

RECORDATION REQUESTED BY:

72-82919

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDS FOR RECORD
LIBER 8708 PAGE 368

AFTER RECORDATION, ADDRESSEE:

Security Title Corp
e/o sd

67-2

1972 NOV -3 AMIC: 51

[Signature]
REGISTRAR

When Completed: Mail ()
Pick Up (X) Phone:

10/25/72

DECLARATION OF PROTECTIVE PROVISIONS
FOR MARINER'S VALLEY TWO

THE TRUSTEES OF THE ESTATE OF BERNICE PAUAAHI BISHOP, DECEASED, whose place of business and post office address is 519 Halekauwila Street, Honolulu, Hawaii (herein, with their successors in trust and assigns, called the "Trustees"), the owners in fee simple of all that certain land on the north-east side of Hawaii-Kai Drive at Maunaloa, Honolulu, Hawaii, consisting of Lots 1 through 159, inclusive, as shown on File Plan No. 1275 for Kalama Valley Units 1-A and 1-C, filed in the Bureau of Conveyances of Hawaii and approximately 320 other lots, the general location and layout of which are as shown on the Preliminary Subdivision Plan attached hereto as Exhibit A and made a part hereof and which are to be designated as lots of Kalama Valley Units 1-B, 1-D, 1-A-1, 4-A and 4-B on future file plans (Kalama Valley Units 1-A, 1-C, 1-B, 1-D, 1-A-1, 4-A and 4-B, herein sometimes called "Mariner's Valley Two"), in order to establish a plan for the use and maintenance of certain common areas of Mariner's Valley Two as hereinafter described, do hereby declare, certify and agree that all Mariner's Valley Two residential lots shall hereafter be held, leased, mortgaged, conveyed, used, occupied and improved subject to and with the benefit and protection

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of the following restrictions, covenants, conditions, provisions and easements:

1. Common Areas. As used in this instrument, the term "Common Areas" shall mean (i) the area in or adjacent to Mariner's Valley Two described below as well as (ii) those areas, if any, shown on future file plans for Mariner's Valley Two, or any areas immediately adjacent to areas on such future file plans, which are designated as "Common Areas" by a supplemental declaration (the terms "Lot" or "Lots" used below refer to Lot or Lots shown on File Plan 1275):

(a) A decorative screen wall, six inches (6") thick, immediately adjacent to, and running along, the inside of the eastern boundary of Lots 22 through 31 (course line 35), inclusive, of the northeastern boundary of Lot 31 (course line 34), and of the southeastern and eastern boundary of Lot 150 (course lines 30, 31 and 32);

*Hi Kai - Molokai
in Kealahou ST*

(b) That continuous strip of land lying between the decorative screen wall described in item (a) above, and the curb of the roadway adjacent to said wall;

*1178 Molokai
Kealahou ST*

*Now
sidewalk*

(c) A decorative screen wall, six inches (6") thick, situate within Lots 1 and 4 through 21, inclusive, and immediately adjacent to, and running along, the outside of the northern boundary of Lot 155; ?

*Kealahou
Back Over*

(d) A decorative screen wall six inches (6") thick, immediately adjacent to, and running along the inside of the southern and southeastern boundaries of Lots 93 through 96 (course lines 8 and 9) inclusive;

*Molokai
Kealahou ST*

(e) All of those easements identified as Maintenance Easements M-1 through M-16 in the sheets attached hereto as Exhibit B and shown on the Survey Map attached hereto as

*SEPT
MAPS*

Exhibit C;

(f) That continuous strip of land lying between the southern and eastern boundaries of said Maintenance Easement M-16 and the curbs of the roadways adjacent to said easement.

Large parking area

(g) A decorative screen wall six inches (6") thick, immediately adjacent to and running along the outside of the western and northwestern boundaries of easement M-1 within Lot 21 and of the northern and northwestern boundaries of easement M-2 within Lot 22, as such easements are described in Exhibit B and shown on Exhibit C;

22'

(h) Lot 155; and *Big parking area*

(i) That continuous strip of land lying between the southern and western boundaries of Lot 155 and the curbs of the roadways adjacent to said Lot;

(j) All of that easement identified as Maintenance Easement M-17 in the sheet attached hereto as Exhibit D and shown on the Survey Map attached hereto as Exhibit E;

(k) That continuous strip of land lying between the southern and eastern boundaries of said Maintenance Easement M-17 and the curbs of the roadways adjacent to said easement.

~~Survey Map Attached~~

Prior to the lease by the Trustees of any residential lot in Mariner's Valley Two not shown on said File Plan No. 1275, the Trustees will execute and file or record supplemental declarations designating all Common Areas thereof and each residential lot thereof having the use of said Common Areas. Each lot so designated by supplemental declarations shall thenceforth be subject to and have the benefit and protection of the applicable protective provisions set forth in this

*When
is
this*

declaration until such time as this declaration of protective provisions shall terminate.

2. Mariner's Valley Two Maintenance Association.

All owners of Mariner's Valley Two residential lots, as defined hereinafter, shall become members of an association called Mariner's Valley Two Maintenance Association (herein called the "Association"), now or hereafter to be formed under the laws of the State of Hawaii as a non-profit corporation and at all times having charter provisions for membership not inconsistent with this declaration. The Association shall be organized to maintain and improve the Common Areas of Mariner's Valley Two and to supervise and enforce the compliance by the

owners of the Mariner's Valley Two residential lots with all applicable protective provisions and covenants.

3. Regulations. The Association will insure the fullest possible use and enjoyment of the Common Areas by the owners of the Mariner's Valley Two residential lots consistent with applicable laws, rules or regulations and, except as otherwise provided herein, shall be solely responsible for the care and maintenance of the Common Areas. The Association shall have the right from time to time, upon reasonable notice to its members and upon giving them an opportunity to be heard thereon, to adopt, amend, modify or revoke such reasonable rules and regulations as it deems necessary or desirable for the proper control and operation of the Common Areas, including without limitation, suitable restrictions on the use of the Common Areas and penalties for the violation thereof, and the Association may enforce such rules and regulations by any appropriate means. Management and control of the Common Areas shall not be assigned or transferred by the Association either in whole or in part.

4. Membership. Membership in the Association shall always consist of and be limited to the owners of the Mariner's Valley Two residential lots or the lessees thereof under any valid and subsisting leases or subleases for a term of one year or more entitling them for the time being to possession of such lots, and the Trustees will on request thereof furnish to the Association all information available in their records regarding holders of such leases or subleases. In case the Association shall at any time cause its charter or bylaws to be amended to change in any material respect the foregoing qualifications or rights of membership therein, or

in case of the dissolution of the Association or its inability or failure for a period exceeding 120 days following receipt of notice from the Trustees thereof to administer the Common Areas as herein provided, the Trustees may at their option either designate as its successor a Hawaii non-profit corporation whose charter and bylaws provide substantially the foregoing qualifications and rights of membership therein and transfer to such successor the administration of all Common Areas of Mariner's Valley Two, including without limitation all the rights, privileges, powers and duties herein provided for the Association, or terminate this declaration and all easements and rights hereby created, which transfer or termination shall be evidenced by a supplemental declaration thereof executed only by the Trustees and duly recorded in the Hawaii Bureau of Conveyances; provided, however, the Trustees shall not so terminate this declaration at any time within a ninety (90) day period from the giving to each mortgagee of Mariner's Valley Two residential lots or leases thereof, its successors and assigns (and to the Federal Housing Administration if it is insurer of the mortgage) written notice of grounds for termination, and within such period of ninety (90) days any such mortgagee, its successors and assigns (or the Federal Housing Administration if it is insurer of the mortgage) may cure the violation of this declaration by the Association which constitutes grounds for termination of this declaration by causing all existing defaults to be cured.

5. Care and Maintenance of Common Areas. The Association shall landscape to the extent reasonably suitable, maintain, care for and keep in good order and condition all of the Common Areas and all improvements and landscaping thereon;

and in any event the quality and standard of care and maintenance of all such Common Areas shall be in accordance and compliance with all applicable laws, ordinances, rules and regulations of any governmental authority.

6. Limitations and Reservations. The Trustees reserve the right at any time or from time to time:

(a) To grant easements, licenses, permits and rights-of-way for public or private utility purposes, drainage, gas distribution systems, pedestrian walkways, telephone and television cables and other similar uses in, over, through and under the Common Areas;

(b) To enter on any Mariner's Valley Two residential lot for the purpose of constructing any improvements or changes in or appurtenant to the Common Areas and performing other proper functions in connection with the care and maintenance thereof, provided that such lot shall promptly be restored as nearly as practicable to the condition thereof prior to such work at no expense to the owner thereof;

(c) To assign and transfer all or any of their rights, privileges, powers, interests and obligations hereunder to any other person, including without limitation, the Association or any successor designated by the Trustees to administer the Common Areas;

(d) To dedicate any portion of the Common Areas to public use, free and clear of any right, title or interest arising hereunder on the part of the Association or any lot owner; however, upon dedication of such portion, the obligations hereunder in respect thereto shall survive any law, ordinance, rule or regulation of any governmental authority

placing such obligations on any other persons or entities notwithstanding, unless such portion is at the time of dedication or thereafter withdrawn from the obligations hereunder by the Trustees; and

(e) To withdraw any portion of the Common Areas from the restrictions, covenants, conditions and provisions hereunder.

7. Assessments. Each Mariner's Valley T residential lot shall be subject to equal (per lot) semi-annual general assessments by the Association to provide adequate working funds and reserves for the care and maintenance of the Common Areas and the Association's other functions, including without limitation landscaping of areas within the Common Areas. Every general assessment shall be payable in advance on the first day of January and July of each and every year. Any owner of a lot who shall cause any damage to the Common Areas necessitating repairs shall be subject to special assessments for the cost of such improvements or repairs. Every general or special assessment hereunder shall be a lien on any lot assessed or the lease thereof if the owner as defined hereinafter is a lessee, prior and superior to all other liens thereon except taxes and assessments levied according to law and any outstanding mortgages, and the owner of such lot shall be personally liable for the payment of such assessment thereon. Such lien may be foreclosed by the Association by suit in like manner as a mortgage of real property, provided that thirty (30) days' prior written notice of intention to foreclose shall be given to the Trustees and mailed, postage prepaid, to all other persons having any interest in such lot according to the Association's record of

ownership. Within sixty (60) days after the end of each year the owners of all lots shall be given a full and accurate written statement of all receipts and expenditures of assessments during such year, prepared in reasonable detail according to generally accepted accounting practices and certified as correct by a public accountant.

8. Indemnity. All owners of Mariner's Valley Two residential lots shall indemnify and hold the Trustees harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the exercise by them or their agents, servants, guests and invitees of any easements and rights hereby created, and shall use and permit the use of the Common Areas at their sole risk without any obligation or responsibility whatsoever of the Trustees for the condition, control or other use thereof, and will jointly and severally reimburse the Trustees for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the defense of any such claims or demands or with any act or failure to act of the Association or its agents, or in case the Trustees, without any fault on their part, shall be made a party to any litigation commenced by or against the Association or its agents. The Association shall effect and maintain at all times comprehensive general liability insurance covering itself, the Trustees and all owners of Mariner's Valley Two residential lots with respect to the Common Areas with minimum limits of not less than \$100,000 for injury to one person and \$500,000 for injury to more than one person in any one accident or occurrence and \$50,000 for property damage, and from time to time upon receipt thereof deposit promptly with the Trustees current certificates of such insurance.

9. Alteration. Restoration or replacement of the common areas or any structure, improvement or landscaping thereon or construction of any additional structures, improvements, landscaping or any alterations or additions thereto different in any material respect from the structures, improvements or landscaping theretofore approved by the Trustees shall be undertaken by the Association only pursuant to the affirmative vote of a majority of the owners of Mariner's Valley Two residential lots and in accordance with complete plans and specifications therefor first approved in writing by the Trustees.

10. Remedies for Breach. The Trustees or Association or the owner of any Mariner's Valley Two residential lot shall be entitled to enjoin by appropriate legal action for the continuing or repeated breach of any restrictions, covenants, conditions or provisions herein contained, and damages for such breach shall not be deemed to be adequate compensation therefor. Failure of the Trustees, Association or any other person so entitled to enforce any restrictions, covenants, conditions or provisions hereof shall not constitute or be deemed to be a waiver thereof or of the right to enforce the same. In case the Trustees, Association or any other person so entitled shall bring and sustain an action to enforce any restrictions, covenants, conditions or provisions hereof, they shall be entitled to recover from the person guilty of such breach all their costs and expenses including a reasonable attorney's fee incurred in connection with such action.

11. Binding Effects. All restrictions, covenants, conditions and provisions hereof shall constitute covenants and servitudes running with the land of Mariner's Valley Two and shall be binding on and inure to the benefit of the parties hereto, their respective successors and assigns, and all subsequent owners of the lots or Common Areas of Mariner's Valley Two and their respective successors, heirs, executors, administrators and assigns. Every owner of any Mariner's

Valley Two residential lot shall be deemed conclusively to have accepted such lot upon and subject to all the restrictions, covenants, conditions and provisions hereof and agreed to be bound thereby, whether or not the same are set forth or referred to in any instrument by which such person acquired title or possession of such lot.

12. Duration. All the restrictions, covenants, conditions and provisions hereof shall continue in full force and effect for the term of seventy-five (75) years after the date hereof, unless sooner terminated as herein provided, and may, prior to the expiration of said term, be extended in the same manner as herein provided for amendment.

13. Amendment, Waiver and Termination. All or any of the restrictions, covenants, conditions and provisions herein contained or hereby established may be amended, enlarged, modified or waived in any way from time to time or terminated with respect to all or any of the Mariner's Valley Two residential lots by a supplemental declaration thereof in writing, duly executed and acknowledged by the Trustees and recorded in said Bureau, with the prior written consent of the owners of not less than 66-2/3% of all the Mariner's Valley Two residential lots or, if less than all such lots shall be affected thereby, of such lots so affected. In case any Mariner's Valley two residential lot shall be held by two or more owners the written consent of one such owner shall constitute the consent of all in the absence of written objection by any of the others to the Trustees.

14. Separability. Invalidation of any restriction, covenant, condition or provision hereof by final judgment, order or decree of any court or governmental commission, board or agency having jurisdiction thereof shall in no way affect the other restrictions, covenants, conditions and pro-

visions hereof, which shall remain in full force and effect according to their terms.

15. Approval of Kaiser Hawaii-Kai. Kaiser Hawaii-Kai Development Co., a Nevada corporation qualified to do business in the State of Hawaii (herein called "Hawaii-Kai"), having undertaken to develop and improve for leasing by the Trustees certain land at Maunaloa, including Mariner's Valley Two by that certain unrecorded Development Agreement dated April 27, 1961, providing for the establishment by the Trustees with the approval of Hawaii-Kai of restrictions on the use thereof, hereby approves and consents to all restrictions, covenants, conditions and provisions herein contained or hereby established and agrees with the Trustees that Mariner's Valley Two shall be held, used, leased and conveyed subject thereto.

16. Owners of Mariner's Valley Two Lots. In case any Mariner's Valley Two residential lot shall be leased for a term exceeding one (1) year, the lessee (including his successors and assigns) entitled to possession thereof shall at all times during the continuance of such lease be deemed to be the owner of such lot for all purposes of this declaration and shall have all the rights, privileges, duties and obligations of such owner, including without limitation membership and vote in the Association, and during the continuance of such lease the lessor thereunder shall not be deemed to be the owner of such lot.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the 25th day of October, 1972.

Lawrence H. Hirsch

Richard L. ...

Hungwa Cherry
Trustees of the Estate of
Bernice Pauahi Bishop, Deceased

APPROVED AS TO FORM,
CONTENTS & AUTHORIZATION
[Signature]
LEGAL DEPARTMENT

KAISER HAWAII-KAI DEVELOPMENT CO.

By R. S. Dumper
Its Vice President

By Lambreth Hancock
Its Vice President

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this _____ day of NOV 2 1972, 1972, before me personally appeared Frank E. Nickless

Richard Lyman, III and Hung Wo Ching, Trustees of the Estate of Bernice Pauahi Bishop, Deceased, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees.

Evela Black
Notary Public, First Judicial Circuit, State of Hawaii
My commission expires:

EVELA BLACK
Notary Public, First Judicial Circuit
State of Hawaii
My Commission expires March 31, 1976

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

On this 25th day of Oct, 1972, before me appeared R. S. DUMPER and LAMBRETH HANCOCK, JR., to me personally known, who, being by me duly sworn, did say that VICE-PRESIDENT and VICE-PRESIDENT they are

respectively of KAISER HAWAII-KAI DEVELOPMENT CO., a Nevada corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said

R. S. DUMPER and LAMBRETH HANCOCK, JR. acknowledged said instrument to be the free act and deed of said corporation.

Clara K. Tomomats
Notary Public, First Judicial Circuit, State of Hawaii
My commission expires: 8-1-75

