

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows: **Only as to Unit Nos. 2-101, 2-201, 2-202, 2-203, 2-301 and 2-303.**

SPECIAL NOTICE

This Public Report covers phase 2 of the Project which consists of 12 resort apartments located in Building C. There are no commercial apartments in phase 2 of the Project.

The Developer has registered phase 1 of the Project under a separate registration filed with the Real Estate Commission of the State of Hawaii as Registration No. 5069. In addition to the apartments located in Buildings A and B, the pool and recreation area around the pool (including the Jacuzzi, barbeque area and shower next to the pool) were built as part of phase 1.

This Supplementary Public Report covers Unit Nos. 2-101, 2-201, 2-202, 2-203, 2-301 and 2-303 located in The Beach Villas at Kahalu'u condominium project (the "Condominium"). These units have been submitted to a fractional ownership program called "The Beach Villas at Kahalu'u Fractional Ownership Plan" (the "Plan"). The Plan is NOT a timeshare plan and, therefore, is not governed by Chapter 514E of the Hawaii Revised Statutes.

The basic idea of the Plan is that the owners will share the ownership and use of certain condominium units and other property in the Plan and will also share the cost of operating the Plan and maintaining those units and their furnishings, and the Condominium. A buyer will be purchasing a fractional interest in property in the Plan ("fractional ownership interest"). Each buyer will receive a deed of a fractional ownership interest in a condominium unit. The deed will be recorded in the real estate records of the State of Hawaii. The form of deed has been filed with the Real Estate Commission.

The Plan was established and is governed by the Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership recorded in the Bureau of Conveyance as Document No. 2006-138673 ("Fractional Declaration"). A copy of the Fractional Declaration is attached to this Supplementary Public Report as Exhibit 1.

Each owner of a fractional ownership interest in the Plan will automatically become a member of The Beach Villas at Kahalu'u Fractional Owners Association ("Fractional Owners Association"). This is a different owners association than the Association of Apartment Owners of the Condominium. The Fractional Owners Association was formed pursuant to the Articles of Incorporation of The Beach Villas at Kahalu'u Fractional Owners Association ("Fractional Association Articles"). A file-stamped copy of these Articles is attached as an exhibit to the Fractional Declaration. As a member of the Fractional Owners Association, an owner will be subject to certain rules and will be required to pay maintenance fees for the operation of the Plan.

Additional rules for the operation of the Plan and the use of the units and other property in the Plan are set forth in the Bylaws of The Beach Villas Kahalu'u Fractional Owners Association ("Bylaws") and the Association Rules. The Bylaws and the initial Association Rules are attached as exhibits to the Fractional Declaration. The Fractional Declaration, Fractional Association Articles, Bylaws and Association Rules are referred to as the "Plan Documents."

The nature of the Plan and the rights and duties of the developer, the owners, and anyone else who participates in the Plan or who has an interest in it, are governed by the Plan Documents. The Plan Documents explain an owner's other rights and duties as an owner including an owner's duty to pay a share of the costs of owning a fractional ownership interest in the Plan and operating the Plan. A buyer should read these documents carefully before completing the purchase of a fractional ownership interest in the Plan.

Section 1 (Persons Connected with the Project) - The sales broker for the Plan is Clark Realty Corporation. This is not the same company that is serving as the sales broker for the sale of whole condominium units in the Project. Section 1 has been updated to provide the contact information for Clark Realty Corporation.

Section III.E (Encumbrances Against Title) – An updated title report reflecting the recordation of the Fractional Declaration has been filed with the Real Estate Commission.

Exhibit F (List of Encumbrances) – Exhibit F provides a list of encumbrances on the units covered by this Supplementary Public Report. This exhibit has been updated to reflect the encumbrances listed in the updated title report filed with the Supplementary Public Report (e.g., the Fractional Declaration).

Exhibit H (Summary of Escrow Agreement and Sales Contract) - The sales contract and escrow agreement for the purchase of fractional ownership interests in the Plan are different from the sales contract and escrow agreement for the purchase of whole units in the Condominium. A summary of the sales contract and escrow agreement for the purchase of fractional ownership interests in the Plan are provided in Exhibit H to this Supplementary Public Report and copies of the form of sales contract and the executed escrow agreement have been filed with the Real Estate Commission.

Exhibit 2 to this Supplementary Public Report – The estimated regular assessments for the Plan are based on the budget attached to this Public Report as Exhibit 2. This budget is different than the budget for the Apartment Owners Association attached to the Final Public Report for this Condominium as Exhibit G. The regular assessments for the Plan include the payment of an owner’s share of the maintenance fees for the Condominium.

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General information on Condominiums

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

Operation of the Condominium Project

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Kahalu'u Beach Club LLC Phone: (808) 322-9433
Name* (Business)
78-216 Makolea Street, #32
Business Address
Kailua-Kona, Hawaii 96740

Names of officers or general partners of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC) (attach separate sheet if necessary):

See Exhibit A attached to this Condominium Public Report.

Real Estate Broker*: Clark Realty Corporation Phone: (808) 331-1300
Name (Business)
78-6831 Ali'i Drive, #142
Business Address
Kailua-Kona, Hawaii 96740

Escrow: Old Republic Title & Escrow of Hawaii, Ltd. Phone: (808) 566-0100
Name (Business)
733 Bishop Street, Suite 2700
Business Address
Honolulu, Hawaii 96813

General Contractor*: Ledcor - U.S. Pacific Construction LLC Phone: (808) 540-0777
Name (Business)
Pauahi Tower, Suite 1250
1001 Bishop Street
Business Address
Honolulu, Hawaii 96813

Condominium Managing Agent*: Maryl Realty, Inc. Phone: (808) 331-8200
Name (Business)
75-1000 Henry Street, Suite 200
Business Address
Kailua-Kona, Hawaii 96740

Attorney for Developer: Charles E. Pear, Jr./Stacey Hee
McCarriston Miller Mukai MacKinnon LLP Phone: (808) 529-7300
Name (Business)
P.O. Box 2800
Business Address
Honolulu, HI 96803-2800

* For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed
 Recorded - Bureau of Conveyances: Document No. 2004-029098
Book _____ Page _____
 Filed - Land Court: Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to the Declaration of Condominium Property Regime dated August 19, 2004, recorded in the Bureau of Conveyances as Document No. 2004-171555.

Amended and Restated Declaration of Condominium Property Regime, recorded in the Bureau of Conveyances as Document No. 2005-259696.

B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, and dimensions of each apartment.

The Condominium Map for this condominium project is:

- Proposed
 Recorded - Bureau of Conveyances Condo Map No. 3706
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]:

First Amendment to the Declaration of Condominium Property Regime dated August 19, 2004, recorded in the Bureau of Conveyances as Document No. 2004-171555.

Amended and Restated Declaration of Condominium Property Regime, recorded in the Bureau of Conveyances as Document No. 2005-259696.

C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this Condominium are:

- Proposed
 Recorded - Bureau of Conveyances: Document No. 2004-029099
Book _____ Page _____
 Filed - Land Court: Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

None.

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed Adopted Developer does not plan to adopt House Rules

E. **Changes to Condominium Document.** Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%*	<u>75%</u>
Bylaws	65%	<u>65%</u>
House Rules	---	<u>**</u>

* The percentages for individual condominium projects may be more than the minimum set by law for projects with five or fewer apartments.

** These house rules may be amended by a majority of the Association's board of directors at a duly called meeting.

2. **Developer:**

- No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.
- Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules.

The developer has reserved various rights under the condominium documents. See Exhibit I for examples of the developer's reserved rights. Generally, the developer may exercise these reserved rights during the "development period" of the project; however, some reserved rights continue past this. The development period is the period starting on February 11, 2004 (the date that the Declaration was recorded) and ending on the earlier of (i) December 31, 2014, or (ii) the date when the developer records a document giving up all of the developer's reserved rights.

Some of the developer's reserved rights are or may be necessary or helpful to developing the project in phases. Even so, the exercise of the developer's reserved rights is not limited to the development of the project in phases except to the extent that the declaration expressly states otherwise.

The developer may exercise the developer's reserved rights separately or in one or more combinations and at one or more times. The developer has no duty to exercise the developer's reserved rights. For example, the developer has no duty to develop any new phases of the project. Conversely, the use of these rights on one occasion does not limit or otherwise affect the developer's right to use them again at any time prior to the time such rights expire.

The developer may use the developer's reserved rights without being required to obtain the approval, consent, or joinder of anyone else, and without having to give notice to anyone else. This includes, but is not limited to, the Association, any apartment owner, any lender, or any other interested person.

III. THE CONDOMINIUM PROJECT

A. Interest to be Conveyed to Buyer:

- Fee Simple: Individual apartments and the common elements, which include the underlying land, will be in fee simple.
- Leasehold or Sub-leasehold: Individual apartments and the common elements, which include the underlying land will be leasehold.

Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: Month Year

For Sub-leaseholds:

- Buyer's sublease may be canceled if the master lease between the sublessor and fee owner is: Canceled Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple; Common Interest in the Underlying Land in Leasehold or Sub-leasehold:

Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver to the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.

Exhibit _____ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: _____ Rent Renegotiation Date(s): _____

Lease Rent Payable: Monthly Quarterly
 Semi-Annually Annually

Exhibit _____ contains a schedule of the lease rent for each apartment per: Month Year

Other:

IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney.

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement, by law or by agreement between the lessor and lessee. The Renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease a new lease of the land with the lessee (apartment owner). The developer may lease improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

B. Underlying Land:

Address: 78-6721 Ali'i Drive Tax Map Key (TMK): (3) 7-8-14-86
Kailua-Kona, Hawaii 96740

Address TMK is expected to change because _____

Land Area: 33,964 [X] square feet [] acre(s) Zoning: Hotel-Resort
(V-1.25)

Fee Owner: Kahalu'u Beach Club LLC
 Name
78-216 Makolea Street, #32
 Address
Kailua-Kona, Hawaii 96740

Lessor: Not Applicable.
 Name

 Address

C. **Buildings and Other Improvements****

1. New Building(s)
 Conversion of Existing Building(s)
 Both New Building(s) and Conversion

2. Number of Buildings: 1 Floors Per Building: Building C – 3 floors
 Exhibit _____ contains further explanations.

3. Principal Construction Material:
 Concrete Hollow Tile Wood
 Other: gypsum board, aluminum and glass

4. Uses Permitted by Zoning:

	No. of Apts. *	<u>Uses Permitted By Zoning</u>	
<input type="checkbox"/> Residential	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Commercial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Mix Res/Comm	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Hotel	<u>12**</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Timeshare	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Ohana	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Industrial	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Agricultural	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Recreational	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other:	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Is/Are this/these use(s) specifically permitted by the project's Declaration or Bylaws?
* Yes No

* This Public Report only covers phase 2 of the project which consists of 12 resort apartments. See Special Notice on page 2 of this Public Report.

**The Declaration provides that the resort apartments may be occupied and used (i) as a permanent or temporary residence or (ii) for hotel or transient vacation rental purposes. In addition, the Declaration specifically provides that the resort apartments may be placed in a fractional ownership plan or in a time share plan if the Developer creates the plan or authorizes or consents to this use in a recorded document.

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: See Section 9.1G of the Bylaws.

Number of Occupants:

Other: See Amended and Restated Condominium Declaration and Bylaws, especially section 9.1 of the Bylaws regarding use restrictions. Copies of the Amended and Restated Declaration and Bylaws have been filed with the Real Estate Commission and are available upon request.

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: 1 (Building C) Stairways: 2 (Building C) Trash Chutes: 0

<u>Apt. Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Net Living Area (sf)*</u>	<u>Net Other Area (sf)</u>	<u>(Identify)</u>
Type D <u>(two-bedroom)</u>	<u>6</u>	<u>2 / 2</u>	<u>874.50</u>	<u>128.25</u>	<u>Lanai</u>
Type E <u>(two-bedroom)</u>	<u>6</u>	<u>2 / 2</u>	<u>934.46</u>	<u>128.25</u>	<u>Lanai</u>

Total Number of Apartments: 12 apartments**

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.** The apartment includes the interior of the apartment and the lanai area.

Other documents and maps may give floor area figures which differ from those above because a different method of determining the floor area may have been used. All floor area figures are approximate.

**** This Public Report covers phase 2 of the project.** Phase 1 of the project is registered under a separate Public Report. See Special Notice on page 2 of this Public Report.

Boundaries of Each Apartment: See Exhibit B.

Permitted Alterations to Apartments: See Exhibit C.

Apartments Designated for Owner-Occupants Only: Not Applicable. All apartments were designed and constructed for hotel or resort use and the Project is located in an area designated by the County of Hawaii for hotel and resort use.

~~Fifty percent (50%) of residential apartments must be so designated; developer has a right to substitute similar apartments for those apartments already designated. Developer must provide this information either in a published announcement or advertisement as required by section 514A-102, HRS; or include the information here in this public report and in the announcement (see attachment 11a). Developer has elected to provide the information in a published announcement or advertisement.~~

11. Conformance to Present Zoning Code

- a. No variances to zoning code have been granted.
 Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u> x </u>	<u> </u>	<u> </u>
Structures	<u> x </u>	<u> </u>	<u> </u>
Lot	<u> x </u>	<u> </u>	<u> </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit _____

as follows: All parts of the condominium project except for the apartments, including those parts of the project designated in the Declaration as limited common elements, are common elements.

2. Limited Common Elements: Limited Common Elements are those common elements which are designated for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit D

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit E

as follows:

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit F described the encumbrances against the title contained in the title report dated July 28, 2006 and issued by Old Republic Title & Escrow of Hawaii .

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

There are no blanket liens affecting title to the individual apartments.**

There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit of Developer Defaults or Lien is foreclosed Prior to Conveyance</u>
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Mortgage and Assignment of Rents and Leases. See Exhibit F for more information.

Lender (mortgagee) has priority over a buyer's rights under a sales contract, and has a right to terminate sales contracts upon foreclosure of its mortgage before an apartment sale is closed. If there is a foreclosure, or a deed in place of foreclosure, the lender (new owner of the condominium) can choose to cancel the sales contract or to take the seller's place under the buyer's sales contract and complete the sale. If the sales contract is canceled, the buyer will get its money back but nothing more.

F. **Construction Warranties:**

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

Developer makes no warranties, express or implied, about the Project, the apartments or any consumer products or anything else installed in the apartments or on the Project. This includes but is not limited to warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. EVERYTHING IS BEING SOLD "AS IS" AND WITH ALL DEFECTS, WHETHER VISIBLE OR HIDDEN, AND WHETHER KNOWN OR NOT.

1. Building and Other Improvements: The developer has entered into an agreement (the "Construction Contract") with a general contractor ("contractor") for the construction of phase 2 of the Project. The Construction Contract provides that the contractor will correct any "Work" "found not to be in accordance with the requirements of the Contract Documents" within one (1) year of the date of "Substantial Completion" (as the terms in quotations are defined in the Construction Contract) unless the developer has previously accepted such work. The developer will lose this right if, during the one-year warranty period, it fails to notify the contractor and give the contractor an opportunity to make the correction. The developer will try to pass on the benefits of this warranty to a purchaser if a purchaser gives the developer written notice of a condition that may be covered by this warranty promptly after the purchaser discovers it and before the one-year warranty period is up (and before the Developer accepts the condition). The developer will then forward the purchaser's notice to the contractor together with a notice from the developer asking the contractor to make the correction. **However, the developer is not making any warranty of its own or joining in the contractor's warranty or guaranteeing that the contractor will fix any defects or honor its warranty. The developer is simply trying to pass on the benefit of the contractor's limited warranty.** Further, the developer cannot guarantee that the Construction Contract will not be amended in a manner that may change or eliminate this warranty provision.

Note that the warranties that cover portions of phase 1 of the project which include the pool and other recreation areas will expire in less than a year.

2. Appliances: To the extent that an assignment is permitted, the developer will assign any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances that are part of the apartment for the unexpired term, if any, at the close of escrow. It should be noted that the developer is merely attempting to pass through to buyer any such manufacturer's or dealer's warranties. **The developer is not, however, adopting any such warranties or acting as co-warrantor with respect to any furnishings, fixtures or appliances.** The terms of the manufacturers' or dealers' written warranties shall be available for buyer's examination at the developer's sales office.

G. **Status of Construction and Date of Completion or Estimated Date of Completion:**

Construction of phase 2 of The Beach Villas at Kahalu'u condominium project is expected to begin on or about February 15, 2006 and is expected to be completed on or about July 31, 2007.

Construction on phase 1 of the project is almost complete. Construction has not begun on phase 3 and none has been planned at this time. See Section H of this Public Report, below, for an explanation of the developer's right and obligation to develop future phases.

H. **Project Phases:**

The developer [] has [] has not reserved the right to add to, merge, or phase this condominium

Summary of Developer's plans or right to perform for future development (such as additions, mergers or phasing):

Phasing. The developer plans to develop the project in stages. Each stage is called a "phase" or an "increment". Each phase may include apartments and other improvements. The developer has no obligation to build any phase beyond phases 1 and 2. The developer can develop the phases in any order that it wishes. It can also develop more than one phase at a time or divide a phase into separate smaller phases. For example, the developer might decide to develop phase 3 in two phases and possibly as two separate buildings. The developer may also change its plan of development without the consent or approval of anyone else.

Merger. The developer reserves the right to develop one or more adjacent condominiums on any adjacent parcel and to merge any adjacent condominium with the project pursuant to the Declaration of Merger dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-029097. The developer may do this more than once and at any time before the "development period" ends. The developer may only merge the project and any adjacent condominium in accordance with the terms of and subject to the conditions to merger stated in the Declaration of Merger. The "development period" is defined in the Declaration as the period starting on February 11, 2004 and ending on the earlier of (i) December 31, 2014, or (ii) the date when the developer records a document giving up all of the developer's reserved rights.

Additions. See Exhibits C and I to this Public Report.

IV. CONDOMINIUM MANAGEMENT

- A. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- [x] not affiliated with the Developer [] the Developer or the Developer's affiliate
[] self-managed by the Association of Apartment Owners [] Other:

- B. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit G contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change).

- C. Utility Charges for Apartments:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- [] None [x] Electricity (Common Elements only x Common Elements & Apartments)
[] Gas (Common elements only Common Elements & Apartments)
[x] Water [x] Sewer [] Television Cable
[x] Other: Any other utility services and utilities that board deems necessary.

V. MISCELLANEOUS

A. Sale Documents Filed With the Real Estate Commission:

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants. Not Applicable.
- Specimen Sales Contract.
Exhibit H contains a summary of the pertinent provisions of the sales contract
- Escrow Agreement dated May 27, 2005
Exhibit H contains a summary of the pertinent provisions of the Escrow Agreement.
- Other: _____

B. Buyer's Right to Cancel Sales Contract:

1. Rights Under the Condominium Property Act (Chapter 514A, HRS):

Preliminary Report: Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

Supplementary Report to a Preliminary Report: Same as for Preliminary Report.

Contingent Final Report or Supplementary Report to a Contingent Final Report: Sales made by the developer are binding if: **

- A) The Developer delivers to the buyer a copy of:
- 1) Either the Contingent Final Public Report **OR** the Supplementary Public Report which has superseded the Contingent Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
 - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded.
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
 - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
 - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Final Report or Supplementary Report to a Final Report: Sales made by the developer are binding if: **

- A) The Developer delivers to the buyer a copy of:
- 1) Either the Final Public Report **OR** the Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission; **AND**
 - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded.
- B) The buyer is given an opportunity to read the report(s); **AND**
- C) One of the following has occurred:
- 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
 - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
 - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

Material Change: Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issues by the developer which have been issued an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other: **Declaration of Merger, Sales Contract, Form of Deed and SMA Permit No. 382.**

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov
Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs
Website to access rules: www.hawaii.gov/dcca/har

This Public Report is part of Registration No. 5709 filed with the Real Estate Commission on June 3, 2005.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock WHITE paper stock PINK paper stock

C. **Additional Information Not Covered Above**

A Special Management Area Use Permit (SMA 382) was issued by the Planning Commission of the County of Hawaii. This permit allows the development of a condominium project and related uses on the property. The property is subject to this permit. Buyers and/or the owners association must comply with this permit on an ongoing basis. A copy of this permit has been attached as Exhibit J to this Public Report.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A- 1.6]. (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

KAHALU'U BEACH CLUB LLC



SCOTT F. CHURCH
Its Managing Member

7-07-2006
Date

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

**Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.*

Exhibit A

**Kahalu'u Beach Club LLC
a Hawaii limited liability company
Managers and Members**

Members

Scott F. Church

James L. Louis

Barry B. Bradley

Derrol E. Estrella

Managers

This is a member-managed limited liability company, therefore, there are no managers.

Exhibit B

Apartment Boundaries

RESORT APARTMENTS. The resort apartments consist of an apartment interior and a lanai.

RESORT APARTMENTS INTERIOR BOUNDARIES. The boundaries of the apartment interior consist of the interior surface of the perimeter walls, windows and window frames, doors and door frames, floors, and ceilings.

THINGS THAT ARE PART OF THE RESORT APARTMENTS. These things are part of each resort apartment:

- All of the walls and partitions that are not load-bearing and that are located inside of the apartment's boundaries.
- All movable glass lanai doors and the door frames.
- All doors and door frames located inside of the apartment's boundaries.
- The decorated or finished surfaces of all walls, panels, windows and window frames, doors and their door frames, floors and ceilings that make up the boundaries of the apartment interior.
- All fixtures originally installed in the apartments and all replacements of those fixtures.

THINGS THAT ARE NOT PART OF THE RESORT APARTMENTS. These things are not part of the resort apartments:

- The undecorated or unfinished surfaces of the boundary walls.
- The decorated or finished surfaces of the outside walls of the building that separate the lanai from the apartment interior.
- Any windows and window frames that separate the lanai from the apartment interior.
- Any railings or support posts, and any other walls or other improvements enclosing the lanai, including the decorated or finished surface of them.
- Any load-bearing walls or columns inside of the apartment. However the decorated or finished surfaces of load-bearing walls or columns located inside of the apartment interior are part of the apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each resort apartment.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility service lines or enclosed spaces for wiring, pipes, air exhaust or air conditioning (if any) running through or otherwise located within an apartment if they are used for or serve the common elements or more than one apartment.

All of these things are Common Elements. This is so regardless of the net living areas listed in the Declaration and the way in which they were measured.

LANAI BOUNDARIES. The lanai boundaries consist of these things:

- The decorated or finished surfaces of the outside walls of the building that separate the lanai from the apartment interior;
- The outside surface of any doors, door frames, windows and window frames that separate the lanai from the apartment interior; and
- The interior decorated surface of any railings or support posts, and any other walls or other improvements enclosing the lanai.

COMMERCIAL APARTMENTS. The commercial apartments consist of an apartment interior. There is no lanai. The boundaries of the apartment interior consist of the interior surface of the perimeter walls, windows and window frames, doors and door frames, floors, and ceilings.

THINGS THAT ARE PART OF THE COMMERCIAL APARTMENTS. These things are part of each commercial apartment:

- All of the walls and partitions that are not load-bearing and that are located inside of the apartment's boundaries.
- All doors and door frames located inside of the apartment boundaries.
- The decorated or finished surfaces of all walls, panels, windows and window frames, doors and their door frames, floors and ceilings that make up the boundaries of the apartment interior.
- All fixtures originally installed in the apartment and all replacements of those fixtures.

THESE THINGS ARE NOT PART OF THE COMMERCIAL APARTMENTS:

- The undecorated and unfinished surfaces of the boundary walls.
- The decorated or finished surfaces of the outside walls of the building in which the apartment is located.
- Any load-bearing walls or columns inside of the apartment. However the decorated or finished surfaces of load-bearing walls or columns located inside of the apartment interior are part of the apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each commercial apartment.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning (if any) running through or otherwise located within an apartment if they are used for or serve the common elements or more than one apartment.

All of these things are common elements. This is so regardless of the net living areas listed in Exhibit B and the way in which they were measured.

Note: There are no commercial apartments in phase 2 of the Project. The commercial apartments are part of phase 1 of the Project.

Exhibit C

Alterations to Apartments

1. ADDITIONS OR CHANGES WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT.

Each owner has the right to make any of the following changes, additions and improvements solely within the owner's apartment or within any limited common element that the owner controls:

- The owner may install, maintain, remove and rearrange partitions and other structures from time to time within the apartment or limited common element.
- The owner may finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the apartment or limited common element. This right does not extend to plumbing, electrical or other fixtures that are general common elements.
- The owner may decorate, paint, repaint, wallpaper or otherwise change the appearance of the walls, floors and ceilings of the apartment or limited common element.
- The owner may tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the apartment or limited common element.
- The owner may make "nonmaterial structural additions to the common elements" as that term is used in §514A-89 of the Hawaii Revised Statutes (Condominium Property Act).

The developer's reserved rights include the right to do any or all of these things with respect to any apartment that the developer owns or the limited common elements of an apartment that it owns.

2. CHANGES BETWEEN APARTMENTS AND/OR LIMITED COMMON ELEMENTS. The owner of an apartment has the right and an easement to do these things:

- It can change or remove all or any part of any common element wall, floor, or ceiling that separates the apartment from its limited common elements.
- It can install windows, doors, stairways and other improvements in any opening that it makes.
- It can seal hallways or other openings.
- It can make other reasonable changes or additions.

The developer's reserved rights include the right to do the same things with respect to any apartment that it owns.

3. CHANGES BETWEEN TWO APARTMENTS. The owner of two (2) apartments which are separated by a common element that is a wall, floor or a ceiling, or whose limited common elements are separated from each other by a common element that is a wall, floor or ceiling, has the right and an easement to do these things:

- It can change or remove all or part of the intervening wall, floor and/or ceiling.
- It can install windows, doors, stairways and other improvements in such opening or openings in the intervening common element.
- It can seal hallways or other openings.
- It can make other reasonable changes or additions.

However, the owner may do the things listed above in sections 2 & 3 of this Exhibit only if:

- The structural integrity of the building will not be adversely affected,
- The finish of the remaining common element improvements are restored to substantially the same condition they were in before the change or removal, and
- All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the owner or developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

The developer's reserved rights include the right to do the same things with respect to any two (2) apartments that it owns.

4. REDESIGNATION OF LIMITED COMMON ELEMENTS. The owner of any two (2) apartments has the right to change the designation of the limited common elements that go with those apartments so that all or any part of one apartment's limited common elements now will be appurtenant either to the other apartment or to both of the apartments. The owner cannot do this without the written consent of each lender who has a mortgage on either apartment. The developer's reserved rights include the right to do the same things with respect to any two (2) apartments that it owns.

5. SUBDIVISION OF APARTMENT. The owner of an apartment can subdivide the apartment to create two or more apartments. In connection with this subdivision, an owner can designate which limited common elements of the subdivided apartment will be appurtenant to the apartments resulting from the subdivision and convert parts of the existing apartment to common element status to facilitate the subdivision.

6. CONSOLIDATION OF APARTMENTS. An owner who owns any two (2) or more adjacent apartments may consolidate the apartments into a single apartment. In connection with this consolidation, the owner may make any common element walls between the apartments part of the apartment or its limited common elements. This does not apply, however, to load-bearing walls. The common interest of the newly created apartment will be equal to the sum of the common interests of the apartments being consolidated.

7. LIMITS ON OWNER ALTERATIONS. An owner is not authorized to do any of the following:

- Any work or change by an owner or the developer that would not be consistent with a first-class vacation ownership resort.
- Any work or change by an owner or the developer that would jeopardize the soundness or safety of any part of the project, or reduce the value of it.
- Any work or change by an owner (other than the developer) that would materially change the uniform external appearance of the project without the consent of the board and, during the development period, the developer.
- Restore or replace the project or any building or other structure on it,
- Construct any new building or other structure on it, or
- Make any structural change or addition to its apartment that is different in any material respect from the condominium map, unless pursuant to an amendment of the Declaration.

8. REQUIRED ALTERATIONS. The board of directors of the Association may require that an owner or the developer make changes within an apartment or limited common element as needed to comply with the fire code and all other laws that apply to the project.

Exhibit D

Limited Common Elements

1. LIMITED COMMON ELEMENTS - GENERALLY

All parts of the condominium except the apartments are called "*common elements*". Some common elements, called "*limited common elements*", are designated and set aside for the exclusive use of certain apartments. Except as otherwise specifically provided in the Declaration, those apartments have the exclusive right (in legal terms, an "*exclusive easement*") to use the Limited Common Elements set aside for their use. These Common Elements are Limited Common Elements:

A. MAILBOXES. Each apartment has the exclusive right to use the mailbox having the same number as the apartment.

B. RESORT LIMITED COMMON ELEMENTS. "*Resort limited common elements*" are limited common elements appurtenant to all of the resort apartments.

THINGS THAT ARE RESORT LIMITED COMMON ELEMENTS. Except as provided below, all common elements contained in or that are part of the building containing a resort apartment are limited common elements of that resort apartment. This includes, for example, the following common elements to the extent that they are located within the building containing an owner's resort apartment:

i. All of the following so long as they are not located within an apartment or its limited common elements: All lobby areas, stairways, elevators, corridors, hallways, elevator lobby areas, entrances, entry ways and exits of the building, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms and housekeeping closets so long as they are not located within an apartment or its limited common elements.

ii. Any sprinkler system, fire prevention, or other safety equipment.

iii. The structural components of the building. This includes, among other things, all foundations, footings, floor slabs, girders, beams, supports, apartment boundary and load-bearing walls and columns (except for the finishes on them), and roofs.

THINGS THAT ARE NOT RESORT LIMITED COMMON ELEMENTS. The following common elements are not resort limited common elements.

i. The pool, pool deck, jacuzzi, shower area and barbeque area.

ii. The trash rooms, the maintenance room, elevator machine room, mechanical rooms and electrical rooms, if any.

C. STORAGE CLOSETS. Certain apartments have the exclusive right to use one or more storage closets located in Building C as listed in the Declaration.

D. ELEVATORS. The apartment owners in Building C have the exclusive right to use the elevator located in Building C.

Exhibit E

Common Interest

Except as otherwise provided by law or in the Declaration or elsewhere in the Bylaws, the common expenses will be charged to the owners in proportion to the common interests appurtenant to their respective apartments.

COMMON INTEREST FOR EACH APARTMENT. Each apartment comes with an undivided percentage interest, called the "*common interest*", in all common elements and for all other purposes, including voting. Except as otherwise provided in the Declaration, an apartment and its common interest cannot be separated. In legal terms, the common interest is "appurtenant to" the apartment.

The initial common interest for each apartment that is part of phase 2 of the project is as follows:**

Apartment Number – Type	Common Interest (%)
2-101 – Type D	4.7633%
2-102 – Type E	5.0481%
2-103 – Type D	4.7633%
2-104 – Type E	5.0481%
2-201 – Type D	4.7633%
2-202 – Type E	5.0481%
2-203 – Type D	4.7633%
2-204 – Type E	5.0481%
2-301 – Type D	4.7633%
2-302 – Type E	5.0481%
2-303 – Type D	4.7633%
2-304 – Type E	5.0481%

Except as otherwise provided by law or in the Declaration or the Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u, the common profits of the project will be distributed among, and the common expenses will be charged to the apartment owners, including the developer, in proportion to the common interest appurtenant to their apartments. The total common interest of phases 1 and 2 is 100%.

** This Public Report only covers phase 2 of the project. Therefore, the common interests for phase 1 of the project are not provided in this Public Report, however, the common interest for the apartments located in phase 1 of the project are listed in the Declaration.

ADJUSTMENTS TO COMMON INTEREST.

When new apartments are created, the developer has the right to reallocate the common interests among the existing apartments and the new apartments. This includes the right to change the common interests of existing apartments. Each apartment will have an appurtenant undivided percentage interest in the common elements of the project. In the event that new apartments are added to the project, an apartment's common interest may be adjusted or recalculated by the developer. The undivided percentage interest appurtenant to a particular apartment will be based on the following fraction:

$$\frac{\text{The net living area of that apartment}}{\text{The sum of the net living areas for all apartments in the project.}}$$

The percentage common interest appurtenant to an apartment is equal to the result of this fraction, rounded as provided in section 25.3 of the declaration. Note that the term "net living area" is not limited to the area of an apartment that is suitable for occupancy. Rather the Hawaii Condominium Regulations use the term "net living area" to refer to the floor area of an apartment.

Exhibit F

Encumbrances on Title

1. All unpaid real property taxes.
2. Title to all minerals and metallic mines reserved to the State of Hawaii.
3. Easement A for future road widening purposes over and across Lot 1-A of Makolea Subdivision and being more particularly described in the Condominium Declaration.
4. Notice of Time Share Plan recorded on February 11, 2004 as Document No. 2004-029096.
5. Declaration of Merger of Condominium Phases of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029097.
6. Condominium Map No. 3706 filed in the Bureau of Conveyances of the State of Hawaii.
7. Covenants, conditions, restrictions, reservations, agreements, obligations, provisions, and easements set forth in the Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029098, as amended by First Amendment to Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u dated August 19, 2004, recorded on August 19, 2004 as Document No. 2004 -171555, as amended and restated by Amended and Restated Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u recorded as Document No. 2005-259696.

The above Declarations amongst other things, provide for the possibility of a right of reversion of the common elements and the proportionate common interest conveyed as part of the condominium estate.

8. Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u dated February 3, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on February 11, 2004 as Document No. 2004-029099.
9. Grant of Perpetual Easement in favor of Verizon Hawaii, Inc., a Hawaii corporation, dated December 2, 2004, recorded in the Bureau of Conveyances of the State of Hawaii on January 18, 2005 as Document No. 2005-010027.
10. Grant of Perpetual Easement in favor of Hawaii Electric Light Company, Inc., a Hawaii corporation, for utility purposes, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-103164.
11. Terms, provisions and conditions as contained in the Apartment Deed and/or Fractional Ownership Deed, and the effect of any failure to comply with such terms, provisions and conditions.
12. Any and all easements encumbering the apartment herein mentioned, and/or the common interest appurtenant thereto, as created by or mentioned in said Declaration, as said Declaration may be amended from time to time in accordance with the law and/or in the Apartment Deed and/or Fractional Ownership Deed, and/or as delineated on said Condominium Map. The preliminary title report does not purport to show any recorded apartment deeds affecting various condominium units and any facts, rights, interests or claims arising therefrom.
13. The ALTA/ACSM Land Title Survey map prepared by Chrystal Thomas Yamasaki Registered Professional Land Surveyor, Certificate No. LS-4331 on April 22, 2003 and revised on January 26, 2006, discloses the following:
 - a. The CRM retaining wall along the Easterly property line protruding into the subject property by 0.0 to 0.3 feet.
 - b. A Transformer Vault on a Concrete pad at the Southwesterly corner of the property by 0.0 to 0.5 feet.
14. Any rights, interests or claims which may exist or arise by reason of the facts shown on the ALTA/ACSM Land Title Survey plat prepared by Chrystal Thomas Yamasaki, Registered Professional Land Surveyor, Certificate No. LS-4331, designated Job No. 15330.42, on January 26, 2006 as follows:
 - a. "Dirt and rock pile" encroaching on neighboring property along the Easterly property line by 0 to 3.3 feet.
 - b. Encroachment of the anchor for the utility pole at the Northeasterly corner of the property by up to 1.0 foot and the "cross-bar" on the pole by up to 0.9 feet into the property.
 - c. Transformer vault on concrete pad, a "pad-mounted gear" on a concrete slab and 9 posts at the Southwesterly corner of the property, partially in Easement "A".

15. The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership dated July 10, 2006, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-138673.
16. Mortgage recorded on March 24, 2006, as Document No. 2006-056596 (see Note below).
17. Assignment of Rents and Leases recorded on March 24, 2006, as Document No. 2006-056599 (see Note below).
18. Collateral Assignment of Developer's Rights recorded on March 24, 2006, as Document No. 2006-056598 (see Note below).
19. Financing Statement (UCC-1) by and between Kahalu'u Beach Club, LLC and CSE Mortgage, LLC, recorded on March 24, 2006, as Document No. 2006-056597 (see Note below).

NOTE: Item nos. 16, 17, 18, and 19 were recorded in connection with a loan made for phase 2 of the project. However, the apartments and/or fractional ownership interests will be conveyed to the buyers free and clear of these encumbrances.

Expenses	Yearly Totals	2-101,2-103			2-102,2-104			2-103			S-1	S-2	S-3	S-4	S-5
		201	202	203	201	202	203	201	202	203					
Electricity	\$15,000	\$43	\$60	\$63	\$58	\$70	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	
Water	\$13,800	\$40	\$55	\$58	\$53	\$64	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Sanitary Services	\$10,640	\$31	\$42	\$45	\$41	\$49	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TV Cable	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Telephone	\$420	\$1	\$2	\$2	\$2	\$2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Janitorial	\$600	\$2	\$2	\$3	\$2	\$3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Building Maintenance	\$3,200	\$9	\$13	\$14	\$13	\$15	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Landscape Contract	\$540	\$2	\$2	\$2	\$2	\$3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
In House Mgr // Supplies/Mat'ls	\$41,400	\$119	\$164	\$174	\$159	\$192	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	
Elevator Opns & Maint	\$2,400	\$0	\$16	\$17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Project Planning	\$1,440	\$4	\$6	\$6	\$6	\$7	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Pool Services / Supplies	\$3,000	\$9	\$12	\$13	\$12	\$14	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Pest Control	\$3,749	\$11	\$15	\$16	\$14	\$17	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Refuse	\$6,744	\$19	\$27	\$28	\$26	\$31	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Fire Extinguisher	\$504	\$1	\$2	\$2	\$2	\$2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Office & Administration	\$900	\$3	\$4	\$4	\$3	\$4	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Bank Charges	\$312	\$1	\$1	\$1	\$1	\$1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Mailing / Copies	\$590	\$49	\$2	\$2	\$2	\$3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Taxes & Licenses	\$120	\$0	\$0	\$1	\$0	\$1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Management Serv Fee	\$9,600	\$28	\$38	\$40	\$37	\$45	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Association Mng Expense	\$360	\$1	\$1	\$2	\$1	\$2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Legal Fees	\$1,500	\$4	\$6	\$6	\$6	\$7	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Audit / Public Acctg	\$960	\$3	\$4	\$4	\$4	\$4	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Security Services	\$9,000	\$26	\$36	\$38	\$35	\$42	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Insurance	\$27,480	\$79	\$109	\$116	\$106	\$128	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	
AOAO Reserves (75%)	\$16,500	\$47	\$65	\$69	\$63	\$77	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	
Contingency	\$1,500	\$4	\$6	\$6	\$6	\$7	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Totals	\$172,359	\$14,363	\$19,772	\$20,651	\$18,651	\$22,990	\$6								

The Developer has not performed a reserve study. The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency.

Exhibit H

Summary of Escrow Agreement and Sales Contract

NOTE: ALL BUYERS AND PROSPECTIVE BUYERS SHOULD READ WITH CARE ALL PROVISIONS OF THE ESCROW AGREEMENT AND RESERVATION AND PURCHASE AGREEMENT (“SALES CONTRACT”). THE SUMMARY OF THE ESCROW AGREEMENT AND SALES CONTRACT IN THIS EXHIBIT IS NOT INTENDED TO BE A THOROUGH OR EXHAUSTIVE EXPLANATION OF ALL TERMS AND PROVISIONS CONTAINED IN THE ESCROW AGREEMENT OR SALES CONTRACT BUT ONLY A SUMMARY OF SOME KEY PROVISIONS OF THESE AGREEMENTS. WHILE ONE CAN USE THIS SUMMARY AS A GENERAL SUMMARY OF THE ESCROW AGREEMENT AND SALES CONTRACT, A BUYER MUST REFER TO THE ESCROW AGREEMENT REFERENCED IN THE BUYER’S SALES CONTRACT TO DETERMINE HIS/HER RIGHTS AND OBLIGATIONS AND TO DETERMINE THE SPECIAL MEANING OF TERMS THAT ARE DEFINED IN THE ESCROW AGREEMENT AND THE SALES CONTRACT. IF ANY CONFLICT OR DIFFERENCE EXISTS BETWEEN THIS SUMMARY AND THE ESCROW AGREEMENT OR SALES CONTRACT, THE ESCROW AGREEMENT OR SALES CONTRACT WILL GOVERN.

Copies of the specimen sales contract and the executed escrow agreement have been submitted as part of the condominium registration. It is incumbent upon buyers and prospective buyers to read these documents with care.

The escrow agreement establishes how the proceeds from the sale of the apartments are placed into escrow, as well as the retention and disbursement of these funds. The sales contract also determines the time for and the amount of payments on the purchase price and for the payment of all closing costs.

DEFINITIONS. Below are some of the defined terms used both in the sales contract and the escrow agreement:

“**Blanket Lien**” means any lien or encumbrance (i) that encumbers more than one fractional ownership interest, and (ii) that secures or evidences the obligation to pay money or to sell or transfer the fractional ownership interest, and (iii) that authorizes, permits, or requires the foreclosure and sale or other loss of use of the fractional ownership interest. For example, a mortgage on a vacation unit is a blanket lien. An option agreement that permits someone to force the sale of a vacation unit is also a blanket lien. A judgment against a vacation unit is also a blanket lien. The following are not considered to be blanket liens: (A) The lien of real property taxes that are not overdue; (B) Taxes and assessments levied by a public authority that are not overdue; (C) A lien for assessments charged by a homeowners association (such as the fractional owners association or the condominium owners association) that are not overdue or that otherwise secures compliance with the condominium documents or the plan documents; and (D) An assignment by the seller of its interest as the lender under a loan made to finance the sale of a given fractional ownership interest.

“**Buyer’s Funds, Notes and Loan Documents**” means all funds, notes, and loan documents received before closing from or on behalf of a buyer in connection with a sales contract.

“**Closing Costs**” means all costs and expenses of closing a sale. It includes, for example: (i) the escrow agent’s fee, (ii) conveyance taxes, (iii) notary fees, (iv) recording costs, (v) charges for credit reports on the buyer obtained by the seller, (vi) costs of preparing the buyer’s fractional ownership deed and any loan or financing documents, (vii) costs of title insurance for the buyer and the buyer’s lender, (viii) all loan fees and costs, (ix) any administrative and processing fees charged by the seller, and (x) postage and handling fees.

“**Closing Date**” means the date set by the seller (in the manner provided in the buyer’s sales contract) for the closing to occur. The closing actually may occur later, but the closing date is the day when the closing is scheduled to occur.

“**Condominium Property Act**” means the Hawaii Condominium Property Act (Chapter 514A, HRS) or any law that replaces that law or that applies in the place of that law, whether in whole or in part, to the extent that it applies.

“**Contract Documents**” means, for each buyer, (i) the escrow agreement, (ii) the buyer’s sales contract, (iii) the Buyer’s Certification, and (iv) any written changes to any of those documents. Changes must be in writing and signed by the person whose duties change.

A “**fractional ownership interest**” consists of these things: (1) An ownership share (in legal terms, an “undivided interest as tenants in common”) in a vacation unit; (2) The right to use that vacation unit, and the common furnishings in it, for one “use period” either every year or every other year; (3) A membership in the fractional owners association, a non-profit Hawaii corporation. Fractional ownership interests are divided into different kinds depending on whether the owner may use a vacation unit every year or every other year. These terms are used to describe the different kinds of fractional ownership interests:

1) "Every-Year Fractional Ownership Interest" means a fractional ownership interest that gives its owner the right to use the owner's unit during the owner's use period in each use year.

2) "Every-Other-Year Fractional Ownership Interest" means a fractional ownership interest that includes the right to use a vacation unit for one use period only every other use year. There are two kinds of every-other-year fractional ownership interests, as follows:

(a) "Even-Year Fractional Ownership Interest" means a fractional ownership interest that gives its owner the right to use the owner's unit during the owner's use period in each even year. A use year is an "even year" if the first day of use period no. 1 occurs in an even-numbered calendar year (such as 2008, 2010, and so on).

(b) "Odd-Year Fractional Ownership Interest" means a fractional ownership interest that gives its owner the right to use the owner's unit during the owner's use period in each odd year. A use year is an "odd year" if the first day of use period no. 1 occurs in an odd-numbered calendar year (such as 2009, 2011, and so on).

"Fractional Ownership Deed" means a deed in which the seller transfers the buyer's fractional ownership interest to the buyer.

"Funds" means money.

"HRS" means Hawaii Revised Statutes.

"Loan Documents" means any note and mortgage, and any related documents used in connection with a loan made to finance the buyer's purchase of a fractional ownership interest. A buyer's contract documents and fractional ownership deed are not loan documents.

"Note" means any "negotiable instrument" as that term is defined in Chapter 490, HRS. A check is an example of a negotiable instrument. Generally, if a negotiable instrument is transferred to someone else, that person can force the buyer to keep his or her promise to pay money. The buyer must pay it even if the buyer has a claim or defense against the seller.

"Plan" means the plan created and governed by the plan documents. The name of the plan is The Beach Villas at Kahalu'u Fractional Ownership Plan.

"Plan Documents" means the following documents and any changes and additions properly made to any of them from time to time:

- "Declaration" means The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership. It created the plan.
- "Articles" means the Articles of Incorporation of The Beach Villas at Kahalu'u Fractional Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. The articles established and govern the fractional owners association as a corporation.
- "Bylaws" means the bylaws of the fractional owners association. A copy of the initial bylaws is attached to the declaration.
- "Association Rules" means the rules adopted by the seller and any changes made to them from time to time by the fractional owners association.

ESCROW AGREEMENT

The Escrow Agreement identifies Old Republic Title & Escrow of Hawaii, Ltd. as the escrow agent.

A. RECEIPT OF FUNDS AND DOCUMENTS BY ESCROW AGENT

1. Receipt of Documents. Each time a sales contract is accepted, the seller will send to the escrow agent (a) a copy of the sales contract, and (b) a copy of the receipt for public report signed by the buyer. The escrow agent will also accept and hold any closing statement or settlement statement prepared pursuant to the Real Estate Settlement Procedures Act

("RESPA"), and all other papers from the seller or any lender supplying money to or for the buyer.

The escrow agent will handle and deliver all of these documents as instructed by the person who provided them and the escrow agreement or other instructions.

2. Receipt of Funds, Notes and Loan Documents.

The seller will send each buyer's funds, notes and loan documents to the escrow agent promptly after receiving them, unless the law of another state, country, or other government (national or local) requires that an out-of-state escrow account be set up in that state or country to handle sales made there.

The escrow agent will accept, hold, deposit, and pay out, according to the contract documents, all funds, notes and loan documents received from the buyer or from anyone else for the buyer. The buyer's funds may not be used for any purpose while the escrow agent is holding them except as otherwise expressly provided in the escrow agreement.

3. Interest on Funds Held in Escrow. At least twice each week, the escrow agent will deposit all funds it receives under the escrow agreement in a federally insured account at a bank, savings and loan association, or trust company authorized to do business in the State of Hawaii and chosen by the seller. The accounts must pay interest at the prevailing interest rate. The seller will receive the interest earned on the deposits unless the buyer's sales contract says otherwise.

B. CANCELLATION PERIODS

1. Condominium Cancellation Period. A buyer has the right to cancel the sales contract under Section 514A-62 of the Condominium Property Act (the "condominium cancellation period"). The condominium cancellation period ends on the earlier of:

- Midnight of the 30th day following the day that the public report is delivered to the buyer; or
- When the buyer gives up (in legal terms, "waives") his or her right to cancel using the receipt for public report form; or
- When the buyer is deemed to have waived his or her right to cancel as provided in the Condominium Property Act; or
- When the buyer's fractional ownership deed is recorded. **NOTE: THIS MEANS THAT THE ESCROW AGENT CAN CLOSE BEFORE THE END OF THE 30-DAY PERIOD DESCRIBED ABOVE, AND THAT RECORDING THE DEED WILL TERMINATE THE BUYER'S CANCELLATION RIGHT.**

2. Reservation Cancellation Period. Some forms of the sales contract may provide that the buyer has the right to cancel the sales contract until the end of the reservation period. The "reservation period" ends on the earlier of (i) October 1, 2006, or (ii) the date when the buyer and the seller both have signed a "Confirmation of Contract" in a form provided by the seller.

C. RELEASE OF BUYER'S FUNDS, ETC.

1. Release of Buyer's Funds and Notes. No matter what else the contract documents say, the escrow agent may not release a buyer's funds or notes to the seller, or to someone else for the benefit of the seller, until the last of the following events occurs:

- The buyer's sales contract "has become binding, and the requirements of sections 514A-40, 514A-39.5 and 514A-63 have been met" as that phrase is used in section 514A-65 of the Condominium Property Act.

- The escrow agent has received either:
 - a. A copy of a receipt for public report signed by the buyer whose funds are being released, or
 - b. Satisfactory evidence that the buyer whose funds are being released is deemed to have received for the public report.
- The condominium cancellation period has ended as to the buyer whose funds are being released.
- The escrow agent has not received from that buyer a valid notice of cancellation sent or delivered before the end of the condominium cancellation period.
- If the buyer's sales contract provides a reservation period, the escrow agent has not received from that buyer a valid notice of cancellation sent or delivered before the end of the reservation period.
- The escrow agent has received a sworn statement from the seller in the form attached as Exhibit "B" to the escrow agreement as to the buyer whose funds are being released. The statement must be dated at least five days after the condominium cancellation period and the reservation period have expired; except that if the sale will close before the condominium cancellation period expires, then the affidavit must be dated no more than three business days before the closing date.

2. Release of Buyer's Funds and Documents Without Closing. A buyer's funds and notes may be released from escrow without a closing only as follows:

a. Refunds to Buyer. The escrow agent will refund buyer's funds and notes held by the escrow agent, without interest and without any other earnings on them, if and only if any of the following things have happened:

- 1) The buyer gives a valid notice of cancellation during the condominium cancellation period. In that event, the escrow agent must promptly return to the buyer all of the buyer's funds and notes less any costs incurred by the escrow agent up to \$250.
- 2) The buyer gives a valid notice of cancellation pursuant to section 514A-63 of the Condominium Property Act. In that event, the escrow agent must promptly return to the buyer all of the buyer's funds and notes.
- 3) The seller gives notice to the escrow agent that the seller has exercised its right to cancel the sales contract before the end of the reservation period (if the sales contract provides a reservation period). In that event, the escrow agent must promptly return all of the buyer's funds and notes.
- 4) The seller gives notice to the escrow agent that the buyer has exercised any right to cancel that the buyer has under the sales contract (other than the rights described above in subsections A or B), including any right to cancel before the end of the reservation period (if the sales contract provides a

reservation period). In that event, the escrow agent must return all of the buyer's funds and notes within fifteen (15) business days after the escrow agent receives the seller's notice. The escrow agent will deduct from the buyer's refund, however, the escrow cancellation fee and other costs associated with the purchase, up to a maximum of \$250.

5) The buyer gives notice to the escrow agent that the buyer has exercised any right to cancel that the buyer has under the sales contract (other than the rights described above in subsections A or B), including any right to cancel before the end of the reservation period (if the sales contract provides a reservation period). In that event, the escrow agent will give the seller written notice of the buyer's decision to cancel. The seller has five (5) business days after it receives the escrow agent's notice within which to provide written notice to the escrow agent of the seller's approval or disapproval of the cancellation. If the seller gives it approval, then the escrow agent must return all of the buyer's funds and notes within fifteen (15) business days after the escrow agent receives written notice of approval from the seller. If the escrow agent receives no notice or receives a notice of disapproval from the seller, then the escrow agent may proceed as provided in the escrow agreement.

6) If the seller instructs the escrow agent to do so, the escrow agent will return to the buyer all of the buyer's funds and notes within fifteen (15) business days after the escrow agent receives the seller's instruction.

b. Payment of Funds if the Seller Cancels Because the Buyer Defaulted. If the seller gives written notice to the escrow agent that the seller is canceling a buyer's sales contract because of the buyer's default then the buyer's funds will be delivered as provided in that buyer's sales contract. To the extent that the sales contract provides that the buyer's funds will be released to the seller as liquidated damages if the buyer defaults, then the following rules apply:

1) **Notice From Seller.** The seller must give a written notice of default to the buyer. The seller must provide the escrow agent with a copy of the notice of default sent by the seller to the buyer, together with a statement that at least fifteen (15) days have passed since the notice was sent and that the buyer has not cured the default. The escrow agent must then give the buyer notice by certified or registered mail. The escrow agent's notice must say that the seller has declared that the buyer is in default under the sales contract; and that if the buyer objects to this declaration, the buyer must notify the escrow agent in writing; and that if the escrow agent does not receive any objection from the buyer within thirty (30) days from the date the notice is sent, the escrow agent may treat the buyer's funds as belonging to the seller to the extent provided in the buyer's sales contract and may release those funds to the seller.

2) **Release of Funds.** If the escrow agent receives an objection from the buyer within thirty (30) days after sending the notice to the buyer, then the escrow agent may proceed as provided in the escrow agreement. Otherwise, to the extent authorized by the buyer's sales contract, the escrow agent must treat the buyer's funds as the funds of the seller and pay them

out as provided in the escrow agreement. The amount to be paid to the seller will be deemed "liquidated damages", which means damages agreed to in advance. The escrow agent will refund to the buyer any of the buyer's funds remaining in escrow after payment of the liquidated damages to the seller.

c. Return of Documents if a Sale is Cancelled. If any sale is canceled or rescinded before closing by the buyer or the seller, the escrow agent will:

1) Mark "canceled" on the fractional ownership deed and the sales contract and return them to the seller; and

2) Provide to the buyer any original notes (except for checks and so on that have already been cashed), each marked "canceled;" and

3) Return all other papers to the person who gave them to the escrow agent.

d. Unclaimed Refunds. Unless the law requires something else, the escrow agent must send written notice by certified or registered mail to each buyer entitled to a refund. If a buyer does not claim his or her refund within one year after the notice is mailed, then the escrow agent must treat the money as the seller's and not the buyer's funds. By sending the buyer written notice of payment of that money to the seller, the escrow agent is released from any further liability to the buyer for that money.

e. Disputes. The escrow agent is not required to decide disputes or resolve conflicting demands from the seller, the buyer, or anyone else. The escrow agent can wait for the dispute to be settled by the parties or by appropriate legal proceedings. If it chooses, the escrow agent may instead ask a court in Hawaii to decide the rights of the parties and deposit the funds with the court. This is called an "interpleader action." Once the escrow agent files the interpleader action and deposits the funds with the court, the escrow agent has no more liabilities or obligations for those funds.

D. CLOSING

1. Closing Conditions. The escrow agent will not close any sale before the closing date set according to the sales contract. The escrow agent will close each sale on the closing date if all of the following things (the "closing conditions") have happened:

- The escrow agent has not received a notice of cancellation from the seller or the buyer as provided in the escrow agreement.

- The escrow agent has received enough money to pay the purchase price stated on the buyer's sales contract and any closing costs less (i) any credits allowed by the seller and (ii) the amount of any loan made by the seller to the buyer.

- The escrow agent has received all necessary closing documents.

- All requirements set by the seller or anyone else

loaning money to the buyer for the purchase have been met provided that escrow agent is notified of those requirements in writing.

- The buyer's unit is included in the plan if it isn't already.
- The County of Hawaii has issued a temporary or permanent certificate of occupancy for the buyer's unit.

- A title insurance company authorized to do business in Hawaii is committed to issue, after the buyer's fractional ownership deed is recorded, a policy of title insurance on the buyer's fractional ownership interest in accordance to the requirements set forth in the escrow agreement. Among other things, the title policy must insure that the buyer's fractional ownership interest is subject only to the condominium documents, the plan documents, the buyer's fractional ownership deed, any mortgage signed by the buyer, the "permitted encumbrances" listed in Exhibit "A" to the escrow agreement, and anything else that doesn't make the buyer's title unmarketable.

- As to each existing blanket lien, (i) the escrow agent is prepared to record or can confirm that someone else has already recorded a release of the buyer's fractional ownership interest from the blanket lien, or (ii) in the case of mechanics' or materialmen's liens, the title policy includes an endorsement providing coverage against such liens.

- The requirements of section 4.2 (which is described in paragraph C.1., above) of the escrow agreement have been met or will be met when the buyer's fractional ownership deed is recorded. **THE ESCROW AGENT WILL CLOSE BEFORE THE END OF THE BUYER'S 30-DAY RIGHT TO CANCEL UNDER THE CONDOMINIUM CANCELLATION PERIOD IF THE OTHER CLOSING CONDITIONS ARE THEN MET.**

2. **After Closing.** After closing, the escrow agent will do the following:

- Mail or otherwise deliver, or have someone else deliver to the buyer (i) the fractional ownership deed, (ii) a copy of any recorded mortgage and any closing statement or RESPA settlement statement held by the escrow agent, and (iii) the original owner's title insurance policy; and
- Mail or otherwise deliver to the seller each release and a copy of the fractional ownership deed and any closing statement or RESPA settlement statement held by

the escrow agent; and

- Mail or otherwise deliver the original note and loan documents, any original lender's title policy, and copies of any closing statement or RESPA settlement statement held by the escrow agent, and any other documents to, and do anything else reasonably required by, the seller or anyone else loaning money to the buyer for the purchase; and
- Refund any over-payment to the buyer.

3. **Title Insurance.** A policy of title insurance will be issued to protect the buyer and a separate policy will be issued to anyone making a mortgage loan to the buyer (such as the seller if it makes a loan). The buyer is free to choose any title company licensed in the State of Hawaii. The buyer must give a written notice to the escrow agent stating the name of the title insurance company chosen by the buyer. If the buyer does not choose a title company, then the seller must do so.

E. ESCROW AGENT

1. **Fees.** The escrow agent will be paid an escrow fee in an amount set by agreement of seller and escrow agent. The escrow fee will be charged to the buyer, unless otherwise stated in the buyer's sales contract.

2. **Limits on Liability and Duties.** The escrow agent will not be liable to the buyer, the seller or anyone else for acting as directed by the contract documents, even if the seller, the buyer or someone else instructs it to do otherwise. The escrow agent does not have to tell the seller or any buyer about any other transaction or fact if that transaction or fact does not prevent the escrow agent from obeying the contract documents. The escrow agent is not responsible for documents or money not delivered to the escrow agent. The escrow agent is not liable if the buyer gives a valid notice of cancellation to the seller but the seller does not notify the escrow agent in a timely fashion. The escrow agent need not determine if any sales contract it receives is valid or sufficient.

3. **Indemnification by Buyer and Seller.** The buyer and the seller, jointly and severally (together and separately) promise to indemnify the escrow agent against (which means the buyer and the seller agree to pay in full) all costs, damages, judgments, legal fees and expenses reasonably incurred by the escrow agent for acting as instructed in this escrow agreement. This does not, however, apply to anything caused by the negligence or misconduct of the escrow agent.

SALES CONTRACT

1. By signing the Reservation and Purchase Agreement, the seller agrees to sell and the buyer agrees to buy the fractional ownership interests described in the Reservation and Purchase Agreement on the terms and conditions stated in the contract documents. The

"contract documents" consist of the Reservation and Purchase Agreement, the Buyer's Certification, and the escrow agreement. The Buyer's Certification is a separate document from the Reservation and Purchase

Agreement, and it is titled "The Beach Villas at Kahalu'u Buyer Certification."

2. The contract documents contain the entire agreement between the parties. **Things not written in the contract documents are not part of the agreement, no matter what anyone says.**
3. Some sales contracts may contain a provision stating that the sales contract will be a reservation agreement (and not a binding contract) until the end of the reservation period. The "reservation period" ends on the earlier of (i) October 1, 2006, or (ii) the date when a buyer and the seller both have signed a "Confirmation of Contract" in a form provided by the seller. The buyer and the seller each have the right to cancel the buyer's Reservation and Purchase Agreement for any reason at any time before the end of the reservation period. However, after the end of the reservation period or after October 1, 2006, all sales contracts will be binding contracts wherein the seller agrees to sell and the buyer agrees to buy a fractional ownership interest(s) on the terms and conditions stated in the contract documents.
4. The owner or owners of each fractional ownership interest have the right to use a specific condominium apartment for a specific sixty-day period each year or every other year. The sales contract identifies the unit and use period that the buyer will use, and states whether the buyer will have the right to use them every year or only every other year. The sales contract also specifies the amount and time for payment of the purchase price, closing costs, and financing terms for any amounts of the purchase price which are financed by the buyer.
5. The escrow agent may not close until the "closing conditions" stated in the escrow agreement have been met. These are discussed above.
6. Ownership and use of the fractional ownership interest(s) are subject to the documents that created and that govern the plan and the condominium, are called the "plan documents" and the "condominium documents," respectively. Together they are called the "governing documents." A buyer's rights and duties as an owner are defined, limited and governed by the governing documents and can be changed as provided in them. Either the Owner's Handbook or the developer's internet site "BeachVillasatKahaluu.com" contains most of the governing documents (except for the condominium map which is quite large and certain minor amendments to the governing documents). Buyer's should read the governing documents and their fractional ownership deed before the cancellation right under the Hawaii condominium law ends, and before a buyer gives up or "waives" that right to cancel, because by signing the sales contract, a buyer accepts and approves those documents, including among other things, the rights that those documents give to the seller.
7. The seller has certain rights to change the condominium documents and the plan documents. For example, the seller may do so to comply with the laws and regulations of any place or the requirements of any governmental agency in connection with the registration of the plan to permit the sale of fractional ownership interests there. It may also do so to create new unit types or new kinds of fractional ownership interests, or in connection with the development and completion of the various parts or phases of the condominium. And it may do so facilitate the operation and management of the plan or the sale of the fractional ownership interests, or to facilitate participation in a given exchange program. It may also do so to fix mistakes or to make any change before any fractional ownership interests are deeded to someone other than the seller's lenders. A buyer accepts all of those changes and agrees to keep all of his or her promises in the sales contract even if some or all of the governing documents change after a buyer signs the sales contract. However, a buyer does not give up his or her right to cancel under Section 514A- 63(a) of the Condominium Property Act.
8. If anything in the contract documents is inconsistent with the governing documents, the governing documents will control.
9. In addition to the initial purchase price for the fractional ownership interest, a buyer must also pay the regular and any special assessments charged by the fractional owners association and the condominium association. These fees are used to pay the cost of operating and maintaining those associations or the properties that they manage. *The buyers understand and accept that costs to maintain and operate any real estate project are difficult to estimate. And they usually increase over time as the project ages or due to inflation or other things that the seller cannot control or predict. As a result, the seller, the plan manager of the fractional owners association, and the condominium association's managing agent cannot promise that their estimates of assessments will always be accurate.* Buyers must also pay "personal charges" which are charges for things like long distance calls, extra housekeeping services, damage beyond normal wear and tear, and so on.
10. A buyer must make all payments required by the sales contract when they are due. If seller asks, a buyer must provide written information showing that the buyer can pay all parts of the purchase price except for any amounts financed by the seller. If the seller is providing the financing for a buyer's purchase, the buyer authorizes the seller to check the buyer's credit. If the buyer is borrowing from someone other than the seller, then (i) the buyer must get the loan itself and the seller has no obligation to help the buyer do so, (ii) the buyer must pay all costs and expenses charged by that lender, and (iii) the buyer must make sure that its lender is ready to close by the closing date.

11. The seller must choose the day for the closing. That date is called the closing date and it must occur within ninety (90) days after the closing conditions are met. The seller can postpone the closing for up to six months after (i) a buyer signs the sales contract, or (ii) the County of Hawaii issues a temporary or permanent certificate of occupancy for the buyer's unit, whichever is later. Neither the seller nor the escrow agent needs to tell a buyer when the closing date will be. A buyer must sign and deliver any additional documents needed to close the sale within seven (7) days after the seller or the escrow agent asks for it.
12. If a buyer defaults, the seller may (a) cancel the sales contract, or (b) enforce the sales contract, or (c) do anything else permitted by the sales contract or by law. If the seller decides to cancel, the seller may keep all amounts paid by the buyer (but not more than one-fourth of the "Purchase Price") to compensate (pay) the seller for the buyer's default.
13. In addition to its other rights to cancel, the seller may cancel the sales contract, in its sole discretion, before the closing (i) if the buyer dies before the closing; (ii) if the seller is not satisfied that the buyer can pay all parts of the purchase price except for any amounts financed by the seller; or (iii) if a buyer is financing its purchase and if the seller or the buyer's lender does not give its unqualified approval of the buyer's credit report or loan application.
14. The seller chose the first board of directors and plan manager for the fractional owners association. The seller also chose the first managing agent for the condominium association.
15. Any lawsuit or other legal proceedings will be handled in Hawaii and without a jury.
16. The seller did not make the furniture or appliances or other furnishings in the condominium. Likewise, the seller is not the general contractor nor is the seller related to the general contractor that is building the condominium. The seller expects, but does not promise, that the construction contract between the seller and the general contractor will require that, for one year after the "date of Substantial Completion of the Work", the contractor will correct any of the "Work" that is "found to be not in accordance with the requirements of the Contract Documents" (as those terms are defined in the construction contract) unless the seller has previously accepted it. The seller will lose this right if, during the one-year period, it fails to notify the contractor and give the contractor an opportunity to make the correction. If a buyer give the seller written notice of such a condition promptly after discovering it and before the one-year period is up (and before the seller accepts the condition), the seller will forward the buyer's notice to the general contractor together with a notice from the seller asking the general contractor to make the correction. However, the seller is not making any warranty of its own or joining in the contractor's warranty or guaranteeing that the contractor will fix any defects or honor its warranty. The seller is simply trying to pass on the benefit of the general contractor's limited warranty. ***Except for the warranty of title in the buyer's deed, the seller makes no warranties, express or implied, about the fractional ownership interest(s), the condominium apartments, the condominium, or anything installed or contained in them. This includes but is not limited to warranties of merchantability, marketability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. EVERYTHING IS BEING SOLD "AS IS" AND WITH ALL DEFECTS, WHETHER VISIBLE OR HIDDEN, AND WHETHER KNOWN OR NOT.*** This means, among other things, that the seller does not have to correct or fix any defect no matter what causes it or when it is discovered. ***Buyers also give up (or, in legal terms, "waive and release") all rights and claims that they may have, now or in the future, against the seller, all companies related to the seller, and each of their officers, directors, agents and employees (i) for any defects in the buyer's unit or the condominium or anything installed or contained in them, and (ii) for injury to persons or property arising from any such defects.*** This means that the seller will not have to pay for any injury or damage to people or things as a result of any defect. This waiver and release applies not only to the buyer but also to everyone else claiming by or through you (for example, the fractional owners association or the condominium association). Also, the condominium map is not intended to be and does not create any representation or warranty by the seller.
17. The seller is developing the condominium in stages or phases as described in the condominium documents. Phase 1 of the condominium, which includes the first building, the pool, and various other common elements of the condominium, was substantially completed in March, 2005, and most or all of the warranties on it have now expired. The seller does not promise to complete any additional phase except the phase 2. The condominium documents, the plan documents, and the fractional ownership deed give the seller special rights relating to developing and constructing the condominium and developing the plan. A buyer accepts and agrees that the seller will have these rights, and gives the seller a permanent special power of attorney to sign documents and do other things in the exercise of its special rights as the developer.
18. This phase will be constructed substantially in accordance with the plans and specifications as supplied and as revised from time to time by a licensed architect or professional engineer chosen by the seller. Buyers may review a copy of the plans and specifications at the sales office. Buyers approve and accept them, and all changes to them except for any changes that give the buyer the right to cancel under section 514A-63(a), HRS. The seller reserves the right to substitute materials, furnishings, furniture, appliances and fixtures as it deems appropriate.

19. The seller is borrowing the money to construct and develop the condominium and the plan. The loan amount may go as high as \$8,000,000 plus interest at up to 18% per year. The loan may last until June 30, 2009. To get the loan, the seller signed both a mortgage and a security agreement on its interest in the condominium (for example, all apartments covered by this report) and on the appliances and furnishings in it. Buyers understand and agree that the lender's rights in the condominium, appliances and furnishings under the mortgage and security agreement are and always will be superior to the buyer's rights under the sales contract. This will still be true even if the loan is extended or renewed or the terms are changed (including the release of anyone who is liable to repay the loan), whether or not a buyer is told about it. If there is a foreclosure, or a deed in place of foreclosure, the new owner of the condominium can choose to cancel the sales contract or to take the seller's place under the sales contract and complete the sale. If the sales contract is canceled, a buyer will get its money back but nothing more.

20. The seller has arranged for Resort Condominiums International, LLC ("RCI"), a Delaware limited liability company, to make its "Registry Collection" exchange program available to owners in the plan. The seller and RCI are completely separate companies. Neither can make promises for the other. RCI is only responsible for the representations contained in the written materials supplied by it and that the salespeople provided to you. The seller is not liable for RCI's representations. The seller has agreed to pay a buyer's first year's membership fee. The buyer must pay any fees required to renew the membership and any other fees charged by RCI to use its exchange service or other benefits. A buyer will have access to RCI's exchange program only for so long as the fractional owners association's exchange contract with RCI remains in effect. While the seller expects that the exchange relationship with RCI will continue, there is no assurance that it will do so for any particular period of time. A buyer's decision to buy a fractional ownership interest should be based primarily on the use of the buyer's own use rights in the plan and not on RCI's exchange program.

Exhibit I

Summary of Developer's Reserved Rights

A. The developer's reserved rights under the condominium documents include, among others, the right:

- ❖ To create new apartments in any new buildings and improvements constructed on the land or on any adjacent parcel added into the condominium (section 18);
- ❖ To create new apartments and/or common elements from the limited common elements of an apartment (section 18);
- ❖ To design, develop, construct and add new buildings and improvements on the land of the condominium or on any adjacent parcel and to merge any condominium on any adjacent parcel with the condominium (sections 19 and 21);
- ❖ To add into the condominium any "adjacent parcel" and any improvements located on the adjacent parcel (section 20);
- ❖ To develop the adjacent parcel condominiums and to merge any adjacent condominiums with the project pursuant to the Declaration of Merger.
- ❖ To change the condominium as needed or helpful to comply with law or with certain governmental permits, approvals or zoning requirements;
- ❖ To divide any apartment into two or more adjacent apartments or between an apartment and its limited common elements;
- ❖ To change or remove any wall, floor or ceiling between two adjacent apartments or between an apartment and its limited common elements;
- ❖ To create, grant, accept or otherwise deal (i) with any easements over, under, across or through the common elements, or (ii) easements in favor of the condominium or its land;
- ❖ To enter the condominium and to permit its employees, agents, contractors, and so on, to do so; and
- ❖ To make noise, dust, vibrations and do other annoying things when using these or other reserved rights of the developer.

THIS IS ONLY A SUMMARY OF CERTAIN DEVELOPER'S RESERVED RIGHTS. THE NATURE AND EXTENT OF ALL OF THE DEVELOPER'S RESERVED RIGHTS IS DESCRIBED IN AND GOVERNED BY THE CONDOMINIUM DOCUMENTS.

B. When an apartment owner or any other interested person acquires an apartment or any other interest in the project, he or she automatically does each of these things:

1) He or she takes his or her interest in the project subject to the developer's reserved rights, and each and every exercise and/or assignment of them.

2) He or she acknowledges, approves, consents to, agrees to and accepts:

- The developer's reserved rights and its use of them from time to time;
- That this may change the project;
- That this may result in the recalculation of the common interest of some or all Apartments in some cases; and

- That the developer can file and/or record any and all documents that the developer deems necessary or convenient to the use of its rights. This includes, but it is not limited to, amendments to some or all of the condominium documents.

3) He or she agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the developer in its sole discretion determines to be necessary or convenient to the use of the developer's reserved rights or to accomplish the purposes for which those rights were reserved (as determined by the developer).

4) He or she appoints the developer as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf. This means that the developer can act in the place of the owner or other interested person. The developer can do anything that they could do, and they ratify, accept and confirm anything that the developer does using this power of attorney.

- ❖ This power of attorney appointment is permanent. It cannot be revoked and will not be affected by the disability of the owner or any other interested person who gives it.
- ❖ The developer can let someone else act in its place as a substitute attorney-in-fact.
- ❖ Each owner and every other interested person gives the developer this power of attorney whether or not it expressly says so in any deed, mortgage, or other document by which he or she obtained an interest in the Project.
- ❖ The developer has the power to do only the things stated or intended by the condominium documents (as determined by the developer). This includes, however, the power to do anything else that the developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the developer the power to act.

Exhibit J



John K. Yamashiro
Mayor

County of Hawaii

PLANNING COMMISSION

25 Airport Street, Room 209 - Hilo, Hawaii 96720-4151
(808) 941-8228 - Fax (808) 941-9413

CERTIFIED MAIL
Z 179 517 406

APR 24 1998

Robert G. Nespor, AIA
P.O. Box 9003
Kailua-Kona, HI 96745

Dear Mr. Nespor:

Special Management Area Use Permit Application (SMA 98-1)
Applicant: Kahalu'u Beach Partnership
Request: Allow the Development of a 27-Unit Condominium and Related Uses
Tax Map Key: 7-8-14:86 and 87

The Planning Commission at its duly held public hearing on April 17, 1998, voted to approve the above-referenced application. Special Management Area Use (SMA) Permit No. 382 is hereby issued to allow the development of a 27-unit condominium project and related uses. The property is located on the southeast corner of the Ali'i Drive and Makolea Street intersection, across from Kahalu'u Beach Park, Kahalu'u, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205A, Hawaii Revised Statutes (HRS) and Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

The development of the approximately 27-unit condominium project will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and elimination of planning options. The project consists of a three story building, approximately 27-unit condominium and other related facilities. The proposed project is located mauka of

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Alli Drive approximately 400 feet from the shoreline. The property was graded and bulldozed. The flora on the subject property is sparse, consisting of one monkey pod tree, (samanea saman), koa-haole (leucaena leucocephala), castor bean (ricinus communis) and various weeds. There are no known rare or endangered plant life or animal species on the property or in its immediate vicinity. Therefore, there would be no adverse impact to recreational and visual resources, access to and along the shoreline nor coastal ecosystems. The proposed development would not impact the immediate adjacent properties as the subject property is surrounded by resort, condominiums, single family residences and vacant lands.

The proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. According to the applicant, the proposed project will be hooked up to the County of Hawaii's Keauhou Wastewater Treatment Plant. Any potential runoff or discharge which could reach ocean waters can be handled by on-site improvements. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. With these precautionary measures in place, the proposed development is not anticipated to have any substantial adverse effects on the coastal resources or environment. Likewise, the potential of finding rare or endangered animal life is not anticipated.

An archaeological reconnaissance survey was conducted by Paul Rosendahl, in September 1986. "The archaeological reconnaissance survey revealed the project area had previously been entirely bulldozed, as evidenced by large uprooted tree trunks and scraped and scarred basalt boulders mounded together. A sparse surface scatter of weathered marine shell midden was present, but this material was disturbed, or secondary, context as a result of the bulldozing activity....Based on the findings of the reconnaissance survey, it is our opinion that the limited archaeological remains identified within the Keauhou Circle K Project Site of minimal significance in terms of potential scientific research, interpretive, and/or cultural value. We believe that the data recovered constitutes adequate and sufficient recovery of archaeological data present, and that no additional archaeological field work is necessary or justified." On January 20, 1995, a site visit was conducted by the Historic Preservation Division. The site inspection revealed, "Past developments along Alli Drive (makai) and Makolea Road (north), and a condominium mauka of the parcels have encroached on the parcels. In the past, some grading and placing of fill in the parcels has occurred. In Parcel 86 there is the collapsed remains of a historic house and what appears to be a community rubbish dump. No other structures or features were noted in the subject parcels. However, across Makolea Road, in parcel TMK: 7-8-14:47, a lava tube containing stacked stone features and human remains, has been recorded. The lava tube had been sealed by ceiling fall in Parcel 47, so the run of the lava tube could not be mapped. It appeared however, that the tube may run under Makolea Road towards the two subject parcels. We request that if a lava tube is encountered during any grubbing or grading work on the subject parcels, that work in the area of the exposed tube be halted and the Historic Preservation Division office be contacted immediately." Conditions of approval to ensure the review and approval of the Department of Land and Natural Resources, Historic Preservation Division have been included. The establishment of buffer zones, interim protection measures needs to be established. These mitigative

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measures will satisfy the SMA objective to "Protect, preserve and where desirable restore significant historic and cultural resources."

The proposed development is consistent with the County General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area for Urban Expansion. This designation allows for high and medium density uses which includes activities such as those proposed. The proposed development will compliment the following goals, policies and standards of the Land Use and Housing Elements of the General Plan:

LAND USE

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- o Allocate appropriate requested zoning in accordance with the existing or projected needs of neighborhood, community, region and County.
- o The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

HOUSING

- o Attain safe, sanitary, and livable housing for the residents of the County of Hawaii.
- o Attain a diversity of socio-economic housing mix throughout the different parts of the County.
- o Maintain a housing supply which allows a variety of choice.
- o Develop better places to live in Hawaii County by creating viable communities with decent housing and suitable living environments for our people.
- o Improve and maintain the quality and affordability of the existing housing stock.
- o Seek sufficient production of new affordable rental and fee-simple housing in the County in a variety of sizes to satisfactorily accommodate the needs and desires of families and individuals.
- o Ensure that housing is available to all persons regardless of age, sex, marital status, ethnic background and income.

ECONOMIC

- o Provide residents with opportunities to improve their quality of life.

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- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The proposed development would also compliment the following Courses of Action in North Kona:

- o Since the lands in this district are sloped, the County shall encourage the use of cluster and planned unit developments which can take advantage of the topography.
- o Aid and encourage the development of a wide variety of housing for this area to attain a diversity of socio-economic housing mix.

The proposed condominium development will add to the housing inventory for the district of North Kona. Thus, it is determined that the purpose and provision of this type of housing development in this district will be implementing the General Plan's Housing Element. This condominium will be in harmony with the character of the surrounding neighborhood, and will result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this proposed condominium development occurs.

Based on the above findings, it is determined that the proposed development and related improvements will not have any substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions. Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed development and related improvements shall be completed within five (5) years from the effective date of this permit. This time period shall include the securing of Final Plan Approval from the Planning Director for the proposed development. Plans shall identify structures, fire protection measures, paved and striped parking stalls and driveway, landscaping and other improvements associated with the proposed use.
3. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works.
4. Sewer lines shall be constructed to connect to the Keauhou Wastewater Treatment Plant system in a manner meeting with the approval of the Department of Public Works.

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5. A scaled and detailed buffering plan shall also be included in the plans to be submitted for Final Plan Approval to ensure that construction activity will not disturb the Makolea Trail. Plans shall show the location and details of the construction barrier (including height and type of materials) and any other proposed mitigating measures. This plan shall also be reviewed and approved by the Department of Land and Natural Resources, Historic Preservation Division, with a copy of such approval submitted with the plans for Final Plan approval.
6. Should any lava tube, or remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
7. Before construction or any land alteration activities occurs within the subject property, the property boundary adjacent to the historic Makolea Trail shall be measured, staked, and roped with a continuous flagline by a registered surveyor in accordance with the approved buffering plan by DLNR-HPD. The Planning Department shall be notified to conduct a site inspection of the subject property to verify the location of the flagline prior to commencing any construction or land alteration activities and subsequently, after completion of the development. The flagline shall be left in place for the duration of construction activities within the subject property.
8. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
9. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

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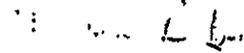
Robert G. Nespor, AIA
Page 6

- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,


Kevin M. Balog, Chairman
Planning Commission

Lkaha01.PC

cc: Kahalu'u Beach Partnership ✓
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program (w/Background)
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Corporation Counsel
Ms. Susan R. C. Johnson

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THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES

DATE _____ TIME _____
DOCUMENT NO. Doc 2006-138673
JUL 28, 2006 01:00 PM

Exhibit 1

RETURN BY MAIL () PICK-UP () TO:

Charles E. Pear, Jr.
McCorriston Miller Mukai MacKinnon
Five Waterfront Plaza, 4th Floor
Honolulu, Hawaii 96813
Phone No. (808) 529-7300

This document contains 109 pages.

Tax Map Key: (3) 7-8-14-86, CPR Nos. [Not Yet Assigned]

The Beach Villas at Kahalu'u

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

FOR FRACTIONAL OWNERSHIP

(A Fractional Ownership Plan in
THE BEACH VILLAS AT KAHALU'U
a Fee Simple Condominium)

THIS DECLARATION is made on the 10th day of July, 2006, by KAHALU'U BEACH CLUB LLC, a Hawaii limited liability company (the "developer").

The developer owns the apartments described in Exhibit "A" which is attached to and part of this declaration. They are located in The Beach Villas at Kahalu'u condominium. This declaration establishes a plan for sharing the ownership and use of the apartments described in Exhibit "A" and any other apartments submitted to this declaration in the future. This plan is called the "fractional ownership plan" or just the "plan." The name of the plan is "*The Beach Villas at Kahalu'u Fractional Ownership Plan.*"

To help you read this document, we included a table of contents. Key terms are defined in chapter 1 and in the glossary of legal terms in section 17.5. Other terms are defined elsewhere in this declaration. To help you find them, we have included an index of all defined terms.

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1. DEFINITIONS

This chapter 1 defines certain words or phrases having special meanings in this declaration or in the bylaws. Other chapters include definitions of key words or phrases that are introduced or explained in those chapters. Section 17.5 contains a glossary of key legal terms. Defined terms will have the special meanings assigned to them except where the context clearly requires otherwise.

These definitions are not listed alphabetically. Instead, they are presented in groups of related concepts. Each group starts with an introduction of the topic area. This should help make it easier to read and understand this chapter. For future reference, key words and phrases are listed alphabetically in the index.

1.1 THE FRACTIONAL OWNERSHIP PLAN. The Beach Villas at Kahalu'u Fractional Ownership Plan is a plan for sharing the ownership and use of certain condominium apartments in The Beach Villas at Kahalu'u condominium project. The plan also provides for sharing the expenses of owning and operating the apartments and the plan. The nature of the plan, and the rights and duties of the developer and anyone else who participates in the plan, are described in various legal documents. These definitions are used to describe the plan and the documents that govern it:

A. "FRACTIONAL OWNERSHIP PLAN" OR "PLAN" means the plan created by and existing under the plan documents.

B. "PLAN DOCUMENTS" means the following documents and any changes and additions properly made to any of them from time to time:

1) "DECLARATION" means this document.

2) "ARTICLES" means the Articles of Incorporation of The Beach Villas at Kahalu'u Fractional Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. The articles established and govern the Association as a corporation. The original articles are attached as Exhibit "B" to this declaration, but there may be amendments that are not reflected in Exhibit "B".

3) "BYLAWS" means the bylaws of the Association. The bylaws are attached as Exhibit "C" to this declaration.

4) "ASSOCIATION RULES" means the rules adopted by the developer and any changes made to them from time to time by the Association as permitted by section 10.3H of this declaration. The initial Association

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Rules are attached as Exhibit "D" to this declaration, but there may be amendments that are not reflected in Exhibit "D".

1.2 "DEVELOPER" means Kahalu'u Beach Club LLC. It is a Hawaii limited liability company. The developer created the plan and adopted the plan documents.

A. "DEVELOPER'S RESERVED RIGHTS" means all rights reserved to the "developer" in the plan documents. For example, see the developer's rights described in sections 5.11 and 16.1D. (These are not all of the developer's reserved rights.)

1.3 FRACTIONAL OWNERSHIP INTERESTS. The developer intends to sell "fractional ownership interests" to the public. The owners of the fractional ownership interests will have the right to use the vacation units on the terms and conditions stated in the plan documents. These terms are used to describe the fractional ownership interests and their owners:

A. "FRACTIONAL OWNERSHIP INTEREST" means:

1) A 1/6th or 1/12th ownership share in a vacation unit (see section 4.4 for details);

2) The right to use that vacation unit, and the common furnishings in it, for one "use period" either every year or every other year (see section 4.2 for details); and

3) A membership in the Association.

B. "ASSOCIATION" means The Beach Villas at Kahalu'u Fractional Owners Association, a Hawaii non-profit corporation. It serves as the association of owners of fractional ownership interests in the plan. Be careful not to confuse it with the condominium association which is described a little later in this declaration.

1) "BOARD" means the board of directors of the Association.

2) "PLAN MANAGER" means the agent or agents hired by the developer to manage the plan and the vacation property. It also means any replacement agent or agents hired by the board to manage the plan and the vacation property. See section 10.4 for details.

C. "OWNER" means the owner of a fractional ownership interest. The following persons are "owners":

1) The owner named in the first deed of a fractional ownership interest and any person to whom that

fractional ownership interest is later transferred, while he or she owns it.

2) The buyer under an agreement of sale. "Agreement of sale" is defined in the glossary (section 17.5). While an agreement of sale is in effect, only the buyer (and not the seller) will be considered to be the "owner." Even so, the seller may keep the right to vote on "matters substantially affecting his security interest" as that phrase is used in the Hawaii condominium law. If the agreement of sale is canceled, the seller will become the owner again.

3) Someone who leases a fractional ownership interest. This applies only to the extent and for the purposes stated in a recorded lease of a fractional ownership interest as required by the Hawaii condominium law.

4) The developer with respect to any fractional ownership interest not transferred by a first deed or an agreement of sale or a recorded lease.

1.4 THE VACATION PROPERTY. The Association operates and maintains the apartments included in the plan and any other property owned or leased by the Association. These terms are used to describe that property:

A. "VACATION UNIT" OR "UNIT" means an apartment included in the plan. Each apartment described in Exhibit "A" is a "vacation unit." Each apartment added to the plan by the developer acting under section 15.2 is also a "vacation unit."

B. "COMMON FURNISHINGS" means all things owned or leased by the Association for use by the owners or for operating or maintaining the vacation property or the plan. It includes, for example, furniture, appliances, and furnishings (like linens and kitchenware) in the vacation units, as well as equipment (like computers, tools, ladders, and motor vehicles) owned or leased by the Association for the benefit of the plan. The Association may also buy or lease things like bicycles, surfboards, videotapes, digital video disks (DVDs), and other recreational property for use by, or to rent to, owners and other occupants. These are also common furnishings. "VACATION PROPERTY" means the vacation units and the common furnishings. **THE CONDOMINIUM.** The vacation units are condominium apartments in The Beach Villas at Kahalu'u condominium project. The condominium is governed by the condominium documents. Those documents created the condominium and divide it into apartments and common elements. They also describe the rights and duties of the condominium developer and the apartment owners. These definitions are used to describe the condominium and the documents that govern

it: "CONDOMINIUM" means The Beach Villas at Kahalu'u condominium project. The condominium consists of apartments and common elements.

1) "APARTMENT" means any "apartment" or "unit" (as defined in the applicable Hawaii condominium law) in the condominium. When used to refer to legal title, it also includes the common interest that goes with the apartment.

2) "COMMON ELEMENTS" means all parts of the condominium except the apartments. For example, the roof is a common element. Some common elements, called "limited common elements," may be used only by the owners of certain apartments. For example, an apartment's mailbox is a limited common element.

3) "COMMON INTEREST" means the undivided interest in the common elements of the condominium assigned to a particular apartment. In a condominium, the apartment owners own their apartments separately and they share the ownership of the common elements. Their ownership interest in the common elements is called their "common interest." See the explanation of "undivided interest" in the glossary (section 17.5) for more information.

B. "CONDOMINIUM DOCUMENTS" means these documents and any changes and additions properly made to any of them from time to time:

1) "CONDOMINIUM DECLARATION" means the "Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u" described in Exhibit "A". It established and governs the condominium.

2) "CONDOMINIUM BYLAWS" means the "Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u" described in Exhibit "A".

3) "CONDOMINIUM RULES" means any rules and regulations adopted by the condominium association from time to time.

4) "CONDOMINIUM MAP" means the recorded drawings designated in the condominium declaration as the condominium map. The condominium map shows, among other things, the floor plans and elevations of the buildings in the condominium.

5) "DECLARATION OF MERGER" means the "Declaration of Merger of Condominium Phases of The Beach Villas at Kahalu'u" described in Exhibit "A". It provides for an administrative merger of the condominium

with one or more other condominium projects on adjacent parcels of land. This means that the condominium projects would be managed and used as if they were one. If there is a merger under the declaration of merger, then:

(a) The term "condominium" will mean the merged condominium projects.

(b) The terms "condominium declaration," "condominium bylaws," "condominium rules" and "condominium map" will refer to the condominium declaration, condominium bylaws, condominium rules and condominium map for each of the merged projects.

The declaration of merger explains which documents govern in case of inconsistencies.

C. "CONDOMINIUM ASSOCIATION" means the Association of Apartment Owners of The Beach Villas at Kahalu'u. It is an association of all of the owners of apartments in the condominium. The condominium association manages the condominium. It is separate from the Association. If there is a merger under the declaration of merger, then the term "condominium association" will mean the association of apartment owners for the merged projects.

D. "CONDOMINIUM DEVELOPER" means the person designated as the "developer" in the condominium documents. If some or all rights or duties of the "developer" under the condominium documents are transferred to someone else, then that person will become the "condominium developer" to the extent (and only to the extent) of the rights or duties transferred. This includes, for example, the right to conduct sales on the common elements of the condominium.

1.6 EXCHANGE PROGRAM. In some circumstances, owners can exchange their use rights in the plan for the right to use a different vacation unit or use period, or for the right to use other property that is not part of the plan. This is called an "exchange." This is discussed in greater detail later. These definitions are used to describe exchange programs.

A. "EXCHANGE PROGRAM" means a service that permits owners to trade their use rights in the plan for the right to use a different vacation unit or use period, or for the right to use property that is not part of the plan. This includes, but is not limited to, "points" systems. There are two kinds of exchange programs, as follows:

1) "INTERNAL EXCHANGE PROGRAM" means any exchange program that permits owners to trade their use rights in the plan for the right to use a different vacation unit

or a different use period but does not allow them to trade their use rights for the right to use property that is not part of the plan.

2) "EXTERNAL EXCHANGE PROGRAM" means any exchange program other than an internal exchange program.

B. "EXCHANGE COMPANY" means a person (other than the Association or plan manager) who operates an exchange program.

C. "EXCHANGE CONTRACT" means an agreement between an exchange company and the Association to make the exchange company's exchange program available to owners.

D. "EXCHANGE USER" means a person, other than an owner in this plan, whose use of a vacation unit is arranged through an external exchange program.

1.7 GUESTS AND OCCUPANTS. Owners may allow someone else to use their vacation period and they may also bring guests. The nature of these rights, and the related responsibilities, are discussed later. These definitions are used to describe occupants of the vacation units and their guests:

A. "OCCUPANT" means a primary occupant and his or her guests.

B. "PRIMARY OCCUPANT" means an owner or other person who has the right to occupy a vacation unit during a particular time period and who has checked in with the plan manager. It may be an owner (including the developer to the extent that it is an owner). It may also be the developer (using its special rights as the developer), an exchange user, or someone else who has the right to occupy the vacation unit at that time.

C. "GUEST" means a primary occupant's family, visitors, renters, employees, servants, "licensees" (persons permitted in the vacation unit) and "invitees" (persons invited in). An exchange user is not considered a "guest" of (i) the owner whose vacation period he or she uses, (ii) the developer, (iii) the exchange company that arranged the exchange, or (iv) anyone else.

2. CREATION OF THE PLAN

2.1 PURPOSE AND EFFECT OF THIS DOCUMENT. By signing and recording this declaration, the developer intends to do these things:

- ❖ It intends to create a plan for the owners to share the ownership, use, enjoyment, management, upkeep and repair of the vacation property and the operation of the fractional ownership plan.
- ❖ It intends to comply with the legal requirements necessary to create the fractional ownership plan and to impose it on the Association and on each vacation unit and anyone who has any rights or interests in it.
- ❖ It intends to create or reserve easements in favor of the developer or other persons.
- ❖ It intends to reserve to the developer certain rights to make changes to the plan and to develop it further.
- ❖ It intends to increase the value, desirability and enjoyment of each vacation unit and any interest in it for the benefit of the developer and each of the owners.

2.2 ADOPTION OF THE PLAN DOCUMENTS. The developer declares that:

A. The vacation units, and all the developer's rights in them, are subject to the plan documents. In legal terms, the developer is "submitting all of its estate, right, title and interest" in the vacation units to the plan documents.

B. The plan documents will govern the fractional ownership plan and the vacation units. In legal terms, the vacation units will be "owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the plan documents," from now until the fractional ownership plan ends. Anyone who owns, occupies or uses any of the vacation units must obey the plan documents.

C. The plan documents are binding on each vacation unit. They also will be binding on, and are intended to benefit these persons:

- 1) The developer.
- 2) The Association.

3) Anyone else who owns all or any part of any vacation unit, or any fractional ownership interest or other interest in it, now or in the future. This includes, for example, all present and future owners and their lenders.

4) Anyone who, by law or by agreement, stands in the place of the persons listed in items 1) to 3). Such people are called, in technical legal terms, "heirs",

"devises", "personal representatives", "successors", "successors in trust", and "assigns."

All of these people must obey the plan documents. It does not matter how or when someone obtains an interest in a vacation unit or whether they ever signed the plan documents or expressly agreed to obey them. They still must obey them just as if they had signed them.

All of these people also have the right to enforce the plan documents in any way permitted by the plan documents.

In legal terms, the plan documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this subsection 2.2C.

2.3 DEVELOPER'S RESERVED RIGHTS.

A. CONDOMINIUM DEVELOPER'S RESERVED RIGHTS. Regardless of what section 2.2 says, the developer reserves to itself any and all rights that it has, now or later, under the condominium documents as the condominium developer. These rights are called the "*condominium developer's reserved rights*" in this document. They include, for example, the condominium developer's rights to build more phases and to create more apartments on the condominium, the right to change the common elements and each apartment's common interest in the common elements, and various easements and other rights.

B. NATURE OF DEVELOPER'S RESERVED RIGHTS. Only the condominium developer may exercise the condominium developer's reserved rights. Those rights will not be subject to or otherwise affected by the plan documents, and those rights will not be transferred to the Association or any owner unless the condominium developer signs and records a document that clearly says so. The developer makes no promise and has no duty to exercise any of the condominium developer's reserved rights. Neither the owners nor the Association will have any legal right to insist that it do so.

3. DESIGNATIONS FOR USE PURPOSES

3.1 INTRODUCTION. The essence of the plan is that owners will have the right to use a vacation unit for a sixty-day period either every year or every other year. This chapter 3 introduces the concept of a "use period." It also explains how the use of each vacation unit is divided into six use periods per year and introduces terms used to describe these periods, other time periods, and when the time periods begin and end.

3.2 DEFINITIONS.

A. "USE PERIOD" means a sixty day period of time as listed in the list of use periods.

B. "LIST OF USE PERIODS" means the list of use periods for the units contained (i) in Exhibit "E" which is attached to and part of this declaration, or (ii) in any declaration of annexation. (Declarations of annexation are discussed in section 15.2.)

C. "VACATION PERIOD" means a use period or other time period during which an owner or someone else (for example, the developer when using the developer's reserved rights) is authorized to use a vacation unit.

D. "TIME PERIOD" means a night, a week, a use period, or any other period of consecutive nights in a given unit.

1) "NIGHT" means a period beginning at check-in time on one day and ending at check-out time the next day.

2) "WEEK" means a period of seven consecutive nights.

E. "CHECK-IN DAY" means the first day of a vacation period.

F. "CHECK-IN TIME" means the time designated as the check-in time in the Association Rules. The Association rules may set different check-in times for different vacation units.

G. "CHECK-OUT DAY" means the last day of a vacation period.

H. "CHECK-OUT TIME" means the time designated as the check-out time in the Association Rules. The Association rules may set different check-out times for different vacation units.

3.3 DESIGNATION OF TIME PERIODS.

A. USE PERIODS. The developer here and now designates six use periods for each vacation unit. The use periods for each unit are numbered from one to six, and are shown on the list of use periods. A use period begins immediately after check-out time on the first day of the use period and ends at check-out time on the last day of the use period.

B. USE YEARS. A "use year" is a period of about one year starting at check-in time on the first day of use

period no. 1, and ending at check-out time on the last day of use period no. 6.

1) ASSIGNMENT OF USE YEARS FOR EACH UNIT. Each unit has its own use year. The use year for each unit is shown in the list of use periods. There is no requirement (i) that the use year for all units be the same, or (ii) that the starting and ending dates of the use periods be the same for all units having the same use year. In fact, to facilitate check-in and check-out services, the developer may set different starting and ending dates for the use periods and use years of the units.

2) ODD AND EVEN USE YEARS. Some owners may have the right to use a vacation unit only every other year. We will explain later how such an owner's use rights recur in even years or in odd use years. For now, you need to know that there are two kinds of use years:

(a) EVEN YEAR. A use year is an "even year" if the check-in day of use period no. 1 occurs in an even-numbered calendar year (such as 2006, 2008, and so on).

(b) ODD YEAR. A use year is an "odd year" if the check-in day of use period no. 1 occurs in an odd-numbered calendar year (such as 2007, 2009, and so on).

C. "SERVICE PERIOD" means a major service period or a minor service period. Service periods are used by the Association to clean, maintain and repair the vacation units and the common furnishings.

1) "MAJOR SERVICE PERIOD" means, for a given unit, the five-day period designated in the list of use periods as the major service period for that unit.

2) "MINOR SERVICE PERIOD" means:

(a) The time between check-out time of one vacation period and check-in time later that same day; and

(b) The times chosen by the board for routine housekeeping, maintenance, and repairs to be performed during the use periods. Each year, the board will prepare a table or description stating, for each unit, the planned days, dates, or intervals of service. The services will be provided between check-out time in the morning and check-in time later the same day. The plan manager will provide a list of the minor service periods to each primary occupant at check in. The board or plan manager may change the days, dates, or intervals of service from time to

time but must give notice of any change in advance to each primary occupant affected when reasonably possible. The notice may be given by any reasonable means (for example, voice mail).

3.4 DESIGNATION OF UNIT TYPES.

A. INITIAL UNIT TYPES. Although the condominium declaration may divide the apartments differently, for purposes of the plan, all vacation units will be considered to be one of these "unit types:"

- ❖ One Bedroom Unit
- ❖ Two Bedroom Unit
- ❖ Three Bedroom Unit

A list of the vacation units showing the unit type for each unit is attached as Exhibit "A"

B. ADDITIONAL UNIT TYPES. Under the condominium documents, the developer may combine two or more apartments together, and may split an apartment into two or more apartments. In addition, the condominium may be expanded by adding new phases. The developer may include in the plan one or more apartments in any later phase of the condominium. The developer may create new unit types as follows:

1) It may do so when it adds apartments to the plan. It does not matter whether those apartments are located in the first phase or any later phase of the condominium. The developer may do this by identifying the new unit type in the declaration of annexation for the apartments being added to the plan.

2) It may do so with respect to vacation units that the developer could remove from the plan pursuant to section 15.5A. The developer may do this by amending this declaration to identify the new unit types.

3.5 LOCK-OFF UNITS. Some of the vacation units may be designed so that they can be used either as a whole unit or on a "lock-off" basis. For example, a two-bedroom unit might be configured so that it can be used either as a single large unit, or as two separate units: a one-bedroom unit and a studio unit, each having its own separate front door that can be locked. In this declaration, when a vacation unit can be used on a lock-off basis, it is sometimes called a "lock-off unit."

A. LOCK-OFF USE. When a vacation unit is used as a whole unit, it is called a "full unit." When it is used as two

separate units on a lock-off basis, then the larger unit is called the "deluxe unit" and the other unit is called the "standard unit." The association rules may permit an owner who has the right to use a lock-off unit to choose to use either (a) a full unit for some or all of his or her use period, or (b) to use just the deluxe unit or just the standard unit for some or all of his or her use period. For example, the owner might like to rent or exchange the side of the unit that the owner is not using.

4. FRACTIONAL OWNERSHIP INTERESTS

4.1 INTRODUCTION. The previous chapter explained how the units are divided into different unit types and how time is divided into different periods for purposes of the plan. The developer uses these concepts in setting the features of the fractional ownership interests. This chapter explains the nature and features the fractional ownership interests.

4.2 EVERY-YEAR, EVEN-YEAR AND ODD-YEAR FRACTIONAL OWNERSHIP INTERESTS. Fractional ownership interests are divided into different kinds depending on whether the owner has the right to use a vacation unit every year or only every other year. These terms are used to describe the different kinds of fractional ownership interests:

A. "EVERY-YEAR FRACTIONAL OWNERSHIP INTEREST" means a fractional ownership interest that includes the right to use a vacation unit for one use period in each use year.

B. "EVERY-OTHER-YEAR FRACTIONAL OWNERSHIP INTEREST" means a fractional ownership interest that includes the right to use a vacation unit for one use period only every other use year. There are two kinds of every-other-year fractional ownership interests, as follows:

1) "EVEN-YEAR FRACTIONAL OWNERSHIP INTEREST" means a fractional ownership interest that includes the right to use a vacation unit for one use period in each even year (for example, 2006, 2008, and so on).

2) "ODD-YEAR FRACTIONAL OWNERSHIP INTEREST" means a fractional ownership interest that includes the right to use a vacation unit for one use period in each odd year (for example, 2007, 2009, and so on).

4.3 CREATION OF THE FRACTIONAL OWNERSHIP INTERESTS.

A. Each vacation unit now included in the plan is here and now divided into six (6) separate every-year fractional ownership interests. Each time that the developer

includes another vacation unit in the plan, it creates six (6) separate every-year fractional interests for that vacation unit.

B. The developer may (but does not have to) convert each every-year fractional ownership interest into one even-year fractional ownership interest and one odd-year fractional ownership interest. For obvious reasons, there must be one even-year fractional ownership interest for each odd-year fractional ownership interest; the reverse is also true. So long as this requirement is met, the developer may divide each vacation unit into any combination of every-year fractional ownership interests and every-other-year fractional ownership interests. As a result, there are at least six (6) fractional ownership interests in the vacation unit and there may be up to twelve (12).

4.4 OWNERSHIP SHARE. Each owner will own a fee simple ownership share in a specific vacation unit. An "ownership share" is an "undivided interest" in a vacation unit. "Undivided interest" is a legal term and it is explained in the glossary (section 17.5). It refers to the idea that a person will be one of the co-owners of a vacation unit. The other co-owners will be the owners of other fractional ownership interests in that vacation unit.

- ❖ The ownership share for an every-year fractional ownership interest will be an undivided one-sixth (1/6th) interest in the unit.
- ❖ The ownership share for an every-other-year fractional ownership interest will be an undivided one-twelfth (1/12th) interest in the unit.

4.5 FIXED AND FLOATING RIGHTS. Initially all fractional ownership interests have the right to use a certain unit (a "fixed unit use right") during a certain use period (a "fixed use period"). The developer's reserved rights include the right to new kinds of fractional ownership interests that do not have fixed use periods and fixed unit use rights. For example, the developer may create fractional ownership interests that have a floating use period and floating unit use rights. If a fractional interest has a "floating use period," then the owner of it must reserve a use period following the procedures established in the association rules. Likewise, if a fractional ownership interest has "floating unit use rights," then the owner must reserve a unit or kind of unit (by unit type) following the procedures established in the association rules. The developer may create new kinds of fractional ownership interests as follows:

A. It may do so when it adds apartments to the plan. It may do so by identifying the features of the new kind of fractional ownership interest in the declaration of annexation for the apartments being added to the plan.

B. It may do so with respect to vacation units that the developer could remove from the plan pursuant to section 15.5A. The developer may do this by amending this declaration.

C. It may do so with respect to unsold fractional ownership interests owned by the developer. For example, the developer could convert fractional ownership interests that it owns so that instead of having fixed use periods and fixed unit use rights, they would have floating use periods and floating unit use rights. The developer may do this by amending this declaration.

Any declaration of annexation or amendment to this declaration establishing a new kind of fractional ownership interest must identify the features of the new kind of fractional ownership interest and may establish any rules governing the reservation and use of such fractional ownership interests. This includes, but is not limited to provisions governing the establishment and operation of a reservation system. Any such declaration of annexation or amendment need only be signed by the developer and recorded. The developer does not need to have the consent or approval of anyone else to do this.

4.6 FIRST DEED.

A. NATURE OF A FIRST DEED. The term "first deed" means the recorded deed by which the developer first transfers a fractional ownership interest. The first deed for each fractional ownership interest establishes the features of the fractional ownership interest and reserves certain special rights in favor of the developer.

1) A document that transfers the developer's entire remaining interest in a vacation unit is not a first deed (i) if it says that it is not a first deed, (ii) if some or all of the developer's rights under this declaration as the developer are transferred with it, or (iii) if it transfers a whole vacation unit.

2) If a fractional ownership interest is transferred back to the developer, then the developer may change the features of that fractional ownership interest by issuing a new first deed for it. For example, the developer could split an every-year fractional ownership interest into an even-year fractional ownership interest and an odd-year fractional ownership interest. If the developer believes that it will be helpful to do so, the developer can record a document reflecting any change or cancellation of identification numbers for fractional ownership interests deeded back to the developer.

3) Nothing in this section 4.5 prohibits the developer from correcting a mistake in a first deed by recording a new first deed for that fractional ownership interest.

B. CONTENT OF FIRST DEED. The first deed for each fractional ownership interest must do these things:

1) It must assign an identification number to the fractional ownership interest.

2) It must state whether the fractional ownership interest is an every-year fractional ownership interest, an even-year fractional ownership interest, or an odd-year fractional ownership interest.

3) It must state that the fractional ownership interest has a floating unit use right if such is the case.

4) It must state the owner's use period (if it has a fixed use period) or it must state that the fractional ownership interest has a floating use period.

4.7 UNISSUED FRACTIONAL OWNERSHIP INTERESTS. The developer is considered to be the owner of all fractional ownership interests not transferred to someone else by a first deed or by an agreement of sale.

5. USE RIGHTS AND RULES

5.1 INTRODUCTION. This chapter explains the rights and duties of anyone who is using a vacation unit.

5.2 DEFINITIONS.

A. "OWNER'S UNIT" means the unit in which an ownership share is conveyed by the first deed of a given fractional ownership interest. The terms "his unit," "her vacation unit," "his or her unit," and similar terms refer to the owner's unit.

B. "OWNER'S USE PERIOD" means the use period for a given fractional ownership interest. It is identified in the first deed of the fractional ownership interest. The terms "his use period," "her use period," "his or her use period," and similar terms refer to the owner's use period.

5.3 USE RIGHTS. Each owner has the right to use his or her vacation unit during his or her use period. An owner's use rights are defined, limited and governed by the plan documents, including the rules contained in this chapter 5.

1) EVERY-YEAR FRACTIONAL OWNERSHIP INTERESTS. The owner of an every-year fractional

ownership interest may use the vacation unit in each use year.

2) EVEN-YEAR FRACTIONAL OWNERSHIP INTERESTS. The owner of an even-year fractional ownership interest may only use the vacation unit in use years that are even years.

3) ODD-YEAR FRACTIONAL OWNERSHIP INTERESTS. The owner of an odd-year fractional ownership interest may only use the vacation unit in use years that are odd years.

5.4 MULTIPLE OWNERS. If more than one person owns a single fractional ownership interest, they still may use only the one use period assigned to their fractional ownership interest.

5.5 RIGHTS DURING YOUR VACATION PERIOD. During an owner's use period, the owner has the exclusive right to occupy and use his or her unit and the common furnishings in it. During the same use period, the owner has the right to use the common elements of the condominium and any limited common elements available to his or her unit. The developer has the same use rights during the use periods for fractional ownership interests that it owns or otherwise has the right to use. The rights of the owners and the developer are defined, limited and governed by the plan documents.

A. GUEST USE. An owner may allow someone else to use his or her unit during all or any part of his or her use period for the purposes permitted by this declaration. The owner, however, must first give written notice to the plan manager that a guest will use his or her unit during that time period. If an owner fails to do this, the Association and/or plan manager may refuse to allow the guest to check-in. The owner will be fully responsible for his or her guests. See chapter 7 for more details.

B. CONSECUTIVE USE PERIODS. Anyone who has the right to use a vacation unit for two or more use periods in a row will also have the right to remain in it during the minor service period between those use periods. This does not mean, however, that the Association cannot enter it to perform housekeeping, maintenance and repairs, and so on, during the minor service periods.

C. EXCHANGE USERS. An exchange user having a confirmed reservation to use a vacation unit in this plan will have the same use rights and responsibilities as an owner has, but only for the duration of the exchange.

D. LOCK-OFF USE. If allowed by the association rules and any laws that apply, an owner entitled to use a

lock-off unit may use either (a) the full unit, or (b) the deluxe unit for some or all of his or her use period and the standard unit for some or all of his or her use period.

5.6 AT OTHER TIMES.

A. UNITS. Except during his or her vacation period, no owner or exchange user may use or occupy a vacation unit, its common furnishings, or any other part of the condominium unless he or she is expressly authorized by (a) the person entitled to use the vacation unit at that time, (b) the Association, or (c) in the case of any other part of the condominium, the condominium association or another owner of an apartment in the condominium. For the purposes of 11 U.S.C. §365(h) and (i), however, each owner is deemed to be in constructive possession of his or her unit at all times.

B. DAY USE. Regardless of what section 5.6A says, the board may permit owners and their guests to use the common elements of the condominium at times other than their vacation periods. Such use is called "day use." The board has no duty to permit day use. If the board permits day use, then owners and their guests will have the right to use the common elements of the condominium upon the terms and conditions set by the board and any additional terms and conditions set by the condominium association. Day use will be subject to any further limitations contained in the condominium documents. The board must limit day use to the extent reasonably necessary to assure that it does not unreasonably burden or interfere with the use of the condominium. For example, if the pool is overburdened by day use, then the board must take reasonable steps to limit such use to a level that does not overburden the pool. So long as the developer owns, or holds a mortgage on, at least one fractional ownership interest, the terms and conditions of day use must be approved by the developer in writing before day use will be permitted.

5.7 DELINQUENT OWNERS. An owner is not allowed to use or exchange the use of the vacation unit or use period if (a) the owner has not paid to the Association any regular assessment, special assessment or personal charge due or past due, or (b) the plan manager learns that the owner has not paid any amounts due (i) under any note or mortgage made by the owner in favor of the developer, or (ii) an exchange company or a resort that the owner used pursuant to an exchange. The plan manager does not have to pay the amounts due or past due from an owner even if the plan manager does not enforce the provisions of this section 5.7.

5.8 GENERAL USE RESTRICTIONS AND DUTIES.

A. LIMITS ON OCCUPANTS AND USE.

1) The number of people allowed in each vacation unit is limited to the maximum number permitted by law, the condominium documents, and the association rules, whichever is lowest.

2) No business or profession may be conducted in the vacation units or on the common elements. This does not prohibit, however, an owner or occupant from taking business calls or doing normal office work (for example, word processing, sending and receiving emails, preparing spreadsheets, and so on) in the unit so long as (i) such use does not violate the condominium documents or any laws that may apply, (ii) the owner or other occupant keeps no inventory of goods in the vacation unit, and (iii) the owner or other occupant does not receive customers, clients, and so on, at the condominium, nor allow pick-up or delivery of goods at the condominium.

3) Owners and occupants may only use the vacation units to provide vacation lodgings for themselves and their guests. Neither they nor their guests may use any vacation unit as a primary residence or for any commercial purpose (except as provided in section 5.8A.2)). Also, they may not, without first getting the developer's written consent, lease, rent or otherwise contribute their fractional ownership interest, use rights, or vacation period(s) to (i) any vacation ownership or time share plan or program, or (ii) any other fractional ownership plan or program. The developer may withhold its consent for any reason or for no reason.

4) The rules in this subsection 5.8A do not apply to the developer's rights under section 5.11.

B. ANIMALS. Persons with handicaps or disabilities may keep specially trained animals in their unit or elsewhere on the condominium as provided in the condominium documents or by law. No other pets or other animals of any kind may be allowed or kept in the vacation units or elsewhere on the condominium except as explicitly provided in the association rules and the condominium documents.

C. RENTALS. Subject to any laws that may apply, owners may rent all or any part of their use periods. Rentals are subject to these restrictions:

1) The owner must give written notice to the plan manager stating that the owner has rented his or her use period and stating the name of the renter and the time period when the renter will use the owner's unit. If the owner fails to do this, the Association and plan manager may refuse to allow the renter to check-in.

2) Owners may not rent less than an entire vacation unit. Among other things, this prohibits renting single rooms, "lock-offs" or "guest quarters."

3) Each owner promises not to enter into a "rental pool" or similar arrangement where all or any part of the owner's use period is placed together in a pool with other owners' vacation periods and rented, or where rental income and/or expenses are shared in some other way. Only the developer can enforce this restriction. The developer can enforce this restriction until the developer has sold all fractional ownership interests and any other apartments it owns in the condominium and in any "adjacent condominium" as that term is defined in the condominium documents and all mortgage loans made by the developer to purchasers of the fractional ownership interests have been fully repaid; provided that the developer cannot enforce this restriction after December 31, 2017. *The developer makes no representation or warranty that any rental pool arrangement will become available, or as to the potential rental value of a fractional ownership interest or vacation period, or that an owner may expect to make a profit by buying, selling, or renting a fractional ownership interest or vacation period.*

D. CHANGES TO THE VACATION PROPERTY. No owner or occupant may make or authorize anyone else to make any changes, additions, or repairs to any vacation unit or the common furnishings except when needed to prevent damage or injury to persons or property in an emergency. Nobody may paint, refinish or redecorate any vacation unit or remove, change or replace any part of the common furnishings without first having the written consent of the Association. The Association alone has the right to do those things. However, these restrictions do not reduce or change the duty of every occupant described in the next paragraph.

E. DUTY OF CARE; MAINTENANCE AND REPAIR. All occupants must keep their vacation unit, and its common furnishings in it, neat and in good condition during their vacation period and must take good care of all property available for their use. This includes, among other things, the common areas of the condominium. The owners, acting through the Association, will conduct and pay for the costs of normal maintenance and repair of the vacation units, their limited common elements, if any, and the common furnishings. The condominium association maintains the general common elements.

F. DUTY TO OBEY THE PLAN DOCUMENTS AND THE CONDOMINIUM DOCUMENTS. Each owner and each occupant must obey the plan documents and the condominium documents, and see that all of his or her guests also do so. Occupants who are not owners may be

required at check-in (or later) to sign a contract in which they promise to do the things required by the plan documents and the condominium documents including, for example, an agreement to pay any personal charges. Occupants and their guests are "jointly and severally liable" to keep all promises and pay all charges required by the plan documents. This means that each of them may have to pay the whole amount, not just part of it or their share of it. Each person is responsible separately and together with the others.

G. DUTY TO PAY PERSONAL CHARGES. Each owner and each occupant must pay all personal charges incurred by them or their guests during their vacation period. This includes, for example, things like charges for extra housekeeping service, long distance telephone calls, the cost of any damage (other than reasonable and ordinary wear and tear or destruction by an unavoidable casualty) that they cause to any vacation unit, the common furnishings or the common elements of the condominium, and so on. It would also include things like legal fees paid to collect personal charges. These must be paid as required by section 11.8C.

5.9 DUTIES AT CHECK-OUT TIME.

A. CHECK-OUT. Except as provided in section 5.5B, occupants must leave their unit by check-out time on the last day of their vacation period.

B. PERSONAL BELONGINGS. At the end of their vacation period, occupants must either remove all clothing, food, liquor, luggage and other personal effects brought into the vacation unit. Nobody (including the Association, the plan manager, or any later occupants of the vacation unit) will be liable or responsible in any way at all for any personal effects left in a vacation unit (including but not limited to any storage locker for the unit) at the end of a vacation period. Personal effects left in a vacation unit (including but not limited to any storage locker for the unit) at the end of a vacation period will be considered abandoned. The plan manager may throw away, sell, or give them away except as otherwise provided by law or by the association rules. Owners must not store in their unit (including but not limited to any storage locker for the unit) food or other things that may spoil or create odors, or any chemicals, solvents, gasoline, or other potentially hazardous or toxic substances, or anything else that might create a fire hazard or pose other dangers to the vacation property or its occupants, or create a nuisance of some kind.

C. CHECK-OUT CONDITION. Occupants must leave their unit and its common furnishings neat and in good and sanitary condition (except for reasonable and ordinary wear

and tear or destruction by an unavoidable casualty or accident).

5.10 INTERFERENCE WITH ANOTHER'S USE.

A. SPECIAL DEFINITIONS. The following definitions apply to this section 5.10:

1) **"INJURED PERSON"** means anyone who is entitled to occupy a vacation unit but who cannot do so because of the acts (or failure to act) of an offender. There may be several injured persons. For instance, a vacation unit may be damaged so that it cannot be used for more than one time period. If so, each person who is entitled to use the vacation unit during those time periods is an "injured person."

2) **"OFFENDER"** means anyone who:

(a) Uses or occupies a vacation unit during another person's vacation period without permission or during a service period (such as by failing to leave by check-out time), or

(b) Purposely or negligently prevents an injured person from using or occupying a vacation unit. This can happen, for example, if someone damages a vacation unit or its common furnishings so that as a practical matter it cannot be occupied during the following time period(s).

3) **"LIQUIDATED DAMAGES"** are damages agreed to in advance when actual damages would be difficult to measure. Actual damages caused by an offender may be uncertain in nature or amount, or difficult, expensive and time-consuming to determine. To avoid these problems, each occupant agrees that the amount of liquidated damages in this section 5.10 will compensate an injured person fairly.

4) **"FAIR RENTAL VALUE"** means the value of a vacation unit based on the cost of renting one like it in the condominium or elsewhere in the area on a daily basis. If a vacation unit was to be used on a lock-off basis, then the term "fair rental value" will mean the value of the deluxe unit or the value of the standard unit, whichever was to be used by the injured person, based on the cost of renting a unit like it in the condominium or elsewhere in the area on a daily basis. The Association determines fair rental value; its decision is final.

B. WHAT HAPPENS TO AN OFFENDER.

1) An offender may be evicted from the vacation unit immediately.

2) An offender "waives" (gives up his or her right to) any notice required in a lawsuit or other legal proceeding to evict him or her (to the extent that Hawaii law allows this).

3) An offender must pay all costs and expenses to the injured person, the Association, and the plan manager that result from the offender's conduct. This includes, for example, the injured person's added travel costs and the costs of renting another place for the injured person to stay. This amount is a personal charge.

4) An offender must pay the injured person liquidated damages equal to twice the daily fair rental value of the injured person's unit for each full or partial night that the injured person cannot occupy the unit. This amount also is a personal charge.

If there is more than one injured person for a single time period, they must share the liquidated damages; the offender does not have to pay each one twice the daily fair rental value. This does not limit, however, the offender's obligation to compensate the injured persons for each time period when more than one time period is affected. If the vacation unit was to be used on a lock-off basis and use of both lock-off units is affected, both the person entitled to use the deluxe unit and the person entitled to use the standard unit will be injured persons and each will be entitled to liquidated damages based on the fair rental value of the side of the unit to be used by them.

C. THE ASSOCIATION'S DUTIES. The Association must take reasonable steps to evict the offender. It also must take reasonable steps to find, and must pay for, other lodgings for the injured person. These should be as near in value to the vacation unit as possible. In addition to the amounts in subsection 5.10B, the cost of these lodgings will be charged to the offender as a personal charge. The Association may decide that it has to rent these lodgings for longer than the use of the vacation unit is prevented. If so, the offender must pay the rental cost of the entire period as a personal charge. The Association's decision on this will be final.

D. APPLICATION TO EXCHANGE USERS. Sections 5.10A through C also apply to exchange users.

5.11 SPECIAL RIGHTS OF THE DEVELOPER. No matter what else the plan documents provide, the developer has and will have the following special rights and privileges:

A. DEVELOPER'S USE. The developer may use its vacation periods for any purpose no matter what else the plan documents provide. This includes, among other things,

use (i) for rental, sales, and other purposes permitted by law, (ii) as model apartments, and (iii) for customer relations, sales, marketing, and/or administrative offices. For each fractional interest owned by the developer, the developer and its guests will have the right to use the vacation unit, the common furnishings in it, the limited common elements, and the common elements of the condominium during the use period for that fractional ownership interest. If the developer rents all or any part of its use periods, then it has the right to keep the rent.

B. MARKETING IN VACATION UNITS. The developer has the exclusive right and an easement to solicit owners and occupants staying in the vacation units. The developer may exercise its right and easement in any manner that does not violate any laws that may apply and that does not prevent or unreasonably interfere with the occupancy of the vacation units. The Association and the plan manager will facilitate the developer's exercise of its exclusive right and easement so long as the developer pays any costs of doing so. For example:

- The developer may require that the plan manager place marketing materials in the vacation units. This might include pamphlets in the guest directory, tent cards, brochures, flyers and/or door hangers on the interior or exterior door knobs.
- The developer may place signs and other marketing materials in other parts of the condominium under the control of the Association or the plan manager.
- The developer may leave messages on the voice mail for the vacation units.
- The Association and the plan manager will provide to the developer access to reservation systems and to other databases, subject to any restrictions imposed by law.

C. USE OF INACTIVE UNITS. The developer alone has the right to use any vacation unit that is an inactive unit. The developer must pay all costs associated with an inactive unit, including for example, real property taxes, utilities, and amounts charged by the condominium association.

D. USE OF COMMON ELEMENTS AND AMENITIES. So long as the developer owns any fractional ownership interest, the developer may use the common elements of the condominium for any purpose permitted by law and by the condominium documents, free from the restrictions imposed by the plan documents. This does not relieve the developer of any restrictions on the use of the condominium

developer's reserved rights contained in the condominium documents.

E. DEVELOPER'S RIGHT TO CHANGE THE VACATION PROPERTY. No matter what else the plan documents say, and except as otherwise provided by law or the condominium documents, the developer reserves the right, at any time and from time to time, to change the vacation property and/or to amend the plan documents as required to comply with any laws that apply to the vacation property, the plan, the Association, or the developer. This includes, for example, the federal Fair Housing Act, 42 U.S.C. §§3601 et seq., and the Americans with Disabilities Act 42 U.S.C. §§12101 et seq., (the "ADA"), and any rules and regulations adopted under either of them. The developer may also do anything necessary or useful to do this. For example, the developer may request and obtain building permits, have contractors build new improvements or remove existing ones, and so on. The developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or as attorney-in-fact of the Association and each of the owners. The Association and each owner gives the developer a special power of attorney to do these things.

F. DEVELOPER'S EASEMENTS.

1) The developer has an easement to use the vacation property when exercising the rights reserved by the developer in this section 5.11. The developer's rights under subsection 5.11B must be used so as to minimize, when reasonably possible, any unreasonable interference with the rights of owners or others to use and occupy the vacation units (but this does not change the condominium developer's reserved rights) and must not violate any law that applies. In no case may these rights be used in a way that prevents an owner or other primary occupant from using their unit during their vacation period.

2) The developer has an easement over, under, and upon the vacation units as may be reasonably necessary or convenient to complete any improvements to and to correct any defects in a vacation unit or to use any other rights of the developer.

3) The developer may authorize its officer, directors, agents, employees, contractors, and governmental officials to use the developer's easements. The term "easement" is explained in the glossary (section 17.5).

G. PLAN NAME. The developer may change the name of the plan at any time. The developer may record or file any documents that it deems necessary or helpful to

change the name. The Association and each owner gives the developer a special power of attorney to do this.

5.12 RENTALS GOVERNED BY HAWAII LAW. Chapter 486K, Hawaii Revised Statutes, or any replacement law, will govern any rentals of vacation units to members of the general public on a transient basis.

6. OWNERSHIP RIGHTS AND RULES

6.1 INTRODUCTION. One of the many benefits of owning a fractional ownership interest is that the owner can transfer it to his or her children, a friend, or just about anyone else. Because it is a real estate interest, an owner may also mortgage his or her fractional ownership interest. This chapter explains how to transfer or mortgage a fractional ownership interest and discusses the restrictions that apply. It also explains when a transfer will take effect and creates rules about making a transfer. It concludes with a discussion of certain other real estate rights of the owners.

6.2 DEFINITIONS.

A. "PRIOR OWNER" means an owner who is transferring a fractional ownership interest to someone else.

B. "NEW OWNER" means the person to whom a prior owner is transferring his or her fractional ownership interest.

6.3 TRANSFERS OF FRACTIONAL OWNERSHIP INTERESTS.

A. PERMITTED TRANSFERS. An owner may transfer his or her fractional ownership interest or fractional ownership interests. A person who owns more than one fractional ownership interest may treat each one separately. The owner is not required to do with all the owner's fractional ownership interests what he or she does with any one.

B. LIMITS ON TRANSFERS. Without the developer's written consent, an owner may not transfer, lease, rent, or otherwise contribute his or her fractional ownership interest or its use rights to (i) a vacation ownership or time share plan or program, or (ii) another fractional ownership plan. Any attempt to do so will not be effective; it will be void. The developer may withhold its consent for any reason or for no reason at all.

C. OWNERS MAY NOT TRANSFER LESS THAN AN ENTIRE FRACTIONAL OWNERSHIP INTEREST. No owner may transfer less than an entire fractional ownership interest. "Entire fractional ownership interest" means

everything transferred in the first deed for the fractional ownership interest (subject to section 6.3A when the first deed transferred more than one fractional ownership interest). Any attempt to transfer anything less than an entire fractional ownership interest will be void. There are two exceptions:

1) An owner may pledge or transfer voting rights to a lender having a mortgage on his or her fractional ownership interest.

2) The seller under an agreement of sale may retain legal title and the right to vote on certain matters. The buyer may transfer his or her entire interest under the agreement of sale, but nothing less.

D. REQUIREMENTS FOR TRANSFER DOCUMENTS. Every deed and every agreement of sale must meet these requirements:

- ❖ It must be recorded.
- ❖ It must state the identification number of the fractional ownership interest.
- ❖ It must state the ownership share and apartment number for the fractional ownership interest transferred.
- ❖ It must state whether the fractional ownership interest is an every-year fractional ownership interest, an even-year fractional ownership interest, or an odd-year fractional ownership interest.
- ❖ It must state that the fractional ownership interest has a floating unit use right if such is the case.
- ❖ It must identify the owner's use period (if it has a fixed use period) or must state that the fractional ownership interest has a floating use period. The fixed use period must be the same as that provided in the first deed for the fractional ownership interest.

E. NOTICE OF TRANSFERS. Written notice must be given to the Association within ten (10) days after any fractional ownership interest is transferred. The notice may be given by either the prior owner or the new owner. The notice must meet these requirements:

- ❖ It must state the name and address of both the prior owner and the new owner.
- ❖ It must state the date of the transfer.
- ❖ It must state the identification number of the fractional ownership interest.

- ❖ It must state the ownership share and apartment number for the fractional ownership interest.
- ❖ Except in the case of a first deed, the notice must include a copy of the recorded document used to make the transfer. The copy must show the recording information for the document.

F. REGISTRATION OF TRANSFER. The plan manager may collect a reasonable service charge (in an amount approved by the board) for changing the Association's records to reflect a transfer. When the plan manager receives a proper notice of a transfer and the service charge, then it will register the change on the Association's membership list and notify the Association.

G. EFFECT OF NOTICE OF TRANSFER. Unless and until the notice is given:

1) Neither the Association nor the plan manager must recognize the new owner for any purpose.

2) The Association and the plan manager may treat the prior owner, the new owner, or both as the "owner" of the fractional ownership interest.

3) The prior owner will remain fully liable as an owner of the fractional ownership interest. The new owner will also be fully liable as an owner of the fractional ownership interest.

4) The Association and the plan manager may deal exclusively with the prior owner, the new owner, or both. All notices from the Association or the plan manager to the "owner" may be sent to the new owner, the prior owner or both, as the Association or the plan manager choose.

H. RIGHTS AUTOMATICALLY TRANSFERRED. The transfer of a fractional ownership interest automatically transfers these things to the new owner whether or not the deed or agreement of sale expressly says so:

- ❖ The interest of the prior owner in all funds held by the Association.
- ❖ The membership of the prior owner in the Association.

I. FUNDS HELD BY THE ASSOCIATION OR THE PLAN MANAGER. No share of any owner in funds held by the Association or the plan manager can be withdrawn or separately transferred. An owner who wants this money must get it from the new owner. Neither the Association nor the plan manager is required to refund it.

6.4 PRIMARY CONTACT PERSON. If a fractional ownership interest is owned by more than one person or if it is owned by a corporation or other legal entity, the association rules may require that the owner choose one person to be the primary contact person. The "primary contact person" is the person to whom notices must be sent and who can otherwise act for the co-owners of that fractional ownership interest. The plan manager may collect a reasonable service charge (in an amount approved by the board) for changing the primary contact person on the Association's records to reflect any change in the primary contact person.

6.5 RELEASE OF AN OWNER'S DUTIES UNDER THE PLAN DOCUMENTS. A person's liability as an owner under the plan documents ends when:

- ❖ He or she no longer owns a fractional ownership interest, and
- ❖ He or she or the new owner notifies the Association of the transfer, and
- ❖ He or she has paid all sums and performed all his or her other duties under the plan documents up to the time his or her ownership ends and the notice of the transfer is given. This includes payment of all assessments and personal charges.

6.6 MORTGAGES.

A. PERMITTED MORTGAGES. An owner may mortgage his or her fractional ownership interest or fractional ownership interests. The owner must, however, mortgage all of his or her rights in the fractional ownership interest; any attempt to mortgage anything less will be void. Anyone who owns more than one fractional ownership interest may mortgage each one separately.

B. PROHIBITED ACTS. No owner can mortgage or otherwise encumber anything other than his or her own fractional ownership interest. For example, the owner cannot mortgage or encumber:

- ❖ The whole vacation unit.
- ❖ The common furnishings.
- ❖ Another owner's fractional ownership interest.

Any attempt to do so will not be effective. It will be void. NOTE: "Encumber" is defined in the glossary (section 17.5).

C. ENFORCEMENT OF MORTGAGES. Any mortgage on a fractional ownership interest will be subordinate to (which means that it will be governed by and will not affect) this declaration or the other plan documents. If a mortgage is properly recorded and given in good faith and for value, then no violation of the plan documents or enforcement of the Association's lien will defeat or make the lien of the mortgage invalid. This does not guarantee, however, that the lender will be paid fully or paid first.

D. NOTICE TO CONDOMINIUM ASSOCIATION. An owner who mortgages a fractional ownership interest must comply with any notice requirements set forth in the condominium documents. For example, an owner may be required to notify the condominium association of the name and address of his or her mortgagee and file a conformed copy of the mortgage with the condominium association.

6.7 DUTY TO OTHERS.

A. PROTECTING OTHER'S FRACTIONAL OWNERSHIP INTERESTS. No owner may cause or permit his or her fractional ownership interest or vacation unit or the common furnishings to be subject to any claim or lien (1) that could result in the sale of the vacation unit, the common furnishings, or the fractional ownership interest of any other owner, or (2) that could interfere with another owner's use or enjoyment of his or her fractional ownership interest.

If any such sale or interference is threatened, or if legal proceedings that could result in such a sale or interference are begun, because of any lien or claim against another owner (the "violinator") or the violinator's fractional ownership interest, then any other owner or the Association may (but need not) pay or compromise the lien or claim without checking the proper amount or validity of it. In that case, the violinator must immediately repay to the other owner or to the Association the total expenses incurred, including all reasonable attorneys' fees and related costs. These amounts will be a personal charge to the violinator.

B. ASSOCIATION'S FUNDS. No owner may permit his or her interest in any funds held by the Association to become subject to any attachment, lien, claim or other legal process. Each owner must promptly restore any funds held by the Association with respect to the owner's fractional ownership interest if they are taken because of any such attachment, lien, claim or other legal process. The owner must also repay the Association for all reasonable attorneys' fees and any other costs it incurs to have the funds restored. Amounts incurred by the Association may be charged to the owner as a personal charge.

6.8 WAIVER OF RIGHTS.

A. TENANTS IN COMMON. Each owner owns a share of his or her vacation unit as tenants in common. "Tenants in common" is a legal term and is explained in the glossary (section 17.5).

Under the law, each owner, as a tenant in common, has certain rights, privileges and duties. These rights, privileges and duties as a tenant in common are and will remain subordinate to (which means that they are subject to and restricted by) the plan documents. In case of any conflict, the plan documents will control for so long as this declaration stays in effect.

B. PARTITION. "Partition" is the right of co-owners to ask a court to divide commonly owned property into separate parts for each co-owner. If the property cannot legally be divided, a court may order the property sold and divide the money from the sale among the co-owners. While this declaration is in effect, nobody may ask for or obtain partition of a fractional ownership interest or a vacation unit. If, however, any fractional ownership interest is owned by two or more persons together, any of them may ask a court to sell their fractional ownership interest and divide the money between them. When this declaration ends any owner may ask a court to sell his or her vacation unit and divide the money between the owners of that unit.

7. OWNER'S RESPONSIBILITY FOR OTHERS

7.1 INTRODUCTION. An owner may wish to allow his or her children, parents, relatives, a friend, or just about anyone else to use the owner's vacation unit during the owner's use period. The plan allows an owner to do this. But each owner has certain responsibilities for his or her guests. This chapter explains those responsibilities. It also explains the responsibilities as between two owners of a single fractional ownership interest.

7.2 CO-OWNERS OF A SINGLE FRACTIONAL OWNERSHIP INTEREST. If there is more than one owner of a single fractional ownership interest, each co-owner is jointly and severally liable to pay all assessments and personal charges. This means that each person may be held responsible to pay the whole amount of the personal charge or assessment, not just part of it or his or her share of it. It does not matter that only one co-owner uses the vacation unit during the vacation period or that personal charges were caused by only one of the co-owners and not the others. For example, when one co-owner damages the furniture or makes a long distance call, each of the co-owners of that fractional ownership interest are fully responsible to pay for

it, not just the one who did it. "Joint and several liability" is described in the glossary.

7.3 OWNER'S RESPONSIBILITY FOR GUESTS. An owner is personally responsible to see that his or her guests:

A. Obey the plan documents and the condominium documents.

B. Promptly pay all personal charges incurred during the owner's vacation period (for example, charges for extra housekeeping service or telephone calls).

C. Promptly pay all other personal charges arising from or related to use by the owner's guests of the vacation property or the condominium.

7.4 OWNER'S LIABILITY FOR GUESTS. By permitting his or her guest to come onto the condominium (whether or not the guest is expressly invited), the owner agrees to be fully responsible for:

- ❖ Any loss, damage or destruction caused by the guest's act or failure to act;
- ❖ Any violation by the guest of the plan documents or the condominium documents; and
- ❖ Any personal charges or other charges incurred by the guest.

An owner will be responsible for the guest's acts or failure to act just as if they were the owner's own acts or failure to act. If the owner's guests do not pay all amounts charged to them, the owner must pay those amounts. The owner must also pay all costs of trying to collect any amounts charged to the guest, including court costs and reasonable attorneys' fees. And, the owner must pay all other amounts charged to the owner as a result of his or her guests. All these amounts will be charged to the owner as a personal charge.

7.5 AN OWNER AND HIS OR HER GUESTS ARE LIABLE SEPARATELY AND TOGETHER. Each owner and each of his or her guests are jointly and severally liable to pay all personal charges and all other charges arising from or related to the guest's use of the vacation unit, the common furnishings, or the condominium. This means that the owner, the owner's guests, or both may be required to pay the whole amount, not just part of it or some share of it.

8. EXCHANGE PROGRAMS

8.1 INTRODUCTION. An exchange program gives owners the opportunity to exchange their use rights for the right to use a different unit or use period, or to use other property
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available through the exchange program. This chapter is intended to explain the relationship among owners, the Association, and any exchange programs. It also creates rules that apply to exchange users when they are using the vacation property.

8.2 EXCHANGE PROGRAMS.

A. PARTICIPATION IN EXCHANGE PROGRAM. An owner may exchange his or her use rights through an exchange program at his or her own option and risk. Rules and regulations of an exchange program do not reduce or suspend the duties of an owner under the plan documents. Any amounts charged to the owner by the exchange company or relating to the exchange program do not change or reduce the owner's personal duty to pay all amounts charged to the owner or to his or her fractional ownership interest as assessments or personal charges under the plan documents.

B. INTERNAL EXCHANGE. The Association may provide an internal exchange program that permits owners in the plan to exchange all or any part of their use periods. The Association may charge a fee to those owners who use this service to pay the additional costs and expenses resulting from the internal exchange program. The Association may require that the plan manager operate and manage the internal exchange program. Without the developer's written consent, the Association shall not operate any exchange program that will or may cause the plan to fall within the scope of the Hawaii time share law.

C. EXTERNAL EXCHANGE. The Association may enter into an exchange contract with one or more exchange companies to provide exchange program services to owners.

8.3 OWNER'S EXCHANGE RIGHTS AND DUTIES.

A. CHARGES RESULTING FROM AN EXCHANGE. If, through an exchange program, an owner exchanges his or her use rights in the fractional ownership plan for use elsewhere, the owner must pay all amounts reasonably charged to the owner at the other property. If the owner does not, the Association may (but does not have to) charge the amount owed as a personal charge to the owner. The board may examine the charges claimed to be owed to the other property and decide which amounts, if any, will be treated as a personal charge.

B. SUSPENSION OF EXCHANGE RIGHTS. A suspension under section 12.3 also suspends the owner's exchange rights. The Association will notify the exchange company of the suspension. A suspension will not affect the rights of an exchange user whose reservation to use part or

all of the suspended owner's use period is confirmed by the Association or the exchange company before the suspension takes effect.

8.4 EXCHANGE USER'S DUTIES AND LIABILITIES.

A. DUTIES. Exchange users have these duties:

- ❖ They must obey the plan documents and the condominium documents, and see that their guests also do so.
- ❖ They will be responsible for (and personally liable for) their guests just as if they were owners (see section 7.3).
- ❖ They must promptly pay all personal charges incurred during their vacation periods (for example, charges for extra housekeeping service or telephone calls).
- ❖ They must promptly pay all other personal charges or personal expenses arising from or related to their use of the vacation property or the condominium (for example, legal fees paid to collect personal charges owed by them or their guests).
- ❖ They will be treated as if they were the owner of the fractional ownership interest for the purposes of section 5.10. Among other things, this means that they will be liable for and must pay all sums charged to them under subsection 5.10B just as if they were owners.
- ❖ They will not have to pay any regular or special assessments and they cannot vote or otherwise participate in Association matters.

B. LIABILITY OF EXCHANGE USERS AND THEIR GUESTS. Exchange users and their guests are jointly and severally liable to keep all promises and pay all charges described in section 8.4A. This means that each of them may have to pay the whole amount, not just part of it or their share of it. Each person is responsible separately and together with the others.

C. EXCHANGE USERS MAY BE REQUIRED TO SIGN A CONTRACT. Exchange users may be required at check-in (or later) to sign a contract in which they promise to do the things required in this section 8.4. They may also be required to pay a security deposit or provide a credit card imprint as security for payment of any amounts charged to them. The Association or plan manager may (but are not required to) use these funds to pay any personal charges of the exchange user. The Association may keep the money (or any unspent part of it) until all charges relating to that person's occupancy have been paid. The Association may

clear charges weekly or at other intervals determined by the board, and may require replenishment of any amounts used for such payments. The Association may lock out or otherwise evict any occupant who fails to make such payment when requested. Neither the Association nor the plan manager will be liable for not asking for or not keeping advance payments or deposits or for locking an occupant out in case of non-payment. The request or failure to request and keep them does not excuse the duty of an exchange user and his or her guests to pay the personal charges.

8.5 LIABILITY.

A. FOR AN EXCHANGE COMPANY. The Association, the plan manager, and the developer (and each of their directors, officers, employees and agents) are not responsible for the acts, failure to act or conduct of an exchange company or for an exchange company's breach of the exchange contract or any other agreement.

B. FOR EXCHANGE USERS. The Association, the plan manager, the developer, and the exchange company (and each of their directors, officers, employees and agents) are not responsible for any act, failure to act or conduct of exchange users or their guests. An owner is not responsible for any act, failure to act or conduct of exchange users or their guests whose use of a vacation unit is arranged through an exchange company in exchange for that owner's use rights.

9. THE ASSOCIATION

9.1 THE ASSOCIATION. The name of the Association is "The Beach Villas at Kahalu'u Fractional Owners Association." It is a Hawaii non-profit corporation. The Association is intended to continue as a corporation for the life of the plan. But the State can terminate or "dissolve" a corporation in certain circumstances such as if the corporation fails to file yearly reports required by law. If the corporation is ever dissolved, whether on purpose or not, then it will be replaced automatically by an unincorporated association having the same name and same members, officers and directors. In that event, all property, powers and obligations of the incorporated association just before it dissolved automatically will be held by the unincorporated association. To the greatest extent possible, any replacement unincorporated association will be governed by the plan documents as if they were the documents governing the unincorporated association. Any officers or directors of the unincorporated association may either revive the old corporation or create a new one to be the Association. The name of the new corporation should be the same as or similar to the old name if possible. The board may amend

this declaration to identify the new corporation as the "Association."

9.2 ASSOCIATION MEMBERSHIP.

A. **CLASS A MEMBERS.** The Class A members shall consist of all owners of fractional ownership interests.

1) Each owner is a member of the Association and, except as provided in section 9.2B, only owners can be members. By acquiring a fractional ownership interest, the owner automatically consents to being a member of the Association. If more than one person is the "owner" of a fractional ownership interest, each of them is a member.

2) The membership of a Class A member ends automatically when he or she is no longer the "owner" of a fractional ownership interest, such as when an owner transfers it to someone else.

3) An owner cannot separate his or her Association membership from the other components of his or her fractional ownership interest. He or she cannot sell, transfer, mortgage, or otherwise deal with it separately from the rest of his or her fractional ownership interest. Any attempt to do so is void.

4) Anyone who transfers a fractional ownership interest also automatically transfers the Association membership for that fractional ownership interest to its new owner.

B. **CLASS B MEMBERS.** The developer is the sole Class B member of the Association. The membership of the developer in its capacity as the "developer" shall be separate and distinct from any Class A membership that it may hold by reason of being an owner. The Class B membership shall terminate when the developer no longer owns any fractional ownership interest and no longer holds a mortgage on any fractional ownership interest, or when nobody holds the rights of the "developer" under the plan documents.

9.3 **VOTING RIGHTS OF MEMBERS.** The members are entitled to vote as provided in the articles, this declaration, and the bylaws.

A. **CLASS A MEMBERS.** Each every-year fractional ownership interest has two votes. Each every-other-year fractional ownership interest has one vote. An owner who owns more than one every-year fractional ownership interest has two votes for each of them. Likewise, an owner who owns more than one every-other-year fractional ownership interest has one vote for each of them.

1) When a fractional ownership interest is owned by more than one person, its co-owners do not each receive one or two votes. Instead, the co-owners of that fractional ownership interest must share the one or two votes for that fractional ownership interest. Only one vote may be cast for each every-other-year fractional ownership interest, and only two votes may be cast for each every-year fractional ownership interest.

2) If a fractional ownership interest is owned by more than one person, they will have to agree among themselves on how to vote. The Association need not settle disputes among co-owners as to voting. If they cannot agree, they lose their right to vote on the matter in question.

3) If a fractional ownership interest is owned by more than one person, the vote or votes for that fractional ownership interest may be cast by any of its co-owners, unless (i) another co-owner files a written objection with the secretary or the chairperson during or before the meeting, or (ii) another co-owner casts an inconsistent vote.

B. **CLASS B MEMBERS.** Except where this declaration, the articles, or the bylaws provide otherwise, the developer will have no voting rights in its capacity as the Class B member. See section 9.2B of the articles for examples of when the Class B member has voting rights.

9.4 **BOARD OF DIRECTORS.** The business and affairs of the Association are controlled by the board. Except as limited by law or by the plan documents, the board may exercise all powers of the Association and must perform all of its duties. The board may not, however, take any action that, by law or under the plan documents, must be taken, authorized or approved by the owners, or by some part or percentage of them, or by the developer. The board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the plan manager. This authority is subject to any limits contained in this declaration, the articles, or the bylaws. The first board will consist of persons appointed by the developer. At the Association's first annual meeting, the owners will elect a new board.

10. MANAGING THE PLAN

10.1 **THE ASSOCIATION MANAGES THE PLAN.** Administration and management of the vacation property and the fractional ownership plan is vested in the Association. Owners participate only through the Association.

10.2 ASSOCIATION DUTIES AND POWERS. Except as limited by law or by the articles, this declaration, or the bylaws, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

A. It has the powers, duties and obligations granted to or imposed on the Association in this declaration, the articles, or the bylaws.

B. It has the powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.

C. It has any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Association under this declaration, the articles, or the bylaws, or that otherwise promote the general benefit of the owners.

10.3 SPECIFIC POWERS AND DUTIES. The Association has the power and duty to do the following things, among others:

A. PAYMENT OF EXPENSES. The Association, acting as the agent of the owners, must pay all expenses of the plan. The Association need not do anything it cannot pay for; it may just wait until it has the money.

B. REPAIR AND MAINTENANCE. The Association must repair and maintain the vacation units and the common furnishings, and keep them in good condition. The Association may replace the common furnishings and may remodel or upgrade the vacation units. The Association may buy any materials and furnishings, and obtain any labor or services, necessary to do so. For example, it may buy or lease replacements for the common furnishings.

C. CLEANING AND HOUSEKEEPING SERVICE. The Association must provide cleaning, housekeeping service, maintenance and repairs to each vacation unit during service periods and at any other times required by the association rules. In addition to the normal service, the Association may set up a program to provide, for an extra charge, additional cleaning and housekeeping service when asked by an occupant.

D. RIGHT OF ENTRY. Except as provided in section 5.5B, the Association has an easement and the right to enter each vacation unit during the minor service periods, and an easement and the right to exclusive possession of each vacation unit during the major service periods, in order to perform its duties under this declaration. It also has the right and an easement to enter any vacation unit at any reasonable time, after giving reasonable notice to anyone in it, to provide cleaning, housekeeping service, maintenance,

and repairs or as otherwise may be necessary to manage or operate the plan or the vacation property. The Association has the right and power, and an easement, to enter any vacation unit:

1) At any time to make emergency repairs or for any other emergency purpose, whether or not the occupant is present; and

2) At reasonable times to do maintenance and repair work that the Association or plan manager decides should not be delayed until the major service periods.

The Association must use this right in a way that avoids unreasonable or unnecessary interference with an occupant's possession, use and enjoyment of a vacation unit. If the circumstances permit it, the Association must give an occupant reasonable notice before entering.

E. TAXES AND ASSESSMENTS. The Association must pay all taxes and assessments on the vacation property. This includes, for example, assessments by the condominium association if they are not charged separately to the individual owners. It also includes all governmental assessments. The Association may decide whether it should collect and pay amounts that are separately assessed to each owner or whether it should permit the owners to pay those sums directly. The Association will pay these taxes and assessments as the agent of the owners, and only if it has the money to do so.

F. LIENS OR CLAIMS. The Association may, but need not, pay, compromise or contest liens or claims affecting the vacation property.

G. UTILITIES. Unless the condominium association already provides these services: (1) the Association must obtain and pay for water, electricity, sewage, garbage disposal, and any other necessary utility services for each vacation unit; and (2) the Association will decide whether to obtain or cancel telephone, cable or satellite television, internet access, and similar services.

H. ASSOCIATION RULES. The Association may adopt, publish and enforce fair and reasonable rules and regulations relating to the vacation units or the common furnishings, and use by occupants of the common elements and any limited common elements of vacation units. The initial association rules are attached as Exhibit "D" to this declaration, but revisions to them need not be recorded. The board may change the association rules from time to time. The developer also has the rights to change the association rules in any circumstance where it could change this declaration. The association rules must be consistent with

this declaration, the articles and the bylaws. The board must give notice to the owners of any change in the association rules. The board may give this notice by mailing it to the owners or by including it in a newsletter, by posting a notice on an internet web site, or by email. It may also give this notice in any other way that is likely to be effective to give notice to the owners and that complies with any laws that apply. At any meeting of the Association, a majority of the owners may change the association rules so long as the notice of the meeting stated that the change would be considered at the meeting and includes a fair and accurate description of the proposed change. At any time when the developer holds a mortgage on or owns any fractional ownership interest, no change to the association rules will be effective without the developer's written consent.

I. LEGAL AND ACCOUNTING SERVICES. The Association may obtain and pay for any legal and accounting services necessary or helpful to manage the plan or the vacation property or to enforce the plan documents or the condominium documents.

1) Even so, the board may not incur or commit the Association to incur legal fees and costs of more than \$25,000 in a dispute with the developer, or any company related to the developer, unless it first meets each of these requirements:

(a) The board must obtain the following information from at least two Hawaii law firms:

(1) A list of all of the Association's claims.

(2) An estimate of the likelihood of prevailing on each claim. The estimate must be based on information then known to the Association. It cannot be based on assumptions or speculation.

(3) An estimate of the total amount of legal fees, court costs and expenses that the Association is likely to incur through the trial or completion of any arbitration or other proceeding (assuming that the Association will prevail on only those claims where the law firms give the Association more than a 60% chance of prevailing).

(4) An estimate of the total amount of any special assessments, or any increase in the regular assessments, that the board expects to charge to the owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on.

In a trial or arbitration of the Association's claims, nobody can introduce the opinions of the law firms into evidence. This includes the developer, the Association, the owners, and everyone else.

(b) The board must call a special meeting of the Association.

(c) The board must provide a copy of the list of claims and estimates to each owner together with the notice of the special meeting of the Association.

(d) At the special meeting, a majority of the owners (not counting the fractional ownership interests and votes of the developer) must authorize the board to start and prosecute the lawsuit, arbitration or other legal proceeding.

2) The rule in section 10.3L.1) does not apply to suits against the developer or any company related to it if the suit is filed solely to collect assessments, personal charges, or subsidy contract payments that are past due or for breach of any contract to provide goods or services to the Association (for example, the management agreement), or to enforce the plan documents.

3) The \$25,000 ceiling contained in section 10.3L.1) will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. index.

(a) The "C.P.I. index" is the U.S. Department of Labor Consumer Price Index for All Urban Consumers - Honolulu. If the government stops publishing that index, then the most similar index available will be used in its place. The Association will choose any replacement index.

(b) The amount of any increase or decrease based on the C.P.I. index will be equal to the percentage change between (i) the C.P.I. index published for the year ending on December 31, 2006, and (ii) the C.P.I. index for the most recently ended calendar year. For example, if the C.P.I. Index on December 31, 2009, is ten percent (10%) higher than the C.P.I. Index on December 31, 2006, then the ceiling would be \$27,500, determined as follows:

$$\text{Ceiling} = \$25,000 + \text{percentage change in C.P.I. Index}$$

$$\text{Ceiling} = \$25,000 + (10\% \text{ of } \$25,000)$$

$$\text{Ceiling} = \$25,000 + \$2,500$$

$$\text{Ceiling} = \$27,500$$

J. VOTING IN THE CONDOMINIUM ASSOCIATION.

In condominium association meetings or votes, the Association must cast the vote of each vacation unit unless the condominium documents allow otherwise and the owners of a majority of the votes for fractional ownership interests in the vacation unit elect to cast the vote for their share of the apartment themselves.

1) At least 30 days before the annual meeting and 15 days before any special meeting of the condominium association, the board will obtain the agenda and any other information that is reasonably available on the matters to be voted upon at that meeting. The board will mail this material to each owner together with a ballot to be returned to the Association. The ballot will ask the owners to vote on each question. The board will appoint an agent to cast the vote of each vacation unit. For each vacation unit, the agent will vote as the owners of a majority of the votes for that vacation unit voted in their ballot; provided that if no ballots are returned or if there is no majority for the vacation unit (i.e., a tie), then the board, through its agent, may cast the apartment's vote in the manner it considers to be in the best interests of the owners.

2) If, for reasons beyond its control, the Association does not have time to send out ballots, the board, through its agent, may cast the vote of the vacation units in the manner it considers to be in the best interests of the owners. This rule also applies to matters properly before the condominium association that were not on the agenda and not reasonably expected to arise.

3) Except as provided in the first sentence of this subsection 10.3J, each owner will be considered to have authorized the Association, and its agent, to act for him or her at any meeting or vote of the condominium association. For this purpose, by taking title to a fractional ownership interest, each owner irrevocably (permanently) gives the board a special power of attorney (see section 17.4) and proxy to represent him, or to appoint an agent to do so, at all meetings and in all votes of the condominium association. No further authorization or proxy is or will be needed for the board or its agent to act for that owner at any meeting or in any vote of the condominium association. But, if the board asks, each owner must: (i) sign and deliver any documents (including but not limited to a proxy form prepared by either the Association or the condominium association); and (ii) do everything else the board reasonably requests to enable it or its agent to cast the vote of the vacation units at any meeting or in any vote of the condominium association or to carry out its other duties under this declaration.

K. MEMBERSHIP LIST.

1) **THE ASSOCIATION MUST KEEP A LIST.** The Association must at all times keep a current list of the names and addresses of all owners. This list is called the "membership list."

2) **THE DEVELOPER'S RIGHTS.** The developer has certain important reasons for wanting to protect the membership list. For example, the membership list is also the list of the developer's customers. In addition, the Hawaii condominium law and the Hawaii non-profit corporations law each contain certain provisions intended to protect the membership list. The developer wants to ensure that these requirements are not circumvented, especially for commercial reasons by a competitor of the developer. For these and other reasons, the developer is expressly declared to be an intended third party beneficiary of this section 10.3K. This means that this section 10.3K is intended to protect the developer and that the developer can enforce it even if it no longer is an owner.

3) **USE OF THE LIST.** The Association and the plan manager may use the membership list as necessary to conduct the affairs of the Association. Without the written consent of the board and the developer, the membership list shall not be:

(a) Obtained or used by any person for any purpose unrelated to the owner's interest as a member of the Association;

(b) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the Association;

(c) Used for any commercial purpose;

(d) Sold to or purchased by any person; or

(e) Published in whole or in part to the general public.

4) **INSPECTION OF MEMBERSHIP LIST.** An owner is entitled to obtain, inspect and/or copy the membership list, or any other records from which a membership list may be compiled, if and only if:

(a) The owner's request is made in good faith and for a proper purpose, and

(b) The records requested are directly related to that purpose, and

(c) The owner complies with all applicable laws and the lawful requirements stated in this section 10.3K, and

(d) Furnishing the membership list or allowing the inspection will not violate any federal or state privacy laws or other laws that may apply, and

(e) Furnishing the membership list or allowing the inspection will not, in the opinion of the board, jeopardize the personal financial situation of the members by, e.g., creating an opportunity for identity theft.

5) PROCEDURE FOR REQUEST OF INFORMATION. An owner who seeks to obtain, inspect or copy the membership list, or any records from which a membership list may be compiled, may only do so if each of these conditions is satisfied:

(a) The owner must deliver to the Association or the plan manager a written request to obtain, inspect or copy the membership list or records from which a membership list may be compiled. The request must satisfy each of these requirements:

(1) The request must describe with reasonable particularity the purpose for such request.

(2) The request must explain how the information requested is directly related to that purpose.

(3) The request must include copies of all documents and materials that the owner intends to distribute using the membership list.

(4) The request must indicate the records that the owner desires to inspect if either (i) less than the full membership list is requested, or (ii) the owner seeks to inspect or make copies of records from which a membership list may be compiled.

(b) The owner's request must be accompanied by an affidavit signed and acknowledged by the owner before a notary public. The affidavit must state that:

(1) The membership list or other information is being requested in good faith and for a proper purpose, and

(2) The membership list or other information will be used by such owner personally and only for the purpose of soliciting votes or proxies or

providing information to other owners with respect to Association matters, and

(3) The membership list or other information will not be used by the owner, or furnished to anyone else, for any other purpose.

6) RELEASE OF THE LIST. The Association will make the membership list available, at cost, to any owner who asks for it; provided that despite anything else stated in the plan documents, the Association will not furnish the membership list or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the membership list or any other documents from which a membership list may be compiled, until after each of these conditions is satisfied:

(a) The board has determined, at a regular or special meeting of the board, that the person requesting the list or inspection has fully satisfied:

(1) Each of the requirements of this section 10.3K;

(2) All other lawful conditions adopted by the board pursuant to section 10.3K.11); and

(3) Any other conditions to obtaining the list imposed by law, including for example, the Hawaii Condominium Law and Chapter 414D, Hawaii Revised Statutes, or any replacement laws.

(b) The board will make its determination based on its review of the written request and any documents, materials, and other information that the owner submits or that is otherwise available to the board.

(c) The board gives written notice of the request to the developer. The notice must include (i) the name and address of the person requesting the membership list or inspection; and (ii) copies of the request for the membership list, the written statement, documents and materials, and affidavit submitted pursuant to this section 10.3K. The board must give this notice to the developer promptly after making its determination under section 10.3K.6(a).

(d) At least ten days have passed since the developer received the Association's notice and the developer has not delivered to the Association a written notice objecting to the release or inspection because the affidavit is improper or the person is not requesting the

membership list or inspection for a proper purpose or that the requirements of law or this section 10.3K have not been fully satisfied.

(1) If the developer or any other owner objects and if the Association or the owner requesting the membership list contests the developer's or other owner's objection, then the matter will be decided by appropriate legal proceedings. In such a case, the Association will not release the membership list, or permit inspection of it or of any records from which a membership list may be compiled, until the appropriate legal authorities order it to do so.

7) RELEASE TO OWNERS OTHER THAN COMPETITORS. If the person requesting the membership list or inspection is not a competitor then the Association will furnish the membership list to the owner, or permit the owner to inspect and copy the records requested, after each of the requirements of this declaration and the other plan documents are met.

8) RELEASE TO A COMPETITOR. If the person requesting the membership list is a competitor of the developer and each of the requirements of this declaration and the other plan documents are met, then unless the law requires something else, the Association will furnish the list in this way (and only in this way): The Association will provide the membership list in the form of mailing labels directly to a company providing mailing services chosen by the person requesting the membership list. The company providing mailing services: (a) cannot be a competitor; and (b) must provide to the developer and to the Association the company's written promise to the developer and to the Association that the company will not:

(a) Use the membership list or any part of it for any purpose except for the mailing;

(b) Provide a copy of the membership list or any part of it or any information from it to anyone else, including but not limited to the competitor; and

(c) Allow anyone else to inspect or make copies of or extracts from the membership list.

9) INSPECTION BY A COMPETITOR. If the person requesting the inspection is a competitor and each of the requirements of this declaration and the other plan documents are met, then unless the law requires something else, the Association will permit the owner to inspect and copy photocopies of the records requested. However, the photocopies will first be modified so as to obliterate entirely the address and any other biographical information from

which the owner requesting the inspection could compile a list containing the addresses, email addresses, fax numbers, or phone numbers of the owners, or any other means of soliciting the owners.

10) WHO IS A COMPETITOR. A "competitor" is a person who is:

(a) The developer of a time share or fractional plan or program (except a plan or program developed by the developer or a related company);

(b) Any marketer, sales agent, or manager of such a time share or fractional plan or program (including but not limited to any OPC);

(c) An exchange company that is not related to the developer; or

(d) Any person who, for a commercial purpose or for any other improper purpose, is acting on behalf of or collaborating with any person identified in subsections (a) through (c).

11) OTHER CONDITIONS. The board may impose other reasonable conditions intended to assure the confidentiality of the list of owners and that the list is not used (i) for commercial purposes by anyone other than the developer or any company related to the developer, (ii) in any way that violates state or federal law, or (iii) for any other improper purpose.

12) PRIVACY LAWS. Regardless of anything else stated in the plan documents, if Hawaii law is amended so that owners may no longer inspect or request the membership list, or if the board determines that federal or state privacy or other laws in any jurisdiction in which the Association has members may prohibit inspection or release of the membership list or that any part of subsections 10.3K.3) through 10.3K.10) is not valid, then the Association will not release or permit inspection of the membership list or any other information from which a membership list may be compiled. In that event, if the conditions of subsections 10.3K.4) through 10.3K.6) are satisfied, then instead of releasing the membership list or permitting inspection as provided in subsections 10.3K.7), 10.3K.8), or 10.3K.9) the Association will mail to the owners any proper documents and materials furnished to the board pursuant to subsection 10.3K.5)(a)(3). The owner requesting the membership list must first deposit with the Association an amount sufficient to pay all costs of duplicating, stuffing, and mailing the documents and materials, including reasonable costs to the Association and the plan manager of responding to the request and arranging

the mailing. The Association shall not, however, mail or otherwise provide to the owners any documents or information not directly and solely distributed for a proper purpose.

13) RELEASE TO THE DEVELOPER. The Association will furnish a copy of the list to the developer promptly after the developer asks for it. Except as otherwise provided by law, the conditions stated in this section 10.3K do not apply to the developer or to companies related to it.

L. ASSOCIATION REAL PROPERTY. The Association must accept title to any real or personal property transferred to it by the developer. The Association may buy, lease, or otherwise acquire one or more apartments or other real property for use by the Association for Association purposes including, among other things, for use as a manager's apartment. The board may mortgage, lease, rent, sell, or otherwise dispose of the Association's real property from time to time as it deems necessary or appropriate, consistent with the purposes permitted above. All costs, expenses, and liabilities incurred in connection with the Association's real property will be plan expenses. The Association must buy and at all times have insurance on the Association's real property and any common furnishings in it; the requirements of Chapter 13 apply to the Association's real property. The Association's real property is considered to be part of the "common furnishings."

M. OTHER POWERS. The Association may do anything else it deems necessary, desirable or useful to run the fractional ownership plan or to maintain, repair, preserve or protect the vacation property.

N. DELEGATION OF ASSOCIATION POWER AND DUTIES. The Association may delegate its power and duties under this declaration to one or more agents, including, among others, the plan manager. The board must supervise the agents.

10.4 THE PLAN MANAGER. The Association must hire a plan manager. It may hire more than one plan manager, and it may divide the duties of the "plan manager" among them. The first plan manager will be appointed by the developer and may be the developer or a company related to the developer. If the first plan manager must be replaced for any reason, the Association must use its best efforts to hire and maintain one or more reputable firms as the plan manager for the fractional ownership plan.

10.5 THE MANAGEMENT CONTRACT. The plan manager must sign a written contract (the "management contract") containing the following provisions:

A. PLAN MANAGER'S DUTIES. The management contract may require the plan manager to perform some or all duties and obligations of the Association except those that cannot be delegated by law or under the plan documents. It may permit the plan manager to delegate some or all of its power and duties to one or more sub-agents or independent contractors for any period and upon any terms it deems proper.

B. TERM.

1) The management contract may provide for an initial term of not more than five (5) years from the starting date. The "starting date" is the first date on which a first deed is recorded.

2) The management contract may provide that after the first term and each later term ends, the contract automatically will be renewed for three more years, unless either party sends a written notice that it is not renewing the contract (a "notice of non-renewal") to the other party at least 90 days before the next renewal date. The management contract also may provide that the Association cannot give a notice of non-renewal without the vote, at an annual or special meeting of the Association held within one year before the renewal date, of a majority of the owners. If the management contract contains such a provision, then:

(a) A decision to cancel or not to renew the management contract cannot be made by the board alone; the board will have no power or authority to do so in its own right or on behalf of the Association; and

(b) Neither the board nor any officer, director, employee or agent of the Association can give a notice of non-renewal before a majority of the owners vote to not renew the management contract at an annual or special meeting of the Association. Any notice of non-renewal sent before then will not be effective. It will be void.

C. TERMINATION BY THE ASSOCIATION. The Association must have the right to terminate the management contract without paying a cancellation fee whenever the plan manager violates a material part of it and fails to cure its violation within the time permitted by the management contract or any longer time permitted by the board. If the plan manager disputes the termination, the matter will be decided by arbitration under the commercial arbitration rules of the American Arbitration Association if arbitration is requested by the plan manager. The board will represent the Association in the arbitration.

D. RESIGNATION. The management contract must provide that the plan manager can resign only if it gives written notice to the board at least ninety (90) days in advance. If the plan manager resigns, then it must turn over to the board all books and records of the Association held by the plan manager and that relate to the management and operation of the vacation property and the fractional ownership plan. This does not require that the plan manager turn over internal or confidential or other records of the plan manager.

E. FEES. The management contract must specifically state the fees to be paid to the plan manager by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the plan expenses or to costs plus a percentage profit.

F. PLAN MANAGER'S INSURANCE. The management contract must require that the plan manager obtain errors and omissions insurance. The policy must name the Association, as agent for each of the owners, as an insured. An "insured" is someone who is paid if there is a loss that is covered by insurance. The Association will pay for the insurance. The board will decide what policy limits are appropriate. The Association will buy this insurance only if it is available at a reasonable price. The board will decide what is reasonable, and its decision will be final. The management contract may also provide that the Association must obtain a fidelity bond or buy fidelity insurance that covers the plan manager with respect to its handling of the Association's funds.

10.6 LEGAL REPRESENTATION OF OWNERS.

A. REPRESENTING THE ASSOCIATION OR OWNERS. By accepting a fractional ownership interest, each owner agrees that the president of the Association or, if authorized by the board, the plan manager may represent the Association or any two or more owners similarly situated as a class in any proceeding concerning the Association, the fractional ownership plan, the condominium, the condominium association or the vacation property. The president or the plan manager may begin, defend, intervene in, prosecute and settle any such proceedings. This does not, however, limit the rights of any owner to appear, sue or be sued separately or to decide not to participate. The board will supervise the president or the plan manager in any such representation.

B. POWER OF ATTORNEY. By accepting a fractional ownership interest, each owner gives a special power of attorney (see section 17.4) to the president of the Association and the plan manager, with full power to do

anything needed or helpful to represent the owner as provided in section 10.6.

C. SERVICE OF PROCESS. Except as otherwise provided by law, process (such as papers for a lawsuit) for the Association may be served only on the registered agent of the Association or, if there is no registered agent, then on the plan manager.

D. LIMITATIONS. The authority of the president of the Association and the plan manager under this section is subject to the limitations contained in section 10.31.

10.7 LIMITS ON LIABILITY.

A. LIABILITY FOR OWNERS AND GUESTS. The Association, the developer, companies related to the developer, and the plan manager (and each of their directors, officers, employees and agents) cannot be held responsible for the acts, failure to act or conduct of any owner or an owner's guests.

B. SECURITY. The Association, the developer, or the plan manager may, but need not, take steps to make the vacation property or the condominium safer than it otherwise might be. The Association, the developer, and the plan manager are not insuring or guaranteeing the safety or security of people or property in the vacation property or the condominium. *The Association, the developer, companies related to the developer, the condominium developer, the condominium association, and the plan manager (and each of their directors, officers, employees and agents) cannot be held responsible for any loss or damage for failing to provide adequate or effective safety or security measures. No representation or warranty is made that any fire protection, burglar alarm or other safety or security system or measures will:*

- 1) **be effective in all cases and cannot be compromised or circumvented;**
- 2) **prevent all losses;**
- 3) **limit access to the vacation unit or the condominium; or**
- 4) **provide the detection or protection that it is designed or intended to provide.**

C. LIMITATION OF WARRANTIES. The developer is also the condominium developer, but the developer is not the general contractor. The condominium documents disclaim any warranties by the developer. Those provisions are made a part of this declaration, just as if they were fully

restated right here. This means, among other things, that **everything is being sold “as is” and that the developer does not have to correct or fix, or pay to have someone else correct or fix, any defect, no matter what causes it or when it is discovered.** This includes, but is not limited to the units, the common elements, and the common furnishings.

11. ASSESSMENTS AND PERSONAL CHARGES

11.1 DEFINITIONS.

A. “**PLAN EXPENSES**” are the costs of operating the fractional ownership plan and the costs of owning, managing, operating, and maintaining the vacation property. The plan expenses are shared by the owners. Plan expenses may include among other things, any or all of the following:

- ❖ The cost of utility services such as water, electricity, garbage disposal, telephone and cable television.
- ❖ The cost of repairing, rebuilding, replacing, remodeling, or making improvements to the vacation property.
- ❖ The cost of buying insurance required or permitted by the plan documents.
- ❖ Wages, accounting and legal fees, management fees, start-up fees, housekeeping and cleaning fees, and other expenses necessary to maintain, repair, manage and operate the vacation property.
- ❖ All amounts charged to the vacation units by the condominium association (except amounts separately charged to individual owners). This includes, for example, the expenses of operating and maintaining the condominium.
- ❖ Any amount charged by the condominium association due to an intentional or negligent act by an occupant of a vacation unit. The Association will pay the charge but will then pass on the charge, and any taxes on it, to the responsible person as a personal charge.
- ❖ Any taxes or other governmental charges upon or charged to the vacation property or the use of it or on any other interest of the owners (except taxes separately charged to individual owners). Examples of this type of expense include real property taxes, transient occupancy taxes, hotel or bed taxes, and any charges imposed in place of a hotel or bed tax.

- ❖ Any liability for loss or damage relating to the vacation property or the use of it.
- ❖ Any money owed by any owner, occupant, or other person to the Association to the extent the board decides that it is uncollectible or too expensive to collect, as a practical matter.
- ❖ Amounts needed to make up any shortfall in funds needed to pay the plan expenses for any prior year.
- ❖ Amounts needed for the reserve accounts. These are savings accounts of the Association. The money is used to pay for capital improvements. “Capital improvements” are things like replacing the carpeting or appliances, other major repairs and remodeling, or replacing the vacation units or common furnishings. Day to day maintenance and repairs are not capital improvements.
- ❖ Any amounts needed by the board to buy one or more fractional ownership interests in a foreclosure sale.

B. “**UNIT EXPENSES**” means the following plan expenses:

- 1) Amounts charged to the vacation units by the condominium association (except any amounts separately charged to individual owners);
- 2) Real property taxes on the vacation units (except amounts separately charged to individual owners);
- 3) Other taxes and assessments charged to the vacation units, including any transient occupancy taxes, hotel or bed taxes, and any charges imposed in place of a hotel or bed tax (except amounts separately charged to individual owners or occupants);
- 4) Housekeeping services, if the board decides to include them as unit expenses;
- 5) Utilities if they are separately charged to each vacation unit and if the board decides to include them as unit expenses; and
- 6) Amounts budgeted for reserve accounts for the vacation property.

C. “**GENERAL EXPENSES**” means all plan expenses except the unit expenses.

D. “**FAIR SHARE**” has different meanings for every-year and every-other-year fractional interests and is based on the unit type of the owner’s unit, as follows:

1) The "fair share" for an every-year fractional interest is 1/6th of the sum of the following fractions:

$$\frac{\text{All general expenses for all vacation units}}{\text{The total number of vacation units}} + \frac{\text{All unit expenses for all vacation units of the owner's unit type}}{\text{The total number of units of that unit type}}$$

2) The "fair share" for an every-other-year fractional ownership interest is 1/12th of the sum of the following fractions:

$$\frac{\text{All general expenses for all vacation units}}{\text{The total number of vacation units}} + \frac{\text{All unit expenses for all vacation units of the owner's unit type}}{\text{The total number of units of that unit type}}$$

In addition, the fair share for an every-other-year fractional interest will include a yearly service or bookkeeping fee in an amount set by the board from time to time.

3) In calculating the sums described in subsections 1) and 2), only units for which assessments have begun will be considered. See section 11.3.

E. "FISCAL YEAR" means tax year.

F. "ASSESSMENTS" means regular assessments, special assessments, or both.

G. "COLLECTION COSTS" means all costs incurred to collect any overdue assessments or personal charges. It includes, but is not limited to foreclosure costs, court costs, and reasonable attorneys' fees, costs, and expenses.

11.2 THE BUDGET.

A. ANNUAL BUDGET. At least sixty (60) days before the end of each fiscal year, the plan manager will prepare and give to the board an estimate of the plan expenses for the following year. The estimate will cover all units for which assessments have begun or are expected to begin by the start of the fiscal year. Upon review and approval by the board, this estimate (with any changes the board makes) will become the "budget" for that year. The budget must specifically state which units it covers or attach a list of them.

B. BUDGETING FOR RESERVE ACCOUNTS. When it reviews and approves the budget, the board must consider what specific capital improvements may be needed within any period of time up to twenty (20) years. To do so, the

board must obtain a reserve study at least every five years, and it must review it at least yearly to see if the Association's reserves are sufficient. The board must then estimate: (i) the remaining useful life of each capital improvement; (ii) the cost to repair, replace or restore it during and at the end of its useful life; and (iii) the amount of money that should be saved each year to be able to pay for those costs when needed. In making these decisions, the board may consider interest earned on any savings accounts. The board must then make any adjustments it deems necessary to maintain the reserves, and include these amounts in the budget. The board must budget for as many reserve accounts as it deems necessary or useful. Its decision will be final. Each of these accounts must be earmarked for capital improvements.

11.3 WHEN ASSESSMENTS BEGIN.

A. Assessments for a vacation unit begin on the later of: (i) the first day of the month after a first deed transferring a fractional ownership interest in that vacation unit is recorded; or (ii) the date when the County of Hawaii issues a temporary or permanent certificate of occupancy for that vacation unit. From then on, each owner of a fractional ownership interest in that vacation unit, whether it is the developer or someone else, must pay a fair share of the plan expenses.

B. Prior to the time when assessments begin for a given unit, the developer shall have the exclusive right to use that unit and the developer must pay all expenses of owning and occupying that unit, and must reimburse the Association for expenses (such as insurance) that the Association incurs with respect to that unit. This will not include fees and costs charged by the plan manager but will include the charges for housekeeping and maintenance requested by the developer.

11.4 REGULAR ASSESSMENTS. The owner of each fractional ownership interest will pay a share of the plan expenses. This is called the "regular assessment." The regular assessment for the first fiscal year will be pro-rated in such manner as the developer determines by written notice to the Association. The regular assessment for each fractional ownership interest is set as follows:

A. For all active units specifically covered by the budget, the regular assessment for each fractional ownership interest will be a fair share of the budget.

B. For all apartments not covered by the budget (such as apartments added to the plan or converted to active unit status at mid-year), the regular assessment for each fractional ownership interest will equal the regular

assessment for vacation units of that unit type. For example, if the fair share for an every-year fractional ownership interest in a two-bedroom unit covered by the budget is \$600, then the fair share for an every-year fractional ownership interest in a different two-bedroom unit that is not covered by the budget will also be \$600. However, no regular assessment shall be due in that year for fractional ownership interests whose use period has already passed (in full or in part) for that year. For example, if a unit is added to the plan on May 1, and if use period no. 2 runs from March 31 to May 30, then no regular assessment would be charged to fractional ownership interests that have use period nos. 1 or 2 (whether they are every-year or every-other-year fractional ownership interests).

11.5 SPECIAL ASSESSMENTS.

A. HANDLING SHORTFALLS. If for any reason the regular assessments for the plan expenses are, or will be, inadequate to pay all plan expenses on time, the board must estimate the shortfall. The board must then (i) increase the next year's budget to make up the shortfall, or (ii) charge a special assessment.

B. SHORTFALL'S RELATING TO DAMAGE OR DESTRUCTION. If the vacation property is damaged or destroyed and the costs to repair or replace it cannot be fully paid by using available insurance proceeds and the money from any appropriate reserve account, the board has the same two choices. It may charge a special assessment or add the amount needed to next year's budget. The special assessment must be charged against all fractional ownership interests regardless of where or how the damage occurred or whether the Association is entitled to be repaid by an owner or occupant.

C. OTHER SPECIAL ASSESSMENTS. The board may also charge a special assessment in any other circumstances permitted by law or by the plan documents. For example, the board may charge a special assessment for the purpose of making capital improvements authorized by the Association.

D. HOW SPECIAL ASSESSMENTS ARE CHARGED. To charge a special assessment, the board must prepare and send to each owner a special budget showing the amount of the shortfall. The board will charge to each fractional ownership interest a fair share of the total shortfall shown on the special budget.

11.6 PERSONAL CHARGES. A "personal charge" is an expense that results from the act, failure to act, or other conduct of an owner or primary occupant, or the guest of an owner or primary occupant. It also includes charges for

extra services requested or used by the owners or occupants. Personal charges should not be confused with regular and special assessments. The following expenses are examples of personal charges:

- ❖ The cost of food, beverages, telephone charges, optional housekeeping service and other special services or supplies resulting from or related to the occupancy of the vacation unit during a person's vacation period.
- ❖ Charges arising from or related to the use of the common furnishings or the condominium (for example, rentals of sports supplies or other recreational equipment, and so on).
- ❖ The cost to repair any vacation unit or to repair or replace any of the common furnishings in them because of loss or damage occurring during a person's vacation period (unless caused by ordinary wear and tear or by an unavoidable accident or other casualty).
- ❖ Expenses to any other owner or to the Association due to a person's intentional or negligent act or failure to act.
- ❖ Expenses resulting from any intentional or negligent violation of the condominium documents or the plan documents.
- ❖ Collection costs.
- ❖ Any late charges and interest on overdue payments.

11.7 DUTY TO PAY ASSESSMENTS AND PERSONAL CHARGES.

A. PROMISE TO PAY. By acquiring a fractional ownership interest, an owner promises to pay all assessments charged to the owner's fractional ownership interest and all personal charges charged to the owner. Each owner makes this promise whether or not he or she signs any document that expressly says so.

B. THE DEVELOPER'S DUTY TO PAY; SUBSIDY CONTRACT. The developer also promises to pay the assessments and personal charges for each fractional ownership interest in an active unit while the developer is the owner of it. Instead of doing so, however, the developer may enter into a "subsidy contract" with the Association in which the developer agrees to pay to the Association an amount calculated substantially as stated in the form of subsidy contract attached as Exhibit "F."

C. PERSONAL OBLIGATION TO PAY. Each owner is personally obligated to pay on time all assessments charged

to the owner's fractional ownership interest and all personal charges charged to the owner. The amount of an assessment or personal charge will become the personal debt of the owner as of the date when it is assessed. An owner cannot avoid liability for the assessments and personal charges by not using his or her fractional ownership interest or by abandoning it. Even if the owner transfers the fractional ownership interest to someone else, the owner is still personally obligated to pay all assessments and personal charges due before the transfer takes effect.

D. INTEREST, LATE CHARGES AND COSTS. All sums not paid within ten days of the due date will be subject to: (i) interest at a rate set by the board or, if no rate is set, then at one percent (1%) per month from the due date; and (ii) a late charge in the amount set by the board or, if no amount is set, then fifty dollars (\$50). An owner must also pay all collection costs.

E. HOW PAYMENTS WILL BE APPLIED. Payments will be applied as the board provides in the association rules. If the association rules do not say how payments will be applied, then they will be applied (in equal shares for each fractional ownership interest if the owner owns more than one) first to collection costs, then to late charges, then to interest, and then to the principal amount of the assessment or personal charge.

11.8 COLLECTING ASSESSMENTS.

A. TIME AND METHOD OF PAYMENT. An owner must pay his or her assessments and personal charges to the Association. An owner must pay his or her regular assessments yearly in advance unless the board adopts a different payment schedule. The board may not adopt a schedule in which payments are due more often than monthly. The board may require that assessments be paid by electronic funds transfer or other specific means of payment. If the board allows owners to pay using credit cards, the board may add a surcharge to pay any costs to the Association of a credit card payment. Despite what section 11.4 says, the board may require owners of every-other-year fractional ownership interests to pay assessments:

1) Every year, in which case the owner must pay a fair share (meaning a 1/12th share) every year, or

2) Every other year, in which case the owner must pay an amount equal to the fair share for an every-year fractional ownership interest (meaning a 1/6th share) for that year.

B. BILLS FOR ASSESSMENTS. The Association or plan manager will mail to each owner, at the address shown

on the membership list, a bill stating the due date and amount of the assessment for the owner's fractional ownership interest. If a single fractional ownership interest is owned by more than one person, the bill may be sent to any of its co-owners. No matter when the bill is sent, however, for the purpose of fixing the amount of the Association's lien based on the assessment, the assessment will be considered due on the date stated in the bill.

1) JOINT BILLINGS. The Association or plan manager may join with the condominium association to send a single bill covering assessments and other sums due under the condominium documents and the plan documents. The Association may permit the condominium association to collect the assessments and turn them over to the Association or plan manager provided that they have adequate fidelity insurance and/or bonds. The Association may also agree with the condominium association to act as their agent in collecting amounts due under the condominium documents.

C. PAYMENT OF PERSONAL CHARGES.

1) TIME FOR PAYMENT. Personal charges will be paid as follows:

(a) Each primary occupant must pick up and pay all bills for personal charges that are ready at check-out time on the check-out day. Examples include optional housekeeping service and telephone charges.

(b) Personal charges not paid at check-out time must be paid within thirty (30) days after a bill for the personal charges is mailed.

2) PERSONAL CHARGE DEPOSIT. At any time before or during a person's vacation period, the Association or the plan manager may require an advance payment or deposit, or a credit card imprint, from an occupant if they decide that it is appropriate. The Association or plan manager may (but are not required to) use these funds to pay any personal charges of that person. The Association may keep the money (or any unspent part of it) until all charges relating to that person's occupancy have been paid. The Association may clear charges weekly or at other intervals determined by the board, and may require replenishment of any amounts used for such payments. The Association may lock out or otherwise evict any occupant who fails to make such payment when requested. Neither the Association nor the plan manager will be liable for not asking for or not keeping advance payments or deposits or for locking an occupant out in case of non-payment. The request or failure to request and keep them does not excuse an occupant's duty to pay the personal charges.

D. COLLECTION POLICIES. The board may establish collection policies and procedures and may delegate the authority to implement those policies and procedures to the plan manager. The board may also compromise and settle disputed amounts and may delegate the authority to do so to the plan manager.

11.9 USE OF AMOUNTS COLLECTED. Assessments must be used exclusively for these purposes:

- ❖ To pay plan expenses,
- ❖ To promote the recreation, health, safety and welfare of the owners,
- ❖ To improve, operate, maintain, repair, remodel, and replace the vacation property,
- ❖ To pay amounts due under the condominium documents or any authorized exchange contract, or
- ❖ To operate and manage the fractional ownership plan and to pay any expenses incurred by the Association in performing its duties.

11.10 DEPOSIT AND USE OF FUNDS.

A. MANAGEMENT OF ACCOUNTS. All amounts received by the Association or plan manager will be deposited in the general account promptly after the Association receives it. Money received for any reserve accounts will be transferred to those accounts promptly. All accounts must be established with a safe and responsible depository (such as a bank, savings and loan association, or trust company) in Hawaii. This money may be put in a savings or checking account. It also may be invested in treasury bills or certificates of deposit or other obligations of an agency of the United States of America (such as U.S. savings bonds) or obligations that are fully guaranteed as to principal by an agency of the United States of America. It may also be invested in any other investments authorized by the Hawaii condominium law. All interest will belong to the Association.

B. THE GENERAL ACCOUNT. The board may spend the money in the general account to pay plan expenses as permitted by the plan documents. Any extra money in the general account at the end of any fiscal year must be used to pay plan expenses in the following year. At the annual meeting each year, the Association must adopt a resolution requiring this. For this purpose, each owner gives the president of the Association a proxy and a special power of attorney to adopt such a resolution.

C. THE RESERVE ACCOUNT. Any part of the regular assessment that is intended for a reserve account must be put in a separate account. The board will authorize payments from the reserve accounts as needed. The money may be used only to pay for capital improvements.

Money in these accounts will be considered conclusively to be savings of the owners held for their benefit to pay for capital improvements. Any part of an owner's assessments used or to be used by the Association for capital improvements or any other capital expense will be treated as a capital contribution by the owner. It will be credited by the Association on its books as paid-in surplus. It will not be treated as income to the Association or to the owners.

11.11 FINANCIAL REPORTS.

A. THE BUDGET. At least 45 days before the fiscal year starts the Association must send to the owners the approved budget for that year.

B. AUDIT. Each year, the plan manager, or the board if there is no plan manager, must arrange for an independent audit of the Association's financial accounts. The audit must be conducted by a certified public accountant in accordance with generally accepted accounting principles. The Association must make the audit available to owners upon request starting one hundred and twenty (120) days after the close of the fiscal year. The audit must include a report (the "Annual Report") that includes each of these things:

- 1) A balance sheet as of the end of the fiscal year;
- 2) An operating (income) statement for the fiscal year; and
- 3) An annual statement of the net changes in the financial condition of the Association for the fiscal year.

12. ENFORCEMENT

12.1 ENFORCING THE PLAN DOCUMENTS. If anyone violates the plan documents, the board or the plan manager (acting on behalf of the Association) has full power and the right to enforce compliance in any manner permitted in the plan documents and by law. The developer has the right to enforce any rights that it has under the plan documents in any manner permitted by law or by the plan documents. The enforcement powers contained in the plan documents, or provided by law, are "cumulative." This means they may be used one at a time or all at once. By acquiring a fractional ownership interest, each owner promises and

agrees that the Association, the plan manager, and the developer have all the rights, powers and remedies provided in the plan documents or by law.

A. PRIOR FAILURE TO ENFORCE. Failure to enforce any provision of the plan documents does not mean that the provision cannot be enforced later.

B. COLLECTION AND ATTORNEYS' FEES AND COSTS. The Association (and the plan manager if authorized by the Association) may employ an attorney to enforce the plan documents against any owner or occupant. If so, the owner or occupant must pay, in addition to any other amounts due, all court costs and all reasonable attorneys' fees and costs incurred by the Association and/or the plan manager. Likewise, the developer may employ attorneys to enforce its rights under the plan documents and has the right to recover all of its court costs and reasonable attorneys' fees and costs.

12.2 RIGHT OF ENTRY. The Association and the plan manager have the right and power, and an easement, to enter any vacation unit, whether or not during a service period and whether or not the occupant is present, to stop any activity or condition or to remove anything that:

A. Violates the law, the condominium documents or the plan documents,

B. Is unauthorized, prohibited, harmful, offensive or potentially dangerous to others or their property, or

C. Threatens the property, rights or welfare of others.

12.3 SUSPENSION OF PRIVILEGES; FINES.

A. If any owner or the owner's guests violate the plan documents, the Association may charge the owner a money penalty and/or suspend the owner's rights, privileges and services under the plan documents. For example, the Association may do any of these things:

1) It may suspend the owner's rights to use the owner's vacation unit during the owner's use period, or to participate in any vote under the plan documents.

2) It may suspend utility and other services to the vacation unit during the owner's vacation period.

3) It may rent all or any part of the owner's use period to someone else for the account of the Association.

B. HEARING. The board must meet and permit the owner to present his or her case before it fines the owner or

suspends the owner's rights, privileges and services. The board must give the owner written notice of the meeting at least 15 days in advance. If the notice is given by mail, it must be sent to the owner's last known address, as shown in the Association's records. The notice must state the purpose of the meeting and the reason for seeking the suspension or fine. The owner has the right to be heard, orally or in writing, on why the penalty should not be imposed or the rights, privileges and services suspended. Unless otherwise required by law, the board will decide whether the owner's defense will be oral or written. The board will decide whether to fine the owner or to suspend the owner's rights, privileges, and services. The board, however, cannot act unless a quorum is present and the meeting is held as provided in the bylaws.

C. WHEN THE FINE OR SUSPENSION TAKES EFFECT. The board must give the owner written notice of any disciplinary action taken and the reasons for it. Any disciplinary action will take effect on the date when the notice is sent, but not less than five days after the hearing.

D. EFFECT ON EXCHANGE RIGHTS. If an owner is suspended, the suspension also suspends the owner's exchange rights. See section 8.3A. A suspension will not affect the rights of an exchange user whose reservation to use all or any part of the suspended owner's use period is confirmed by the plan manager before the suspension takes effect.

E. WHEN PRIVILEGES WILL BE RESTORED. If an owner is suspended for failing to pay amounts due under the plan documents, the suspended rights, privileges and services will be restored automatically thirty (30) days after the Association receives the owner's payment, in cash or by cashier's or certified check, of all amounts due and any fine imposed. If an owner is suspended for any other reason, the suspended rights, privileges and services will be restored automatically at the end of the period stated in the suspension notice and after the Association receives the owner's payment of any fine.

F. THE PLAN MANAGER'S ROLE. The board may delegate to the plan manager the power to carry out any disciplinary actions imposed by the board. The board also may delegate to the plan manager the authority to perform the board's duties under section 12.3B in cases where an owner has not paid all assessments or personal charges due. This includes the right to conduct the hearing required by section 12.3B and to fine the owner and/or to suspend the owner's right, privileges and services, including the right to occupy a vacation unit when the owner has not paid all assessments and personal charges due.

12.4 ENFORCEMENT BY FILING A LAWSUIT. The Association, the plan manager, the developer, or any owner may ask a court to enforce the plan documents and ask for any appropriate relief. For example, the appropriate relief could be damages or an order specifically enforcing those documents, or a combination of those things. The Association or the plan manager may also enforce the liens provided by this declaration and any other lien provided by law, and have the right to take the fractional ownership interest of any defaulting owner in any lawful manner.

A. A VIOLATION IS A NUISANCE. Each violation of the plan documents is declared to be a nuisance. The Association, the plan manager, or the developer may seek an "injunction" (a court order requiring someone to do or stop doing something) or any other appropriate relief to stop the nuisance.

B. DISPUTES WITH THE DEVELOPER. No matter what else the plan documents say, any dispute between the Association and the developer with respect to whether the developer has satisfied its obligations (i) to complete and pay for any improvements of the condominium, (ii) to pay any assessments and personal charges due under the plan documents, or (iii) to pay the costs of operating the plan and maintaining the vacation property under a subsidy contract, must, at the request of the developer, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12.5 THE ASSOCIATION MAY RENT AN OWNER'S USE PERIOD.

A. THE ASSOCIATION'S RIGHT TO RENT. If an owner (other than the developer) is more than sixty (60) days late in paying any personal charge or assessment charged to the owner under the plan documents, and does not make that payment within ten (10) business days after the Association sends a written demand to pay then the Association may rent all or any part of the owner's use period to the public. Likewise, if the developer is more than sixty (60) days late in paying any personal charge, assessment, or subsidy contract payment due from the developer, and does not make that payment within ten (10) business days after the Association sends a written demand to pay then the Association may rent all or any part of the developer's use periods to the public. The renters and their guests will have the right to use the vacation unit during the time period rented. The Association may not rent more time than necessary to pay all sums due in full (plus the reasonable costs of renting the vacation unit).

B. USE OF THE RENT MONEY. The Association will apply the rent money first to pay the cost of arranging the

rental and then to pay all overdue assessments and personal charges owed by the owner (for example, penalties, late fees and so on). If the defaulting owner is the developer, then any excess money will be paid to the developer promptly after receipt. In the case of owners other than the developer, any excess money may be used by the Association to pay any plan expenses and will not be credited to or for the account of the defaulting owner. (The intent here is to be sure the defaulting owner doesn't profit by his or her wrongdoing and to avoid violating any securities laws.)

C. LIMITS ON THE ASSOCIATION'S RIGHT. If the owner has already exchanged all or part of his or her use period, the Association must honor any exchange reservation that has been confirmed by the Association or by an exchange company.

D. WHAT HAPPENS IF THE VACATION PERIOD IS ALREADY RENTED. If the owner has already rented all or part of his or her use period, the renter will be permitted to use the time period rented. The Association will have the right to collect any unpaid rent from the renter until all amounts due are paid in full.

E. ASSOCIATION'S EASEMENT. The Association has an easement for the purpose of conducting rental activities under this section 12.5. The Association's employees, agents, contractors, and other authorized persons may use the Association's easement rights to the extent authorized by the Association.

12.6 THE "ASSOCIATION'S LIEN"; FORECLOSURE.

A. LIEN. The Association has a lien (the "Association's lien") on each fractional ownership interest as security for all amounts charged to it or its owner. This means that the fractional ownership interest is collateral for the owner's obligations to obey the plan documents and to pay all assessments and personal charges, including late charges, interest, and collection costs. If the owner fails to do so, the Association may "foreclose" the Association's lien. This means that the fractional ownership interest will be sold and the money from the sale will be used to pay the amounts owed. The Association's lien will cover all interests in a fractional ownership interest, including, for example, (i) the seller's and the buyer's interests under any agreement of sale, and (ii) all condemnation and insurance proceeds relating to a fractional ownership interest. The recording of this declaration is notice of the Association's lien to each and every person who has or acquires any interest in or to any fractional ownership interest or a vacation unit, now or later.

B. EFFECT OF ASSOCIATION'S LIEN.

1) **EFFECT ON A NEW OWNER.** In this section 12.6B.1), "prior owner" means the owner who transfers a fractional ownership interest, and "new owner" means the person to whom the fractional ownership interest is transferred. If a fractional ownership interest is transferred, the new owner is not personally responsible to pay assessments or personal charges charged to the prior owner and due before the date the transfer took effect. However, the fractional ownership interest will still be subject to the Association's lien for all the unpaid assessments and personal charges of the prior owner. As a result, the Association still may foreclose the Association's lien on the fractional ownership interest. If so, the fractional ownership interest would be taken from the new owner and sold to pay the amounts due. The new owner would get only the money that is left, if any, after all unpaid assessments and personal charges have been fully paid.

(a) **STATEMENT OF UNPAID AMOUNTS.**

A new owner can avoid this problem by asking the Association for a statement of unpaid amounts. Subject to any privacy laws, any owner, lender, potential lender or potential buyer may ask the Association for a letter listing all amounts unpaid with respect to the fractional ownership interest. Within twenty (20) days after receiving the request, the Association or the plan manager must provide the letter. The letter will bind the Association in favor of anyone who relies on it in good faith (except the existing owner of that fractional ownership interest). As a result, after the transfer or mortgage is made the Association may not foreclose the Association's lien for any assessments or personal charges due before the date of the letter in excess of the amount stated in the letter. This does not apply, however, to the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-day period just before the date of the letter. The Association and/or the plan manager may charge a reasonable fee for preparing the letter.

2) **EFFECT ON MORTGAGES AND OTHER ENCUMBRANCES.** No matter what else the plan documents say, the Association's lien is subordinate to (which means that it is subject to and will not affect) the rights or remedies of any lender whose mortgage is recorded before a notice of lien is recorded. Unless the law says otherwise, this rule only applies if the lender has a first mortgage on a fractional ownership interest for a loan made in good faith and for value. In all other cases, the liens created by this declaration will be prior to (superior to and controlling over) all mortgages made by an owner and all liens or encumbrances imposed by law upon any fractional ownership interest. This will be so whether the notice of lien is recorded before or after any such encumbrance. Of course, some liens (such

as real property tax liens) may be superior to the liens in this declaration if the law makes them so.

3) **EFFECT ON AGREEMENTS OF SALE.** Since the buyer is considered the owner, only the buyer (and not the seller) under an agreement of sale will be personally liable. The fractional ownership interest, however, is still subject to the Association's lien for all unpaid assessments and personal charges for which the buyer is personally liable. The Association's lien will remain on the fractional ownership interest even if the agreement of sale is later canceled and the seller again becomes its "owner." As a result, the Association may foreclose the Association's lien at any time, before or after the agreement of sale is canceled.

If this happens before the agreement of sale is canceled, the fractional ownership interest will be taken from both the buyer and the seller and sold to someone else to pay the overdue amounts. The buyer and seller would get only the money that is left, if any, after all unpaid assessments and personal charges have been fully paid. If this happens after the agreement of sale is canceled, the fractional ownership interest will be taken from the seller and sold, and the seller still gets only the money left after all unpaid amounts have been paid.

4) **EFFECT ON A BUYER AT A FORECLOSURE SALE.** Anyone who buys a fractional ownership interest at a foreclosure sale does not have to pay any assessment or personal charge due before the fractional ownership interest is transferred to the buyer. In addition, the fractional ownership interest will not be subject to the Association's lien for any assessments or personal charges that became due before the fractional ownership interest is transferred to the buyer. However, the Association will have the Association's lien on the fractional ownership interest for all assessments and personal charges that become due after the fractional ownership interest is transferred to the buyer at the foreclosure sale.

C. **FORECLOSURE AND SALE.** The Association's lien is like a mortgage with a private power of sale. The Association may foreclose it in any legal way. For example, the defaulting owner's fractional ownership interest may be sold at a public auction or a private sale, with or without first obtaining a court order.

1) **NOTICE OF DEFAULT.** Before the sale, the Association must give a notice to the defaulting owner explaining the violation. The Association must send a copy of the notice to any lender of the defaulting owner which has asked for a copy and furnished its name and address to the Association. The notice must state the date and nature of the violation. If the owner's default is that he or she failed

to pay money, the notice must state the total of any unpaid amounts and include a demand for payment.

2) NOTICE OF LIEN. If the violation is not cured within ten (10) days after the Association gives its notice to the owner, then an officer of or an attorney for the Association or the plan manager may sign and record a notice of lien ("notice of lien"). The notice of lien must include each of these things:

(a) It must state the name of the defaulting owner.

(b) It must include a legal description of the vacation unit.

(c) It must state the identification number of the defaulting owner's fractional ownership interest.

(d) It must state the amount claimed to be due (after any proper offset).

(e) It must say that the notice of lien is made by the Association under the terms of the plan documents.

(f) It must say that the Association's lien is claimed against the fractional ownership interest for the violation and in an amount equal to the net amount due plus interest, late charges, and collection costs.

(g) It must say that the Association intends to have the fractional ownership interest sold in a foreclosure sale.

Each violation will be a separate basis for a notice of lien. But a single notice of lien may cover more than one default, and may include defaults between the date of the notice of lien and the date of the sale.

3) CANCELLATION OF NOTICE OF LIEN. The Association may provide a document canceling a notice of lien. It will do so if both of these conditions are met:

(a) The board must first receive payment in full of the amount claimed to be due and owing (including interest, late fees, and any collection costs).

(b) The owner must ask for the cancellation document and pay a reasonable fee for it.

The document canceling the notice of lien must be signed by an officer of or an attorney for the Association or the plan manager.

4) CONDUCTING THE SALE. The sale may be conducted in any lawful way. For example, the Association has a power of sale and may foreclose the Association's lien in the manner provided in section 667-5 of the Hawaii Revised Statutes, or in any substitute or replacement laws.

5) POWER OF ATTORNEY. When enforcing its rights, the Association (acting in its own name or in the name of the defaulting owner) may sign and deliver any legal documents necessary or helpful to transfer title to that owner's fractional ownership interest to a purchaser. For this purpose, the Association is appointed the attorney-in-fact for each owner.

6) PERMITTED BUYERS. The Association or anyone else (except a competitor) may bid on and buy the fractional ownership interest at the foreclosure sale (but provided that this does not authorize the transfer or use of a fractional ownership interest in a time share plan or another fractional ownership plan without the developer's express written consent). The Association may offset the debt against the amount bid at the sale. The Association may buy the fractional ownership interest of a defaulting owner or accept a transfer of it to the Association from the owner in place of foreclosure.

7) AMOUNTS OWED AFTER THE SALE. The foreclosure sale may not produce enough money to pay all amounts owed by the defaulting owner. If this happens, the defaulting owner remains personally liable for the difference. The Association can sue the defaulting owner to collect the unpaid amount.

8) BUYER AT FORECLOSURE. Anyone who buys a fractional ownership interest at the foreclosure sale will have to obey the plan documents just like any other owner.

13. INSURANCE

13.1 INSURANCE GENERALLY.

A. INSURANCE REQUIRED. The board must see that, as a minimum, the Association and all of the owners together are covered by the insurance required by this chapter. If any part of this chapter conflicts with the condominium documents regarding insurance, however, the condominium documents will control. The cost of insurance will be a plan expense. Each policy may be separate or the board may buy one or more commercial package policies.

B. SOURCE OF INSURANCE. The Association may buy the insurance itself, or it may join with the condominium association in order to buy insurance. If the

plan manager or any related company manages more than one owners association or real estate project, then the plan manager may buy one or more blanket policies that cover the plan and any other owners associations or real estate projects. In that case, the covered projects and time share or fractional ownership plans will split the costs of the policies. The amount charged to the fractional ownership plan for its share of the costs is subject to approval by the board.

C. QUALIFIED INSURANCE COMPANIES. Each insurance company must be licensed to do business in the State of Hawaii. This does not apply to (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each insurance company must have a financial rating of class a-vi or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

D. ADDED INSURANCE. The board has the right and power to increase the insurance coverage or to obtain better terms than those stated in this chapter whenever the board deems it necessary or in the best interests of the Association. The board may also buy other kinds of insurance even if they are not described in this chapter. For example, the board may buy business interruption insurance.

E. SUBSTITUTE COVERAGE; REDUCTION IN INSURANCE. Except for insurance required by law, the board need not buy any insurance if it is advised that it cannot reasonably be obtained or if the board decides that it is too expensive. In those cases, the board must buy other insurance that it believes to be appropriate under the circumstances for apartments in condominiums similar in construction, location and use. The board may accept any deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a plan expense. Even so, if a loss results from the negligence or willful misconduct of an occupant, then the Association may charge the amount to the occupant as a personal charge as provided in section 14.3.

F. YEARLY REVIEW OF COVERAGE. The board must review the insurance program at least yearly. The plan manager must prepare or have someone else prepare an analysis of (a) the insurance needs of the Association and the owners; and (b) the adequacy of the existing insurance policies to meet those needs. The board will review this analysis and then make any changes in the insurance

program it deems necessary or appropriate. All board decisions are final.

G. LIABILITY FOR INSURANCE DECISIONS. The board will not be liable for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, neither the developer nor the plan manager will be liable except for their gross negligence or intentional misconduct.

H. INSPECTION AND COPYING. Any owner (and anyone having a contract to buy a fractional ownership interest) may inspect copies of the Association's insurance policies at the office of the plan manager. If asked to do so, the board will furnish a copy of any policy, or a current certificate of insurance, to any lender that has a first mortgage on a fractional ownership interest. The lender must pay a reasonable fee for the copy.

13.2 PROPERTY INSURANCE. The board must buy a policy of property insurance. This insurance is called the "policy" in this section 13.2.

A. WHO IS INSURED. The policy must name the Association, by the board, as trustee for each owner in proportion to the owner's ownership share in his or her unit as the insured. As an alternative, the policy may name each owner individually.

B. REQUIRED COVERAGE. The policy must, if possible, cover one hundred percent (100%) of the full insurable replacement cost, without deducting for depreciation, of each vacation unit (but only to the extent not covered by any insurance policy obtained by the condominium association in accordance with the requirements of the condominium documents) and the common furnishings.

C. COVERAGE NOT REQUIRED. The policy does not have to cover (i) any part of the vacation units covered by the insurance policy obtained by the condominium association in accordance with the requirements of the condominium documents, (ii) exterior glass if the board decides that this is too expensive, or (iii) underground improvements, except for conduits, plumbing and wiring.

D. FORM OF POLICY. The policy must cover those risks generally covered by a special form policy. A "special form policy" commonly insures against these risks: fire, lightning, windstorm and hail, smoke, explosion, civil commotion, riot, and riot attending a strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss.

If the condominium is located in an area prone to earthquakes, the Association must also buy earthquake insurance if it is available at a reasonable cost.

E. ADDITIONAL COVERAGE.

1) THE POLICY MUST HAVE AN AGREED AMOUNT ENDORSEMENT. This protects members from co-insurance clauses. A co-insurance clause reduces benefits if the Association fails to buy enough insurance.

2) THE POLICY MUST HAVE AN INFLATION GUARD ENDORSEMENT. This automatically increases the policy limits up to a certain amount each year to help keep the policy limits current with inflation.

F. REQUIRED AND PROHIBITED PROVISIONS. Unless the board decides the cost is unreasonably high (and its decision will be final), the policy must provide as follows:

1) The policy must not relieve the insurance company from liability because of:

(a) Any increased hazard on any part of the condominium, whether or not within the control or knowledge of the Association, the board, the developer, the plan manager, the condominium association, any occupant, or any persons under any of them; or

(b) Any breach of warranty or condition or any other act or neglect by any of those persons.

2) The policy must not permit the insurance company to cancel or substantially change the policy or the coverage (whether or not asked by the board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the board and the plan manager.

3) The policy must provide that the insurance company gives up any right to repair, rebuild or replace a damaged or destroyed vacation unit if a decision is made under the condominium documents not to do so.

4) The policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the policy as against the Association, the board, the owners, the developer, the plan manager, and any person under any of them. "Subrogation" is the right of the insurance company to try to recover its costs from the person who caused the loss.

5) The policy must not limit or prohibit any owner from buying other insurance for the owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance, and that the insurance company cannot claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any owner.

6) The policy must provide that any loss with respect to any vacation unit or the common furnishings will be adjusted (settled) by the insurance company and the board.

7) The policy must contain a standard "mortgagee clause." This protects the rights of lenders. The mortgagee clause must do these things:

(a) It must name as an insured any lender whose name has been furnished to the board and to the insurance company.

(b) It must provide that any reference to a lender in the policy includes all lenders, in their order of priority, whether or not named in the policy.

(c) It must provide that any act or neglect of the Association, the board or any occupant will not release the insurance company from its duties to the lender.

(d) It must provide that the insurance company gives up these rights:

(1) Any right to deny coverage for the lender's benefit because the lender fails to notify the insurance company of any hazardous use or vacancy.

(2) Any requirement that the lender pay any policy premium. But, the lender may pay any premium due if the Association fails to do so on time.

(3) Any right to contribution from the lender.

(4) Any right to be subrogated to the right of any lender against anyone causing the loss or to require that any mortgage be transferred to the insurance company. However, the insurance company may retain the right of subrogation to the extent of insurance proceeds received and retained by the lender, if the insurance company gives up any claims for liability against the lender, the Association, the board, the plan manager, the developer, the owners and their guests. This must not, however, impair

the lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

13.3 LIABILITY INSURANCE. The board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance. In this section 13.3, the commercial general liability insurance and commercial umbrella insurance are together called the "policy."

A. WHO IS INSURED. The policy must cover claims for personal injury, bodily injury, death and property damage against (i) the Association, the board, the developer, and the plan manager, and (ii) each of their directors, officers, employees, and agents, and (iii) all owners as a group.

B. REQUIRED COVERAGE. The policy limits for each accident or occurrence may not be less than \$2,000,000 for personal injury, bodily injury, and death, and \$500,000 for property damage. These amounts will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. index.

C. REQUIRED AND PROHIBITED PROVISIONS. Unless the board decides the cost is unreasonably high (and its decision will be final), the policy must provide as follows:

1) The policy must not limit or prohibit any owner from buying other liability insurance for the owner's own benefit.

2) The policy must not relieve the insurance company from liability because of any act or neglect of the Association, the plan manager, the developer, the board, any owner or occupant, or any person under any of them.

3) The policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the policy as against the Association, the board, the plan manager, the developer, the owners and any persons under any of them.

4) The policy must contain a "cross-liability" endorsement. This permits one person who is covered by the policy to file a claim on the policy based on the acts or failure to act of another person who is also covered by the policy.

5) The policy must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of one person who is covered by the

policy because of the negligence of another person who is covered by the policy.

6) The policy must provide that the policy and the coverage it provides may not be canceled or substantially changed by the insurance company (whether or not asked by the board) unless the insurance company gives a written notice of the cancellation or change at least thirty (30) days in advance. The notice must be sent to the board, the plan manager, and the developer.

13.4 MOTOR VEHICLES. The board must buy and maintain a commercial automobile liability policy of insurance if the Association owns or leases any motor vehicles. This is called the "policy" in this section 13.4. It must insure the board, the Association, the developer, the plan manager, and each of their officers, directors, agents and employees. It must cover claims for bodily injury, death and property damage arising out of the condition, use, operation, ownership or lease of any motor vehicle owned or leased by the Association. The policy limits may not be less than \$1,000,000 for bodily injury or death or property damage arising out of a single accident or occurrence. This amount will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. index. The policy must contain a severability of interest provision and a cross-liability endorsement.

13.5 DIRECTORS AND OFFICERS INSURANCE. The board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a director, officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the "policy" in this section 13.5. The policy must also cover anyone who serves, at the request of the Association, as a director, officer, member, employee or agent of another company or organization. The board will choose the policy limits.

If it can be obtained at a reasonable cost, the policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The policy must pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees and costs, court costs, and payment of any judgments, fines and settlements. The board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

13.6 FIDELITY BONDS. A "fidelity bond" covers the loss of money in the care or custody of the Association or the plan manager. The Association must buy a fidelity bond or fidelity insurance. It must cover the Association and the

plan manager. It must also cover each of their directors, officers, agents, and employees who handle funds belonging to or administered by the Association or the plan manager. The fidelity bond or insurance must name the Association as the person protected and who gets paid in case of loss (the "obligee" or the "insured"). The amount of the coverage must not be less than one-half of one year's estimated operating expenses plus all of the savings of the Association. The bond or insurance must also do these things:

A. It must provide that it may not be canceled or substantially changed without at least thirty (30) days' advance written notice to the Association and the plan manager.

B. It must cover anyone who serves without pay (for example, a volunteer). It must also waive (give up) any defense based on excluding such persons from the definition of the term "employee" or similar terms.

13.7 OTHER INSURANCE. The Association will buy all other insurance required by law. This may include, for example, temporary disability insurance and worker's compensation insurance. The owners have the right to buy any extra insurance that they want for their own benefit and at their own expense.

14. DAMAGE AND DESTRUCTION

14.1 DEFINITIONS.

A. "**PROCEEDS**" means insurance proceeds and condemnation proceeds.

B. "**INSURANCE PROCEEDS**" means any money paid by an insurance company for a loss.

C. "**CONDEMNATION PROCEEDS**" means any money paid if the vacation property or any part of it is "taken", meaning that it is condemned or is sold to a condemning agency that has threatened to condemn it. The government and certain other persons have the "*power of eminent domain*." This means that they can make someone sell their property to them. This process is called "*condemnation*." Anyone having the power of eminent domain is called a "*condemning agency*."

D. "**EXCESS PROCEEDS**" are proceeds:

1) From dissolving or terminating (winding up) the condominium or the fractional ownership plan for any reason;

2) Remaining after paying the cost of repairs and replacements;

3) Paid on account of a vacation unit that is destroyed and is not rebuilt. This could happen, for example, if the law is changed so it cannot be rebuilt or if a decision not to rebuild it is made under the condominium documents; or

4) Not required (i) to repair or replace any vacation unit or its common furnishings, or (ii) to pay any one or more owners for personal injury or loss or damage to their property (in which case the proceeds will be distributed with due regard to the loss or damage).

14.2 REPAIRING VACATION PROPERTY. The condominium documents govern all matters covered in them relating to condemnation, damage or destruction to a vacation unit or the common elements. In all other cases, the following rules shall apply:

A. **WHEN REPAIRS ARE REQUIRED.** If a vacation unit or its common furnishings are damaged or destroyed (other than by ordinary wear and tear) the Association must immediately repair the damage and replace anything that cannot be repaired. Anything damaged by normal wear and tear, however, need not be repaired or replaced while it is still usable, reasonably attractive, safe, and in good condition. The board will decide when such things will be repaired or replaced and its decision will be final. If the board decides it is better to replace something instead of repairing it, the board may do so.

B. **PAYING FOR THE REPAIRS.** The Association will use any available proceeds to pay for repairing or replacing the vacation property that is damaged, destroyed, or condemned. The Association also may use any money set aside in a reserve account to repair or replace the damaged items. The damage may not be covered by insurance, or the available proceeds or applicable reserve account may not be enough to pay the total cost of repairing or replacing the damaged property. If so, the Association may charge a special assessment to raise the money.

C. **DISBURSEMENT OF PROCEEDS.** If the proceeds exceed \$500,000, then the proceeds will be paid to an Insurance Trustee. The Association or the Insurance Trustee will pay the cost of the work (as estimated by the board) from time to time or at the direction of the board as the work progresses. If an insurance trust is required, then the Insurance Trustee will make payment periodically as the work progresses and in a manner consistent with the procedures then employed by prudent financial institutions in the State of Hawaii. The \$500,000 amount will rise or

fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. index.

14.3 LIABILITY FOR DAMAGES.

A. LIABILITY OF OWNERS AND OCCUPANTS FOR DAMAGES. If an owner or an owner's guest intentionally or negligently damages or destroys any vacation property or any other part of the condominium, that person must repay the Association for all expenses related to repairing or replacing it. That amount will be a personal charge. If an exchange user or his or her guest intentionally or negligently damages or destroys any vacation property or any other part of the condominium, that person must repay the Association for all expenses related to repairing or replacing it; the owner of the fractional ownership interest whose use period is used by the exchange user, however, is not responsible to repay the Association. The board will decide what should be repaired or replaced as a result of any damage or destruction. The board's decision will be binding on any person responsible for repayment. This section 14.3A does not apply to damage or destruction that the board decides is the result of ordinary wear and tear.

B. NO CLAIM FOR LOSSES PAID FOR BY INSURANCE. Despite what section 14.3A says, the Association and the owners will have no claim or cause of action against any occupant for damage or destruction to the extent the loss is covered by insurance. An occupant will have no claim or cause of action for any damage or destruction of his or her own property against the Association, the board, the plan manager, the developer, any company related to the developer, (or any officers, directors, employees or agents of the board, the plan manager, the developer, or any related companies) or against any other owner or occupant to the extent that the loss is covered by insurance.

14.4 EXCESS PROCEEDS. Any excess proceeds payable to the owners of a vacation unit must be paid as follows: Each owner having an ownership share in the vacation unit will be paid an amount equal to the total amount of excess proceeds for that vacation unit multiplied by his or her ownership share in that vacation unit. If a lender has a mortgage on a fractional ownership interest in the unit, then the share of excess proceeds for that fractional ownership interest will be paid to the owner and the lender. Likewise, if a fractional ownership interest in the unit is subject to an agreement of sale, then the share of excess proceeds for that fractional ownership interest will be paid to the buyer and the seller under the agreement of sale.

15. ADDING AND REMOVING APARTMENTS.

15.1 ADDING APARTMENTS TO THE PLAN. The developer may add more apartments to the plan at any time and without the consent of any owner or anyone else. Only the developer may add apartments to the fractional ownership plan. The developer is not promising to add any more apartments to the plan. Owners who buy a fractional ownership interest may enjoy certain advantages from having units added but will have no legal right to insist that units be added.

15.2 DECLARATION OF ANNEXATION.

A. REQUIRED CONTENT. The developer may add apartments to the plan by recording a "declaration of annexation." It must contain each of the following:

1) A legal description of each apartment and the name of its record owner. If an apartment is owned by anyone other than the developer, then the record owner must either sign the declaration of annexation or sign a document joining in and consenting to the declaration of annexation.

2) A statement submitting the apartment to this declaration. This declaration must be identified by title and recording data.

3) The unit number and unit type for the apartment. If an apartment is being added to an existing unit type, it must have at least as many bedrooms and bathrooms as other vacation units in that unit type.

4) The list of use periods for the vacation unit.

5) A statement identifying any of the apartments that will be inactive units.

B. OTHER PROVISIONS. The declaration of annexation may establish new unit types or new kinds of fractional ownership interests for any or all apartments being added. It may also contain any other provisions that the developer may consider appropriate. For example, it may contain provisions relieving the record owner of any responsibility for acts of the developer or the Association, or for the operation of the plan. If it creates a new unit type or new kind of fractional ownership interest, or if the developer owns all vacation units of a particular unit type, then the declaration of annexation may change the plan documents with respect to that kind of fractional ownership interest or unit type. For example, the developer could create fractional ownership interests whose owners must reserve a use period instead of having the right to use a designated use period.

C. LIMITATION ON DEVELOPER'S RIGHTS. Despite what section 15.2 says:

1) The declaration of annexation cannot change the rights of existing owners (other than the developer) to use the existing vacation property (other than an inactive unit or property that the developer can remove from the plan as described in section 15.5A);

2) The declaration of annexation cannot give the owners of new kinds of fractional ownership interests more than one vote for an every-other-year fractional ownership interest, or two votes for an every-year fractional ownership interest, or change the rights of other owners from one vote for an every-other-year fractional ownership interest or two votes for an every-year fractional ownership interest. However, this does not mean that an amendment cannot change other voting rights. For example, if certain owners have the exclusive right to use a vacation unit and the vacation unit is destroyed by a fire, then the declaration of annexation might say that only those owners can vote on whether or how to repair or replace that vacation unit.

15.3 ADDED VACATION UNITS ARE GOVERNED BY THE PLAN DOCUMENTS. The plan documents will govern the ownership, use and transfer of any apartment added to the plan. Any added apartment will be considered a vacation unit. Any money encumbrances or liens on the apartment on the date it is added must be subordinated to this declaration and to the lien rights given to the Association by this declaration. This rule will apply unless arrangements are made so that when the developer transfers the fractional ownership interests in that apartment, the fractional ownership interests are released from the encumbrances and liens, or other reasonable arrangements are made to pay them off or to protect the owners from them. The lien of the condominium association for future assessments, however, need not be made subordinate to this declaration.

15.4 ACTIVE AND INACTIVE UNITS.

A. DESIGNATION OF INACTIVE UNITS. The developer may include more apartments in the plan than may be needed at any particular time. The developer alone may use any excess apartments. The excess apartments are called "*inactive units*." Each apartment included in the plan by the developer is an active unit unless the developer declares that it is an inactive unit in this declaration or in the declaration of annexation that includes the apartment in the plan.

B. CONVERTING AN INACTIVE UNIT TO AN ACTIVE UNIT. If a unit is an inactive unit, then the developer may make it into an active unit by recording a document, called

an "*active property declaration*." The active property declaration must (i) identify this declaration by date and recording data, (ii) identify the apartment that will become an active unit, and (iii) expressly say that the unit will become an active unit. When this happens, that unit becomes an "*active unit*." If the developer records a first deed transferring any interest in an inactive unit, that unit will automatically become an active unit even if the developer has not recorded an active property declaration.

15.5 APARTMENT MAY BE REMOVED FROM THE PLAN.

A. THE DEVELOPER RIGHTS.

1) WHEN THE DEVELOPER CAN REMOVE A VACATION UNIT. If the developer owns all of the fractional ownership interests in a vacation unit, it may remove that vacation unit from the plan.

2) STEPS TO REMOVE A UNIT. To remove a vacation unit, the developer must sign and record a document named "declaration of removal." It must contain both of these things:

(a) A legal description of the apartment being removed from the plan.

(b) A statement that the apartment is no longer subject to this declaration. This declaration must be identified by title and recording data.

3) EFFECT OF REMOVAL. After the declaration of removal is recorded, the apartments described in it will no longer be vacation units or part of the fractional ownership plan.

B. DAMAGED OR CONDEMNED UNITS.

1) WHEN THE ASSOCIATION CAN REMOVE A UNIT. The Association, through the board, may remove a vacation unit from the plan if that vacation unit is destroyed and a decision is made not to rebuild it, or if a vacation unit is condemned or is to be transferred under threat of condemnation. The board may remove a vacation unit even if all assessments and personal charges with respect to that vacation unit have not been paid.

2) STEPS TO REMOVE A UNIT.

(a) To remove a vacation unit, the Association must record a document named "declaration of removal." It must contain each of these things:

(1) A legal description of the apartment being removed.

(2) An affidavit signed by any two officers of the Association. It must say either (i) that the vacation unit was destroyed and is not being rebuilt, or (ii) that the vacation unit was condemned or is being transferred under threat of condemnation.

(3) A statement that the apartment is no longer subject to this declaration. This declaration must be identified by title and recording data.

3) EFFECT OF REMOVAL. After the declaration of removal is recorded:

(a) The apartment will no longer be a vacation unit or part of the fractional ownership plan.

(b) The owners of fractional ownership interests in that vacation unit will still be personally liable for all assessments and personal charges owed by them even though the vacation unit is no longer part of the plan.

(c) The Association's lien will remain on the vacation unit and any money received from the sale of it, until all assessments and personal charges (including interest, late fees, and attorneys' fees) are paid in full. The Association may sign a document releasing its lien in connection with any sale of the vacation unit.

16. REVISING, TERMINATING, AND INTERPRETING THIS DECLARATION

16.1 AMENDMENTS.

A. OWNERS' RIGHTS. Subject to the limits contained in section 16.1E, this declaration may be "amended" (changed) from time to time if (1) the amendment is approved by the vote of a majority of the owners voting, and (2) if the developer still exists, the developer gives its written consent and signs the amendment. There is an exception to this rule: Some parts of the plan documents require the approval of a majority of the owners or more than a majority of the owners (a "super-majority") before taking certain actions. Such a provision cannot be amended unless (1) the number of votes cast by owners voting in favor of that amendment equals or exceeds the number of votes required to take action under that provision (i.e., a majority of owners or a super-majority), and (2) if the developer still exists, the developer gives its written consent and signs the amendment. No amendment under this section 16.1A will take effect until it is signed by any two officers of the Association and recorded.

B. BOARD'S RIGHTS.

1) The board may revise this declaration, the articles, or the bylaws without the vote of the owners but only when expressly permitted by this declaration. For example, see section 15.5B.1).

2) The board may amend this declaration, the articles, or the bylaws as required to conform with the provisions of the Hawaii Nonprofit Corporations Act, or any other law or regulation adopted by a governmental authority and that applies to the Association or to the plan.

The board may do the things listed in this section 16.1B if the board adopts a resolution authorizing it. No vote or other consent of the Association, the owners, their lenders, or anyone else is necessary despite the requirements of section 16.1A. If the developer still exists, however, then the amendment will not be effective unless the developer gives its written consent and signs the amendment. No amendment made under this section 16.1B will take effect until it is signed by two officers of the Association and recorded.

C. RESTATEMENT OF PLAN DOCUMENTS. No matter what else the plan documents say, the board and the developer each have the right to restate any or all of the plan documents and all amendments to it or them (which includes, for example, all declarations of annexation and so on). Either may do so without the consent of the other and without the vote or other consent of any owner, lender, or anyone else. No restatement of the declaration or bylaws will take effect until it is signed by the developer or by two officers of the Association and recorded.

D. DEVELOPER'S RIGHTS.

1) NATURE OF DEVELOPER'S RIGHTS. Subject to the limits contained in section 16.1E, without the consent or approval of any person (including, for example, the association, the board, any owner and anyone having a contract to buy a fractional ownership interest), the developer may change this declaration (which includes any declaration of annexation) at any time and from time to time:

(a) And for any purpose before any first deed or agreement of sale is recorded;

(b) To comply with the laws and regulations of the State of Hawaii;

(c) To comply with the laws and regulations of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection

with the registration of the condominium or the plan to permit the sale of fractional ownership interests there;

(d) To satisfy requests for changes made to the developer by any commercial lender loaning money to the developer or to individual owners, by any investor in mortgages initially made in favor of the developer, or by any title company licensed to do business in the State of Hawaii;

(e) To facilitate the operation and management of the plan or the sale of the fractional interests, or to facilitate participation in a given exchange program;

(f) In any declaration of annexation adding new unit types or creating new kinds of fractional ownership interests to the extent permitted by section 15.2;

(g) To establish a new unit type as permitted by section 3.4B.2);

(h) To establish new kinds of fractional ownership interests as permitted by section 4.5; or

(i) To correct any errors or mistakes in any of the plan documents.

2) **EFFECT.** An amendment made by the developer under this section 16.1D will take effect when it is signed by the developer and recorded. It does not have to be signed or approved by anyone else.

E. LIMITS ON AMENDMENTS.

1) Unless it is signed by the owner and the owner's lender (if any), no amendment may:

(a) Take away the right of any owner to use the owner's unit during his or her use period.

(b) Change an owner's ownership share in his or her unit. This does not prevent changes in an owner's undivided interest in the condominium made by the condominium developer when using the condominium developer's reserved rights under the condominium documents, such as the right to create more apartments in the condominium.

(c) Change the right of an owner to cast one vote for an every-other-year fractional ownership interest or two votes for an every-year fractional ownership interest.

2) No amendment to any of the plan documents may change the rights and privileges of the

developer unless the developer (i) consents to the change in writing, and (ii) signs the amendment to show its consent.

F. BINDING EFFECT. Any amendment that complies with the provisions of this section 16.1, will be binding on the vacation property, every fractional ownership interest and everyone, including every owner and every lender, who has any interest in the fractional ownership interest or any vacation property.

16.2 TERMINATING THIS DECLARATION. This declaration will remain in effect for sixty (60) years from the day it is recorded. After that, it will continue in effect for additional ten (10) year periods until an amendment canceling it is recorded. This declaration will terminate earlier if any of these things happen:

A. All of the vacation units are destroyed and a decision is made under the condominium documents not to repair, rebuild, or restore them.

B. All of the vacation units are taken in condemnation proceedings or under threat of condemnation.

C. The condominium declaration terminates.

D. A majority of the owners vote to terminate the plan at a regular or special meeting of the association held on or after December 31, 2017.

When this declaration terminates, (a) the owners of fractional ownership interests will remain personally liable for all assessments and personal charges owed by them, and (b) the Association's lien will remain on each owner's interest in the vacation unit and any money received from the sale of it, until all assessments and personal charges (including interest, late fees, and collection costs) are paid in full and the Association's affairs are finally settled. Each present and future owner, and every other person who obtains any interest in a fractional ownership interest (such as a lender), gives the Association a special power of attorney to sell any or all vacation units with respect to which this declaration has terminated, and to engage a real estate broker to offer such units for sale. This power of attorney will stay in effect until the sale is fully closed, even after if it is after this declaration terminates. All money received from the sale of any vacation property will be distributed as provided in section 14.4 above for excess proceeds.

16.3 THE RULE AGAINST PERPETUITIES.

A. GENERAL NATURE OF THE RULE. The “rule against perpetuities” (the “RAP”) is a legal rule. It limits the amount of time that may pass between (i) the date when an interest in real estate is created, and (ii) the date when the interest “vests” such as when the owner of that interest becomes entitled to possession of the property. The RAP creates a deadline for this to happen. This deadline is called the “RAP deadline” in this declaration. In legal terms, the interest becomes “vested” in the future. For convenience, however, we will say that the transfer “takes effect in the future.”

B. APPLYING THE RULE. No matter what else this declaration says, if any part of this declaration violates the RAP or any other limit imposed by law on the duration of the part, then that part will be effective only until the earlier of:

- ❖ the maximum period permitted by law, or
- ❖ 21 years after the death of the last survivor of the now living descendants of Joseph and Rose Kennedy of Massachusetts and George H. W. Bush of Texas.

16.4 EFFECT OF INVALID PROVISIONS. The provisions of this declaration are “severable”. This means that if any part of it is not legal or valid, that part can be ignored. But the rest of this declaration will remain in effect and everyone must obey it.

16.5 EFFECT OF FAILURE TO ENFORCE. A violation of any part of the plan documents by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of the plan documents. Any failure to enforce any provision of the plan documents does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is ignored or overlooked.

16.6 INTERPRETING THIS DECLARATION. To make this declaration easier to read and understand, many chapters include an introduction. The introduction is intended to help you understand what the chapter is about by giving you a general explanation. Likewise, captions have been added to many sections. The developer has also included a table of contents. These are intended to help you find particular parts of this declaration. It is important to realize, however, that the captions, introductions, and table of contents have been included as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of the provisions of this declaration. You should read with

care each and every part of this declaration, not just the captions, the introductions, or the table of contents.

Where this declaration or the other plan documents say things like “for example”, it means that there may be other examples besides the examples given. Likewise, when the plan documents use language such as “among other things”, “including”, and similar phrases, the effect of those sections is not limited to the examples given unless it clearly says so.

16.7 PRONOUNS. Pronouns (for example, “his” or “her”) used in the plan documents include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

17. MISCELLANEOUS PROVISIONS AND GLOSSARY OF LEGAL TERMS

17.1 TRANSFER OF DEVELOPER’S RIGHTS.

A. If the developer signs and records a document that expressly transfers some or all of its rights or duties as the developer under the plan documents to someone else, then that person will become the “developer” to the extent of the rights and duties transferred. After a transfer (i) the new developer has and may use the rights transferred to it, and (ii) the old developer is automatically relieved of any and all liability arising after the transfer takes effect with respect to the rights and duties transferred; and (iii) the new developer will not be liable for any violation of the plan documents or other acts of the prior developer(s).

B. The developer may transfer its rights as collateral for a loan. If so, the lender will not have the rights or duties of the “developer” until (i) it forecloses the loan, (ii) it holds the rights of the developer outright, and (iii) it notifies the Association that this has happened and provides a copy of the legal documents by which it holds the rights of the developer. Under section 17.1A, the developer may also transfer its rights and duties to a lender in place of foreclosure.

C. A transfer of all rights of the developer will automatically transfer the developer’s easements under this declaration. This will happen even if the transfer document does not say so.

17.2 DEVELOPER CONSENT. If this declaration requires the consent or approval of the developer, then the developer can give or not give its consent, and impose conditions to giving its consent, in the developer’s sole discretion and whether or not it is reasonable to do so.

17.3 NOTICES. Except as otherwise expressly provided in this declaration or in the bylaws, or required by law, all notices must be given as follows:

A. NOTICE TO OWNERS. Notice to an owner may be given by delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to his or her address as it is shown on the membership list. If more than one person is the "owner" of a fractional ownership interest, notice to all owners of that fractional ownership interest may be given by providing notice to any one of them.

B. NOTICE TO THE ASSOCIATION. Notice to the Association must be given only to the registered agent of the Association or, if there is no registered agent, then to the president, vice-president, secretary, or any director. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to the address as shown on the membership list, or to any other address designated by notice to the developer and to all owners and lenders.

C. NOTICE TO THE PLAN MANAGER. Notice to the plan manager must be mailed or delivered to the plan manager at its address as shown in the management contract, or to any other address that the plan manager designates by notice to the Association from time to time.

D. NOTICE TO THE DEVELOPER. Notice to the developer must be given to the president of the developer. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to the president of the developer at the address shown on the membership list, or to any other address that the developer designates by notice to the Association from time to time.

E. NOTICE TO A LENDER. Notice to a lender or to an insurer or guarantor of a mortgage may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to its address as it is shown on the membership list, or to any other address that it designates by notice to the board.

F. NATURE OF NOTICE. All notices must be in writing.

1) A notice from the Association to a member is effective when it is mailed, so long as the postage is paid and it is addressed to the member's address shown in the Association's current list of members.

2) A notice to anyone else will be effective on the earliest of the following:

(a) When it is received.

(b) Five (5) days after it is deposited in the US mail, as evidenced by the postmark, so long as the notice is mailed with the correct address and with first class postage affixed.

(c) On the date shown on the return receipt if the notice is sent by registered or certified mail, return receipt requested and the receipt is signed by or on behalf of the person to whom the notice is addressed.

(d) If the notice is faxed, except as otherwise required by law, upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records.

3) Except as otherwise required by law, and regardless of what sections 17.3F.1) and 17.3F.2) say, notices of addresses and changes of addresses will be deemed given only when they are actually received.

4) The addresses for purposes of this section 17.3 may be changed by giving written notice of the change. Unless written notice of an address change is received, the last address will remain effective for all purposes.

G. CHANGES TO NOTICE REQUIREMENTS. Despite what section 16.1 says, the board may change the notice requirements of this section 17.3 to comply with any change in the law that governs giving notices and that applies to the plan or to the Association. The board may do so by changing the association rules.

17.4 SPECIAL POWER OF ATTORNEY. Whenever this declaration or the bylaws provide that an owner or other person gives a "power of attorney" or appoints someone as "attorney-in-fact", the following rules apply:

A. The power of attorney appointment is permanent. In legal terms, it is "*coupled with an interest*," it is "*irrevocable*," it is a "*durable power of attorney*," and it will not be affected by any disability of the person who gives it.

B. It includes "*full power of substitution*." This means that the person given the power of attorney can let someone else act in his or her place as a substitute attorney-in-fact.

C. Each owner (or other person) gives the power of attorney whether or not it expressly says so in the deed, mortgage or other document by which he or she obtained

any interest in the fractional ownership plan or the vacation unit.

D. It is a "special power of attorney." This means that the attorney-in-fact has the power to do only the things stated or intended by the plan documents; this includes, however, the power to do anything else necessary or convenient to accomplish the stated or intended goal. Ambiguities must be resolved in favor of giving, not denying, the attorney-in-fact the power to act.

E. If asked by the attorney-in-fact, the person who is giving the special power of attorney must promptly deliver a signed and notarized special power of attorney in the form requested by the attorney-in-fact.

17.5 GLOSSARY OF LEGAL TERMS.

A. "AGREEMENT OF SALE" means a recorded contract that binds the seller to sell and the buyer to buy a fractional ownership interest and under which the seller keeps the title to the fractional ownership interest as collateral for payment of the sales price. The buyer, however, is considered the owner of the fractional ownership interest and can use a vacation unit during his or her use period so long as the buyer makes all payments and keeps his or her promises under the agreement of sale.

B. "ATTACHMENT" refers to the act or process of seizing property under a court order.

C. "DEED" means any document (except a recorded lease or an agreement of sale) used to transfer ownership of a fractional ownership interest.

D. "EASEMENT" means any right to use property possessed by someone else.

E. "ENCUMBER" refers to putting a legal claim or "encumbrance" on property.

F. "ENCUMBRANCE" means a right or interest in property held by someone other than the owner of that property.

G. "HAWAII CONDOMINIUM LAW" means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, or any law that replaces that law (for example, Chapter 514B, Hawaii Revised Statutes, to the extent that it applies).

H. "INCUR" means to pay or to become obligated to pay, or both.

I. "JOINT AND SEVERAL LIABILITY" means that two or more people are each fully responsible to keep a promise or pay a sum of money. This means that each person may be required to pay the whole amount due, not just part of it or his or her share of it.

J. "LENDER" means anyone who has a mortgage on a fractional ownership interest.

K. "LIEN" is a legal term. In general, it refers to a claim against property. For example, a mortgage on a fractional ownership interest is a claim on the fractional ownership interest as collateral for the payment of money.

L. "MAJORITY OF THE OWNERS" means owners of more than fifty percent (50%) of the total number of votes for all fractional ownership interests in the fractional ownership plan. Any reference to a specific percentage of owners means owners having that percentage of the total number of votes for all fractional ownership interests in the plan. When it refers to having a quorum or taking a vote, these terms mean owners of a majority or other specific percentage of the votes for all fractional ownership interests then entitled to vote. The bylaws explain how and when an owner's voting rights may be suspended.

M. "MAJORITY OF THE OWNERS VOTING" means owners of more than fifty percent (50%) of the total number of votes for all fractional ownership interests held by owners present and casting votes on the matter at hand. Any reference to a specific percentage of "owners voting" means owners having that percentage of the total number of votes held by owners present and casting votes on the matter. When it refers to having a quorum or taking a vote, only the votes of fractional ownership interests then entitled to vote will be considered. The bylaws explain how and when an owner's voting rights may be suspended.

N. "MORTGAGE", when used as a noun, means a recorded mortgage or deed of trust by which an owner's fractional ownership interest becomes collateral for the repayment of a loan. Usually, if the loan isn't repaid, the fractional ownership interest will be sold and the money will be used to repay the loan. When used as a verb, "mortgage" refers to making a fractional ownership interest subject to a mortgage or deed of trust.

O. "PERSON" means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity. Terms like "somebody," "nobody," "someone," "anyone," and so on refer to a "person" and, depending on the context, may refer to a person who is an "owner."

P. "RECORD", "RECORDED", "RECORDING", and similar terms mean recorded in the Bureau of Conveyances of the State of Hawaii.

Q. "SUBORDINATE TO" means governed by. For example, if a mortgage is "subordinate to" this declaration then the mortgage will be governed by and will not affect the declaration. If something in the mortgage does not agree with this declaration, then the declaration will control and must be obeyed.

R. "TENANTS IN COMMON" refers to the relationship between co-owners of property. When the co-owners are tenants in common, then each person owns a separate undivided interest or ownership share in the property. An owner may mortgage or sell his or her ownership share. The owner may also leave it to someone else in his or her will.

S. "TRANSFER" means any way one person may receive a fractional ownership interest from another, including for example a voluntary sale, an involuntary sale (such as a foreclosure sale), a recorded lease, an inheritance or a gift.

T. "UNDIVIDED INTEREST" refers to the ownership of property by two or more persons as tenants in common. Each person owns a share in the property, sometimes called an "ownership share." For example, if two people (who are not married) own an apartment as tenants in common, then normally each person would own a one-half ownership share in a typical case. If four people own it as tenants in common, then each would own a one-fourth ownership share, also called a one-fourth undivided interest or "ownership share" of that apartment.

The developer signed this declaration on July 10, 2006.

KAHALU'U BEACH CLUB LLC

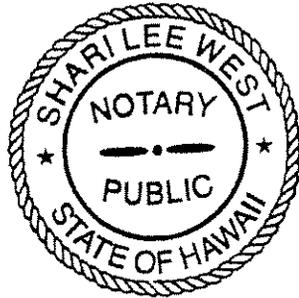
By: 

Name: Scott F. Church

Its: Managing Member

STATE OF HAWAII)
COUNTY OF Hawaii) ss:

On this 10th day of July, 2006, before me personally appeared Scott F. Church, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Sharilee West
Name: Sharilee West

Notary Public, State of Hawaii

My Commission expires: May 23, 2008

EXHIBIT "A"

The initial vacation units consist of the condominium apartments listed in the following table.

Apartment No. / Unit No.	Common Interest	Unit Type	Active or Inactive
2-101	4.7633%	2 Bedroom	Active
2-201	4.7633%	2 Bedroom	Active
2-202	5.0481%	2 Bedroom	Active
2-203	4.7633%	2 Bedroom	Active
2-301	4.7633%	2 Bedroom	Active
2-303	4.7633%	2 Bedroom	Active

Each apartment and its common interest is listed on a separate row. Each apartment is more particularly described as follows:

FIRST:

The apartment identified by the apartment number listed in column 1 of the table shown above in the condominium property regime known as the "The Beach Villas at Kahalu'u" (herein called the "condominium"), as established by that certain Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u, dated February 3, 2004, and recorded as Document No. 2004-029098, , as amended and restated by that certain Amended and Restated Declaration of Condominium Property Regime of The Beach Villas at Kahalu'u, dated December 12, 2005, and recorded in said Bureau as Document No. 2005-259696 (herein as it may be further amended and restated from time to time called the "condominium declaration") and as shown on the plans of the condominium recorded as Condominium Map No. 3706 (herein with any amendments called the "condominium map"), together with the limited common elements, if any, and the rights and easements appurtenant to the apartment as established by and described in the condominium declaration, but subject to the rights and easements excepted in the condominium declaration.

SECOND:

An undivided percentage interest in and to the common elements of the condominium (including the land) equal to the percentage interest stated in column 2 of the table shown above, or such other percentage interest as hereafter established for the apartment by any amendment of the condominium declaration, as tenant in common with the other owners of apartments in the condominium. The land of the condominium is described in the condominium declaration. That description, as it may be amended from time to time, is hereby incorporated herein by this reference.

TOGETHER WITH, AS TO FIRST AND SECOND, appurtenant easements described in (i) the condominium declaration, (ii) that certain Declaration of Merger of Condominium Phases of The Beach Villas at Kahalu'u, dated February 3, 2004, and recorded as Document No. 2004-029097, (herein with any amendments called the "declaration of merger"), and **SUBJECT TO** the easements, encroachments, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The declaration of merger; and
2. The condominium declaration, the Bylaws of the Association of Apartment Owners of The Beach Villas at Kahalu'u recorded as Document No. 2004-029099 (the "condominium bylaws"), any rules and regulations adopted thereunder (the "condominium rules"), as any of the same may be amended from time to time, and the condominium map, to which reference is hereby made.

BEING A PORTION of the property conveyed to the developer by that certain Warranty Deed dated October 24, 1996, recorded November 1, 1996, in the Bureau of Conveyances of the State of Hawaii as Document No. 96-156563.

SUBJECT, HOWEVER, TO all of the encumbrances described in Exhibit "A" to the condominium declaration, each of which is incorporated herein by this reference, and to all other encumbrances of record.

07/13/200620007

FILED 07/12/2006 10:35 AM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

EXHIBIT "B"

*The Beach Villas at Kahalu'u
Fractional Owners Association*

ARTICLES OF INCORPORATION
Section 414D-32, Hawaii Revised Statutes

The person who signed this document desires to form a nonprofit corporation under the laws of the State of Hawaii and certifies the following:

**ARTICLE 1
DEFINITIONS**

Section 1.1 In this document, the following terms have the following meanings:

A. "*Hawaii Nonprofit Corporations Act*" means Chapter 414D, Hawaii Revised Statutes, as it may be amended from time to time, or any successor or replacement law.

B. "*Association*" means the corporation.

C. "*Plan Documents*" means the following documents and any changes and additions properly made to any of them from time to time:

(1) "*Articles*" means these Articles of Incorporation.

(2) "*Declaration*" means that certain document named "The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership" recorded in the Bureau of Conveyances of the State of Hawaii.

(3) "*Bylaws*" means the bylaws of the Association. A copy of the initial bylaws is attached to the declaration.

(4) "*Association Rules*" means the rules and regulations adopted by the developer and any changes made to them from time to time by the Association in accordance with the declaration.

D. "*Plan*" means the plan created by the plan documents.

Section 1.2 Certain other terms used in these articles are defined in the declaration or bylaws. Those terms will have the same meaning here as in the declaration or bylaws unless the context clearly requires otherwise.

**ARTICLE 2
NAME**

The name of the corporation is "The Beach Villas at Kahalu'u Fractional Owners Association."

**ARTICLE 3
INITIAL MAILING ADDRESS**

The mailing address of the corporation's initial principal office is 78-216 Makole'a Street, #32, Kailua-Kona, Hawaii 96740.

**ARTICLE 4
DURATION**

The corporation will exist forever unless it is dissolved as provided in the Hawaii Nonprofit Corporations Act.

**ARTICLE 5
PURPOSES AND POWERS**

Section 5.1 Purposes. The corporation is organized for the following purposes:

A. To be the association of owners required by the declaration, and to have the rights and duties of the Association as provided in the plan documents or by law;

B. To provide an entity to further the interests of the members and the developer; and

C. To engage in any lawful activity for which nonprofit corporations may be incorporated under the Hawaii Nonprofit Corporations Act.

Section 5.2 Powers and Duties. The corporation has and may exercise any or all of these powers and has each of these duties and obligations:

A. It has the powers, duties and obligations granted to or imposed on the Association in the declaration, these articles, or the bylaws.

B. It has the powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.

C. It has any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Association under the declaration, these articles, or the bylaws, or that otherwise promote the general benefit of the members.

Section 5.3 Specific Powers. Without limiting the powers and duties of the Association as stated in section 5.2 or in the Hawaii Nonprofit Corporations Act, the Association has the following specific powers:

A. To manage, control, and operate the plan as provided in the plan documents;

B. To manage, control, operate, maintain, repair, replace, and improve the vacation property and any other property for which the corporation has a right or duty to provide such services;

C. To pay the expenses and costs described in the plan documents, and to charge and collect the assessments, personal charges, and other amounts described in the plan documents;

D. To enforce the plan documents;

E. To join and participate in any exchange program (to the extent permitted by the plan documents), in any trade organizations, or in any other travel-related activities or programs that may benefit the members;

F. To engage in activities that will foster, promote, or advance the common interests of the

members or encourage and promote fractional ownership or vacation ownership in the State of Hawaii.

G. To make contracts and guarantees and incur liabilities, borrow money, issue notes and other obligations, and to secure any of its obligations by mortgage or pledge of all or any part of its property, assets, franchises, or income;

H. To act as principal, agent, joint venturer, partner, or in any capacity that may be authorized or approved by the board of directors of the corporation; and

I. To exercise all other rights and powers and to perform all other duties of the Association under the plan documents.

Section 5.4 Purposes and Powers. The provisions of sections 5.1, 5.2, and 5.3 will each be construed as purposes and powers.

Section 5.5 Limits on Association Powers. The purposes, powers and duties of the Association are subject to any limits set by law or by the declaration, these articles, or the bylaws. The developer is expressly declared to be an intended third-party beneficiary of this limitation. This means, among other things, that this limitation is intended to protect the developer and that the developer may enforce it.

**ARTICLE 6
BOARD OF DIRECTORS**

Section 6.1 Authority of Board. Subject to any limits imposed by law:

A. The business and affairs of the Association are controlled by its board of directors. Except as limited by law or by the declaration, these articles, or the bylaws, the board may exercise all powers and must perform all duties of the Association. The board may not, however, take any action that, by law or under the declaration, these articles, or the bylaws, must be taken, authorized or approved by the members of the Association, or by some part or percentage of them.

B. The bylaws govern the method of appointing, electing, removing and filling vacancies in the board, and the term of office of directors and officers.

C. Subject to any limitations in the Hawaii Nonprofit Corporations Act, the board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the plan manager. This authority is subject to any limits contained in the declaration, these articles, or the bylaws.

Section 6.2 Number of Directors. The board will have not less than three (3) directors nor more than seven (7). The number of directors may be changed by an amendment to these articles or to the bylaws.

Section 6.3 Initial Directors. The initial board will consist of three (3) directors. The developer shall appoint the initial directors. Those persons will hold office until replacement directors are elected or appointed in the manner provided in the bylaws unless they are removed by the developer. The developer may replace any director that it removes.

Section 6.4 Limitation of Liability of Directors. A Director shall have no personal liability to the Association or its members for money damages for breach of the director's duties to the corporation and its members; provided, that this does not eliminate the liability of a director for those things for which, under the Hawaii Nonprofit Corporations Act, a director's liability cannot be eliminated.

**ARTICLE 7
MEMBERS AND VOTING**

Section 7.1 Members. The corporation has members. Memberships will be issued only in the manner and on the conditions described in the declaration and bylaws. The corporation may have different kinds or classes of members as described in these articles or in the declaration or bylaws.

A. **Class A Members.** The Class A members shall consist of all owners of fractional ownership interests. This includes the developer to the extent that it is deemed to be the owner of a fractional ownership interest.

B. **Class B Member.** The developer shall be the sole member of a separate class of members to be known as the "Class B member." The membership of the developer in its capacity as the "developer" shall be separate and distinct from any Class A membership that it may hold by reason of being an owner. The Class B membership shall terminate when the developer no longer owns any fractional ownership

interest and no longer holds a mortgage on any fractional ownership interest, or when nobody holds the rights of the "developer" under the plan documents.

Section 7.2 Voting. The members are entitled to vote as provided in these articles, the declaration, and the bylaws.

A. **General.**

(1) **Class A Members.** Each every-year fractional ownership interest has two (2) votes. Each every-other-year fractional ownership interest has one (1) vote. When a fractional ownership interest is owned by more than one person, its co-owners do not each receive their own votes. Instead, the co-owners of that fractional ownership interest must share the one or two votes for that fractional ownership interest. Only one vote may be cast for each every-other-year fractional ownership interest, and only two votes may be cast for each every-year fractional ownership interest.

(2) **Class B Member.** Except where these articles, the declaration, or the bylaws provide otherwise, the developer will have no voting rights in its capacity as the Class B member.

B. **Voting.** Voting will not be done by class except where the plan documents expressly provide otherwise. For example:

(1) In cases where the plan documents provide for action by a "majority of the owners" or by a "majority of the members", or by a "majority of the owners voting" or a "majority of the members voting," or similar provisions, the votes of all Class A members will be counted, including the developer to the extent that it is then a Class A member. This rule is subject to the rule in section 7.2B.(2).

(2) Certain provisions of these articles or the other plan documents may require (i) the vote of the members (or a "majority of the members," a "majority of the members voting," etc.), plus (ii) the vote, consent or approval of the developer. In those cases, the votes of all Class A members, including the developer to the extent that it is then a Class A member, will be counted with respect to the satisfaction of condition (i). In addition, however, the separate vote, consent or approval of the developer, in its capacity as the Class B member, also will be required to satisfy condition (ii).

(3) Section 10.3 of these articles, and certain provisions of the other plan documents, permit the amendment of these articles or other plan documents by vote or written consent of the developer alone. In such cases, (i) only the developer, in its capacity as the Class B member, can vote on such issues (or take action by written consent), and (ii) no Class A members will be entitled to vote or to give or withhold their consent, nor shall any vote or written consent of the Class A members be required to amend these articles or the other plan documents in such circumstances.

C. If any Class A member or the member's guest violates the plan documents, the Association may, among other things, suspend the member's rights under the plan documents, including the member's rights to vote or participate in any matter before the Association. The nature of this right and the procedures for suspension are stated in the declaration and bylaws.

D. In all other respects, voting rights are governed by and may be limited, enlarged or denied as provided in the declaration, the bylaws, and these articles.

**ARTICLE 8
ASSESSMENTS AND PERSONAL CHARGES**

The Association may charge assessments, personal charges, and other sums to and collect them from the members from time to time in accordance with the provisions of the plan documents. The members must pay the assessments, personal charges, and other sums, and will be personally liable to do so. The members are not individually or personally liable for the debts of the Association, but this does not relieve them from liability to pay the amounts charged to them pursuant to the plan documents. The Association may foreclose on a fractional ownership interest for non-payment of assessments, personal charges, or other sums due.

**ARTICLE 9
NON-PROFIT NATURE**

The corporation is nonprofit in nature. It cannot authorize or issue shares of stock. No dividends may be paid and no part of the income or profit of the corporation may be distributed to its members, directors, or officers. Subject to any limits contained in the declaration or bylaws: (a) the Association may

pay reasonable compensation to its members, officers or directors for services actually provided to or for the benefit of the Association, and (b) the Association may reimburse any expenses incurred for the Association by any officer, director, member, agent or employee, or any other person or entity authorized by the board. Upon dissolution or final liquidation, the Association may make distributions to its members in accordance with the requirements of the bylaws and the Hawaii Nonprofit Corporations Act, and no such distribution will be deemed to be a dividend or a distribution of income or profit (as now provided by the Hawaii Nonprofit Corporations Act).

**ARTICLE 10
AMENDMENTS**

Section 10.1 Amendment by Vote of Members. Except as provided in sections 10.2 and 10.3, these articles may be amended if each of these requirements are met:

A. The board must adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual or special meeting of the Association.

B. The notice of the meeting given to the members, or a document sent with the notice, must set forth the proposed amendment or a summary of the changes to be made by it.

C. The proposed amendment must receive at least two-thirds of the votes held by members present at the meeting, in person or by proxy, or any higher percentage required by law.

D. If the developer (i) owns a fractional ownership interest, or (ii) holds a mortgage on a fractional ownership interest, or (iii) is otherwise deemed to be a member, then the amendment will not be effective unless the developer approves it in writing.

Section 10.2 Amendment By The Board. These articles may be amended by the vote of a majority of the directors in office as necessary (i) to conform these articles to any change to the declaration or bylaws made by the developer when using the developer's reserved rights to amend the declaration or bylaws, or (ii) to conform these articles to any change in the Hawaii Nonprofit Corporations Act. No members are entitled to vote on any amendment proposed for these

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purposes. Unless otherwise required by law, no notice or meeting is required for the purpose of making an amendment pursuant to this section 10.2.

Section 10.3 Amendment By Developer. These articles may be amended by the vote or written consent of the developer when using the developer's reserved rights to amend the plan documents as described in the declaration or bylaws. No other members are entitled to vote on any amendment to be made pursuant to this section 10.3. Unless otherwise required by law, (i) no meeting is required for the purpose of making an amendment pursuant to this section 10.3, and (ii) no notice is required should a meeting be called for the purpose of making an amendment pursuant to this section 10.3. The developer also may use the special power of attorney granted to it in the declaration or bylaws to consent to the amendment on behalf of the members and/or to take action on behalf of the Association by unanimous written consent.

Section 10.4 Amendment of Developer's Rights. No amendment may change the rights and privileges of the developer under these articles or the other plan

documents unless the developer approves the amendment in writing.

Section 10.5 Restatement. The Association may restate these articles in the manner provided in the Hawaii Nonprofit Corporations Act. No vote or other consent of the members is necessary.

**ARTICLE 11
REGISTERED AGENT**

The street address of the corporation's initial registered office is 78-216 Makole'a Street, # 32, Kailua-Kona 96740, and the name of the initial registered agent at that office is Scott F. Church.

**ARTICLE 12
INCORPORATOR**

Scott F. Church is the incorporator. His address is 78-216 Makole'a Street, # 32, Kailua-Kona 96740.

I CERTIFY under the penalties of Section 414D-12 of the Hawaii Revised Statutes that I have read the statements contained in this document and that the statements are true and correct.

DATED this 7th day of July, 2006.

SCOTT F. CHURCH
(Type/Print Name of Incorporator)


(Signature of Incorporator)

Bylaws
of
The Beach Villas at Kahalu'u
Fractional Owners Association

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1. GENERAL PROVISIONS.

1.1 THE ASSOCIATION; ITS NAME AND ADDRESS.

The "Association" is a non-profit Hawaii corporation. Its name is "The Beach Villas at Kahalu'u Fractional Owners Association." Its principal office is at 78-216 Makole'a Street, #32, Kailua-Kona, Hawaii 96740. From time to time, the board of directors may choose a new principal office elsewhere in Hawaii.

1.2 DEFINITIONS. This section defines certain words or phrases having special meanings in these bylaws. Other terms are defined elsewhere in these bylaws in order to put them in context. Defined terms will have the special meanings assigned to them except where the context clearly requires otherwise. In addition to the terms defined in these bylaws, the declaration also defines a number of key words and phrases. Terms defined in the declaration have the same meaning in these bylaws unless the context clearly requires otherwise.

A. "ARTICLES" means the articles of incorporation of the Association, and all changes and additions properly made to them from time to time. The articles established and govern the Association as a corporation.

B. "DECLARATION" means "The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership," and all changes and additions properly made to it from time to time. It was recorded with these bylaws.

C. "OWNER" means the owner of a fractional ownership interest as "owner" is defined in the declaration.

D. "MEMBER" means a member of the Association. There are two kinds of members: Class A members and Class B members. See section 2.1 for details.

1.3 POWERS AND DUTIES OF THE ASSOCIATION.

Except as limited by the declaration, the articles, these bylaws, or by law, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

- ❖ It has the powers, duties and obligations granted to or imposed on the Association in the declaration, the articles, or these bylaws.

- ❖ It has the powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.

- ❖ It has any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Association under the declaration, the articles, or these bylaws, or that otherwise promote the general benefit of the owners.

1.4 WHO MUST OBEY THESE BYLAWS. These bylaws apply to the Association, each owner, and anyone else who has any rights or interests in any fractional ownership interest or the vacation property, or who uses a vacation unit. This includes, among others (i) all present and future owners, lenders, exchange users, occupants, and guests, and (ii) all of their officers, directors, employees and agents. Anyone who has or acquires any interest in a fractional ownership interest or vacation unit, or who uses a vacation unit, automatically accepts, approves and agrees to obey the plan documents.

1.5 CONFLICTS AMONG THE DOCUMENTS. The declaration controls over any inconsistent provision in the articles. The declaration and the articles control over any inconsistent bylaw. If any part of the plan documents is inconsistent with any law that applies, the law will control.

2. MEMBERSHIP

2.1 MEMBERSHIP CLASSES AND QUALIFICATIONS.

A. **CLASS A MEMBERS.** The Class A members shall consist of all owners of fractional ownership interests.

- 1) Anyone who is the owner of a fractional ownership interest automatically is a Class A member of the Association. This includes the developer to the extent that it is deemed to be the owner of a fractional ownership interest. By acquiring a fractional ownership interest, the owner automatically consents to being a member of the Association. If more than one person is the owner of a fractional ownership interest, each of them is a Class A member. Being the owner of a fractional ownership interest is the sole qualification for Class A membership.

2) A person will be a Class A member for so long as he or she is the owner of a fractional ownership interest. A person's Class A membership ends automatically when he or she is no longer the owner of a fractional ownership interest, such as when an owner deeds it to someone else.

B. CLASS B MEMBER. The developer is the sole Class B member of the Association. The membership of the developer in its capacity as the "developer" shall be separate and distinct from any Class A membership that it may hold by reason of being an owner.

2.2 MEMBERSHIP GOES WITH THE FRACTIONAL OWNERSHIP INTEREST.

A. CLASS A MEMBERS. If a fractional ownership interest is transferred, the membership for that fractional ownership interest is also automatically transferred to its new owner. An owner cannot separate his or her Association membership from the other components of his or her fractional ownership interest. He or she cannot sell, transfer, mortgage or otherwise deal with it separately from the rest of his or her fractional ownership interest. Any attempt to do so will not be effective. It will be void. There are three exceptions:

1) An owner may pledge or transfer voting rights to a lender having a mortgage on his or her fractional ownership interest.

2) The seller under an agreement of sale may retain legal title and the right to vote on certain matters. The buyer may transfer his or her entire interest under the agreement of sale, but nothing less.

3) The developer may reset the features of a fractional ownership interest, or convert it into two or more different fractional ownership interests, as provided in the declaration.

B. CLASS B MEMBER. If the developer transfers all of its rights as the "developer" to someone else, then the new developer will become the Class B member. If the developer transfers less than all of its rights as the "developer" to someone else, then that person will become a Class B member with respect to the rights and duties transferred unless otherwise provided in the documents used to make the transfer. If the developer transfers its rights as collateral for a loan, the lender will not have the rights and duties of a Class B member until it also

holds the other rights of the developer, as provided in section 17.1B of the declaration.

3. ASSESSMENTS AND PERSONAL CHARGES

3.1 MEMBERSHIP ASSESSMENTS AND PERSONAL CHARGES. Each member must pay assessments and personal charges as provided in the declaration. The board will set, levy, collect and enforce the assessments and personal charges as provided in the declaration.

3.2 ENFORCEMENT; LIEN RIGHTS. The Association has the lien rights described in the declaration to enforce and collect assessments and personal charges. The board can enforce those rights in the manner described in the declaration. The board also has and may use all other rights and remedies available under the declaration or by law or in equity.

3.3 FISCAL YEAR. The Association's fiscal year ends on December 31st of each year unless the board chooses a different date.

4. MEMBERSHIP RIGHTS AND PRIVILEGES

4.1 MEMBERS' RIGHTS AND DUTIES. Each member has the rights, duties and obligations described in the plan documents.

4.2 AUTHORITY OF MEMBERS. Unless the board approves it, no member can exercise any powers or perform any acts delegated by the plan documents to the Association or the board. Unless the developer approves it, no member can exercise any powers or perform any acts delegated by the plan documents to the developer or any of the developer's reserved rights.

4.3 ASSOCIATION RULES. The board may adopt, publish and enforce such fair and reasonable rules and regulations as it may deem advisable relating to the vacation units, the common furnishings, and use by occupants of the common elements of the condominium or limited common elements of the vacation units. These are called the "association rules." The developer adopted the initial association rules. The board may change the association rules from time to time. The developer also has certain rights to change the association rules as stated in the plan documents. The association rules must be

consistent with the declaration, the articles, these bylaws and the condominium documents. The board must give notice to the owners of any change in the association rules. The board may give this notice by mailing it to the owners or by including it in a newsletter, by posting a notice on an internet web site, or by email. It may also give this notice in any other way that is likely to be effective to give notice to the owners and that complies with any laws that apply. At any meeting of the Association, a majority of the owners may change the association rules so long as the notice of meeting stated that the change would be considered at the meeting and includes a fair and accurate description of the proposed change. At any times when the developer holds a mortgage on or owns a fractional ownership interest, no change to the association rules will be effective without the developer's written consent.

4.4 SUSPENSION OF PRIVILEGES; FINES. If any member or the member's guest violates the plan documents (including but not limited to the failure of the member to pay any assessment or personal charge on time), the Association may charge him or her a money penalty and/or suspend his or her rights, privileges, and services under the plan documents. For example, the board may suspend a member's right to participate in any vote under the plan documents. The declaration contains detailed requirements that must be satisfied in order for the Association to do these things. Each of those requirements is made a part of these bylaws, just as if they were repeated here. The board may delegate to the plan manager the power to carry out any disciplinary actions imposed by the board. The board also may delegate to the plan manager the authority to perform the board's disciplinary duties, including the right to suspend an owner's rights, privileges, and services under the plan documents in cases where the owner has not paid all assessments or personal charges due. This includes the rights (i) to give notice of the proposed fine or suspension with the notice of hearing, (ii) to conduct the hearing, and (iii) to decide whether to fine the owner and/or to suspend the owner's right, privileges and services, including the right to occupy a vacation unit when the owner has not paid all assessments and personal charges due.

5. MEETINGS OF MEMBERS

5.1 MEETING OF THE ASSOCIATION. Subject to section 5.14, and unless otherwise expressly authorized by the plan documents:

A. All action required or permitted to be taken by the members may only be taken at a meeting of the Association;

B. The Association must give proper notice of the meeting; and

C. Enough members must attend to have a quorum.

5.2 ANNUAL MEETINGS. The Association must hold the first annual meeting of the Association within twelve (12) months from the starting date. In the years after that, the Association will hold an annual meeting each year on a day that the board chooses. If the board does not choose a meeting date by the first day of September in any year, then the meeting will be held at the condominium at 11:00 a.m. on the third Thursday in October of that year. The developer may set the date and time for the first annual meeting. At each annual meeting the members:

A. Will elect, by written ballot, directors as provided in these bylaws; and

B. May transact any other Association business that properly comes before them.

5.3 SPECIAL MEETINGS. A special meeting of the Association may be called at any time for any one or more purposes. It may be called by: (i) the Association president; (ii) a majority of the directors; (iii) the developer; or (iv) members holding at least twenty percent (20%) of the total voting power of all members if they sign, date, and deliver to any officer of the Association a demand for a special meeting. The demand must describe the purpose or purposes for which the meeting will be held. The members may transact business on only those matters that are within the purpose or purposes described in the notice of the special meeting.

5.4 MEETING PLACE. The Association will hold its meetings at the condominium unless the board chooses another place. If permitted by law, meetings may be held by telephone conference call, by use of a private internet chat room, or by other electronic means.

5.5 NOTICE OF MEETINGS AND OTHER NOTICES.

A. NOTICE REQUIRED. Notice must be given for each meeting of the Association, whether it is an annual or special meeting.

B. CONTENTS. The notice must meet each of these requirements:

- 1) It must be in writing.
- 2) It must state the authority for calling the meeting.
- 3) It must state the place, date and time of the meeting.
- 4) It must state whether it is an annual or special meeting. If it is a special meeting, it must state the matter or matters for which the meeting was called.
- 5) It must list the items on the agenda. The agenda must include anything that the board expects to present. It must also include anything that a member intends to present if (i) the Association is asked to do so by a person entitled to call a special meeting, and (ii) the request is received by the president or secretary of the Association at least ten days before the Association gives notice of the meeting. Note: a member may still present any other proper business at any annual meeting unless notice of that business is specifically and expressly required by another part of the plan documents or by law.
- 6) It must include anything else required by the Hawaii Nonprofit Corporations Act.

C. STANDARD PROXY FORM. The board may include with the notice a standard proxy form authorized by the Association. It may also include any other necessary or helpful information.

D. WHEN NOTICE MUST BE SENT. Notice of each annual and special meeting must be given at least fourteen (14) days but not more than sixty (60) days before the meeting date.

E. WHO MUST SEND THE NOTICE. The secretary will give the notice except when these bylaws provide otherwise. The secretary may delegate this task to the plan manager. If neither the secretary nor the plan manager sends the notice within thirty (30) days after an officer of the Association receives a proper demand for a special

meeting, a person or persons signing the demand may set the time, date and place of the meeting and give notice in the manner required by law and these bylaws.

F. WHO IS ENTITLED TO NOTICE. Notice must be sent to each person entitled to vote as of the record date. Notice must also be sent to each holder, insurer or guarantor of a mortgage on a fractional ownership interest if, as of the record date, it has made a proper request for copies of such notices.

G. DELIVERY. The notice must be given: (a) by delivering it personally; (b) by mailing it by first-class mail, postage prepaid; or (c) if the Hawaii Nonprofit Corporations Act explicitly permits it, by posting notice on a world wide web site or by sending it by email. Any notice given by mail or email must be sent to the address listed in the Association's membership list.

1) **CHANGE IN ADDRESS.** Each member and anyone who holds, insures or guarantees a mortgage must inform the Association of any change in his or her mailing address or email address at once.

2) **MULTIPLE OWNERS.** If more than one person is the owner of a fractional ownership interest, then (i) notice to all owners of that fractional ownership interest may be given by providing notice to any one of them, and (ii) the Association may require that the owners agree on a single address for notices.

H. NOTICE DOES NOT HAVE TO BE RECEIVED. If notice is given in the manner required by this section 5.5, (i) nobody entitled to notice can object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid.

I. WAIVER OF NOTICE.

1) ATTENDANCE.

(a) **NOTICE OF MEETING.** Anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to claim that notice was not given properly. This rule does not apply if, when the meeting begins, a member objects to holding it because notice was not given to him or her properly.

(b) **NOTICE OF MATTERS TO BE CONSIDERED.** Except as otherwise provided by the Hawaii Nonprofit Corporations Act, anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to object to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice of the meeting. This rule does not apply if, when the matter is presented, the member objects to considering it.

2) **WRITTEN WAIVER.** A member may waive notice of any Association meeting by signing a document (i) that waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. All such documents must be delivered to the Association for inclusion in the minutes of the meeting or filing with the corporate records.

3) **WAIVER BY INACTION.** Except as otherwise provided by law, a member automatically waives notice of any Association meeting if he or she does not file a written objection with the secretary or the plan manager within sixty (60) days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

4) **EFFECT OF WAIVER.** If a member waives notice under this section 5.5I, the fact that notice was not given to that member will not, by itself, make the meeting or any proceedings at the meeting invalid.

J. WHO MAY OBJECT TO NOTICE. Except as otherwise provided by law, a person entitled to receive notice may object if notice was not sent to him or her. A person cannot object that notice was not sent to someone else.

5.6 RECORD DATE FOR NOTICES AND VOTING.

A. PURPOSE OF THE RECORD DATE. The "record date" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The record date is also used to determine who may object to and waive lack of notice and exercise other such rights for or as a member.

B. SETTING THE RECORD DATE. The board may choose the record date. The record date for a meeting may not be more than seventy (70) days

before the meeting date. The record date for action without a meeting may not be more than thirty (30) days before the request for consent or approval is sent. Unless the board chooses another date, the record date will be the date and time when the mailing list is prepared, or, if notice is waived, the last business day before the day of the meeting. If a meeting is adjourned and a new notice must be given, then a new record date must be set.

C. EFFECT OF SETTING RECORD DATE.

When a record date is set, only the members of record on that date (or someone authorized to act for them) have the right to notice and to vote at a meeting or on a ballot or on a request for consent or approval. This rule applies despite any issuance or transfer of a fractional ownership interest in the records of the Association after the record date. A person who is the owner of a fractional ownership interest as of the record date is considered to be the "member of record." A person who becomes a member after the record date can, of course, act for the member of record by simply obtaining a proxy from the member of record. When the declaration, the articles, or these bylaws refer to the "owner" or "member" with respect to notice (including waivers of notice) and voting, it means the member of record or someone authorized to act for the member of record.

5.7 QUORUM.

A. DEFINITION. The term "quorum" refers to the number or percentage of owners who must be present at a meeting to conduct business. For all meetings of the Association, five percent (5%) of the owners must be present to have a quorum unless a different number is required by law, the declaration or another part of these bylaws.

B. WHEN A MEMBER IS "PRESENT." Members are "present" at a meeting if: (i) they attend it in person, or (ii) their proxy holder attends it for them, or (iii) someone else permitted by the declaration, the articles, or these bylaws attends it for them.

5.8 ASSOCIATION ACTION. At any Association meeting at which a quorum is present, the acts and decisions of a majority of the owners voting will be regarded as the acts and decisions of the Association, and will be binding on all members for all purposes, unless a different percentage is provided by law or by the declaration, the articles, or these bylaws.

5.9 RULES FOR CONDUCTING MEETINGS. All meetings must be conducted in accordance with the latest available edition of Robert's Rules of Order.

5.10 ADJOURNING ASSOCIATION MEETINGS. Any meeting of the Association may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the owners voting, whether or not a quorum is present. If no quorum is present, then the meeting must be adjourned *sine die*, which means that it cannot be resumed at a later date. If a meeting is adjourned for thirty (30) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by section 5.4. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Association may do anything that it could have done at the meeting as originally called. The Association cannot adjourn a meeting for more than an aggregate of ten days if any owner or owners having a total of at least six votes object to doing so. Prior to any adjournment to a later date, the chairperson of the meeting must poll the owners present to determine whether there is any such objection. Any owner may request that the poll be conducted by written ballot.

5.11 INSPECTORS FOR VOTING AND PROXIES.

A. APPOINTMENT. At least ten (10) days before any meeting of the Association or before any request for written consent or approval is sent to the members, or any ballot is sent to the members pursuant to section 5.14, the board will appoint either one (1) or three (3) voting inspectors to perform the duties described below. If the board fails or chooses not to appoint voting inspector(s), then the plan manager will serve as the voting inspector.

B. DUTIES. The voting inspector(s) will have these duties:

1) They will determine the authenticity, validity and effect of proxies, pledges, and other documents that purport to give any person the right to represent, act and vote for a member.

2) They will receive votes, ballots, consents, and approvals.

3) They will hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes or to give consent or

approval (but will not reconsider a suspension of an Owner's voting rights made pursuant to section 4.4).

4) They will count and tabulate all votes, ballots, consents, and approvals.

5) They will decide when the polls will close in the case of voting at a meeting.

6) They will determine the results of all votes.

7) They may do anything else appropriate to conduct the vote or election fairly as to all members.

If there is more than one inspector, the decision, act or certificate of a majority of them will be effective. Any facts stated in any effective report or certificate are presumed to be accurate.

5.12 VOTING.

A. NUMBER OF VOTES.

1) Except as provided in section 4.4, each every-other-year fractional ownership interest has one (1) vote and each every-year fractional ownership interest has two (2) votes. When a fractional ownership interest is owned by more than one person, its co-owners do not each receive one or two votes. Instead, the co-owners of that fractional ownership interest must share the one or two votes for that fractional ownership interest. Only one (1) vote may be cast for each every-other-year fractional ownership interest, and only two (2) votes may be cast for each every-year fractional ownership interest.

2) Where the plan documents refer to a certain number or percentage of members entitled to vote, this section 5 and section 4.4 govern the total number of available votes, the number of votes that an owner is entitled to cast, and how to cast the vote of each fractional ownership interest having more than one owner.

B. WHO MAY VOTE.

1) **GENERALLY.** Votes may be cast in person or by proxy by an owner listed in the Association's membership list or by anyone lawfully acting for or on behalf of the owner.

2) **LEGAL REPRESENTATIVES.** Sometimes a fractional ownership interest may be

owned or controlled by a person acting as a personal representative, guardian, or trustee. At any meeting of the Association, that person may cast the vote of each fractional ownership interest held by him or her in this capacity. He or she may vote in person or by proxy. It does not matter whether the Association's record of ownership shows that the personal representative, guardian, or trustee owns or controls the fractional ownership interest. The Association will accept any vote, consent, waiver, or proxy so long as that person presents, if asked, evidence satisfactory to the secretary or the voting inspector(s), that he or she owns or controls the fractional ownership interest in that capacity.

3) AGREEMENT OF SALE. A person buying a fractional ownership interest under a recorded agreement of sale has the rights of an owner. This includes the right to vote except on matters where, under the agreement of sale and as permitted by law, the seller expressly retains the right to vote.

4) PLEDGES. Except as otherwise limited by law, an owner may transfer or pledge the owner's voting rights to someone else in a mortgage or in any other lawful document. Or a court order may transfer an owner's voting rights to someone else. For simplicity, these arrangements are called a "pledge" in this paragraph, and the person to whom the voting rights are transferred is called the "proxy holder." If a true copy of a document containing a pledge is filed as required by section 5.13C before an Association meeting or the solicitation of ballots, written consents or approvals, then only the proxy holder may (i) vote in person or by proxy at that meeting or on that ballot, or (ii) give the written consent or approval. The proxy holder may, however, substitute someone else to vote for it as the proxy holder or to sign a written consent for it as the proxy holder or to provide written consent or approval. The proxy holder will have the right to vote at all later meetings, and on all later votes by ballot, and to approve any later request for the owner's written consent or approval, until someone files with the secretary satisfactory evidence that the pledge has ended or has been released.

C. CO-OWNER DISPUTES. If a fractional ownership interest is owned by more than one person and they cannot agree on how to cast the vote or votes of that fractional ownership interest, they lose their right to vote on the matter in question. Fractional or split votes are not allowed. When one

or more co-owners of a fractional ownership interest casts its vote, it is conclusively presumed for all purposes that he or she acted with the authority and consent of all its co-owners unless (i) another co-owner files a written objection with the secretary or the chairperson during or before the meeting, or (ii) another co-owner casts an inconsistent vote.

5.13 PROXIES. An owner may appoint someone else to vote or otherwise act for the owner at meetings of the Association or on other Association matters (for example, through a consent form). The person appointed to represent the owner is called a "proxy holder." Except as otherwise provided in section 5.12B.4).

A. PROXY REQUIREMENTS. An owner may appoint someone to be his or her proxy holder in these ways:

1) The owner may appoint a proxy holder by signing an appointment form (a "proxy") either personally or by the member's attorney-in-fact. An authorized attorney-in-fact, officer, director, employee or agent of the owner may sign for the owner, or cause the owner's name to be affixed to the proxy form by any reasonable means. For example, the owner's agent could stamp the owner's name on the proxy form.

2) The owner may appoint a proxy holder in any other way permitted under the Hawaii Nonprofit Corporations Act.

B. STANDARD PROXY FORMS. Any proxy distributed by the Association to the members must be in the form and contain any information required by law. It must also meet these requirements:

1) It must state the name of the Association.

2) It must state the name of the proxy holder.

3) It must state the name of the owner.

4) It must provide a way for the member to indicate whether he or she approves or disapproves each matter or group of matters of business proposed to be considered.

5) It must provide that if the member makes a choice, the vote of the member will be cast according to the choice(s) made.

6) It must state the date that the proxy is given.

C. WHEN A PROXY TAKES EFFECT. A proxy is effective when it is received by the secretary or the voting inspector(s) ; provided that unless otherwise required by law, the proxy must be received no later than 4:30 p.m. on the second business day before the date of the meeting.

D. USE OF DUPLICATES OF PROXIES. A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction must be a complete reproduction of the entire original proxy.

E. DURATION.

1) A proxy will be valid for eleven (11) months from the date it is signed unless the proxy says otherwise.

2) The limitations of subsection 5.13E.1) do not apply to voting rights transferred by an agreement of sale pursuant to 5.12B.3) or a pledge pursuant to section 5.12B.4).

5.14 ACTION WITHOUT A MEETING. Except as otherwise provided by law, any action that may be taken at a meeting of the members (such as, for example, electing directors) also may be taken without a meeting and without advance notice if the action is taken in the manner permitted by section 414D-104 of the Hawaii Nonprofit Corporations Act, or if each of these requirements are met:

A. A written ballot must be sent to each member entitled to vote. The ballot must be sent as though it were a notice of meeting and the rules of section 5.5F through 5.5H will apply. In addition, the provisions of subsections 5.5I.2) through 5.5I.4), and 5.5J will also apply, just as if a meeting was being held instead of a vote by ballot.

B. The ballot form must meet each of these requirements:

C. It must state each proposed action and provide a way for the member to vote for or against the proposal.

D. It must state the number of votes needed to meet the quorum requirements.

E. It must state the percentage of approvals necessary to approve each matter other than the election of directors.

F. It must state the deadline by which the ballot must be returned to count.

G. It must provide a reasonable time for the ballot to be returned.

H. The number of ballots received by the deadline for returning ballots must equal or exceed the quorum required to be present at a meeting authorizing the action.

I. The number of approvals must equal or exceed (i) the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot, or (ii) any higher number required by law.

An owner may cancel or change his or her ballot by sending a letter or other document to the Association. It will take effect when the secretary or a voting inspector receives it, and only if it is received before the deadline for returning ballots.

6. BOARD OF DIRECTORS

6.1 NUMBER OF DIRECTORS. Unless changed, the Board of Directors will consist of three (3) persons.

A. The Association may increase or decrease the number of directors from time to time by amending the articles or these bylaws.

B. In no case may the number of director positions be less than three (3) nor more than seven (7).

C. A decrease in the number of directors, or a change in the term of office, does not shorten an existing director's term.

6.2 POWERS AND DUTIES OF THE BOARD. Except as limited by law or by the declaration, the articles, or these bylaws, the board may exercise all powers of the Association and must perform all of its duties. The board may not, however, take any action that, by law or under the plan documents, must be taken, authorized or approved by the members of the

Association, or by some part or percentage of them. The board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the plan manager. This authority is subject to any limits contained in the declaration, the articles, or these bylaws. Except as otherwise expressly provided in the declaration, the articles, or these bylaws, the board may not act on behalf of the Association to amend the declaration, the articles or these bylaws. The board may not act on behalf of the Association to terminate the plan.

6.3 QUALIFICATIONS OF DIRECTORS. All directors, except for directors appointed by the developer, must be owners, co-owners, or an officer of any corporate owner, or in the case of fiduciary owners, the fiduciary or officers of corporate fiduciaries. For purposes of this section:

A. The partners in a general partnership and the general partners of a limited partnership will be deemed to be the owners of a fractional ownership interest owned by their partnership.

B. The general partners of a limited liability partnership will be deemed to be the owners of a fractional ownership interest owned by their partnership.

C. The managers of a manager-managed limited liability company will be deemed to be the owners of a fractional ownership interest owned by such a company.

D. The members of a member-managed limited liability company will be deemed to be the owners of a fractional ownership interest owned by such a company.

6.4 ELECTION OF DIRECTORS. The first directors will be any persons appointed by the developer. They will serve until their replacements are elected at the first meeting of the Association and qualified. At each annual meeting of the Association after the first meeting, and at any special meeting called for that purpose, the members will elect a new director to replace each director whose term has expired or to fill any vacancy caused by any increase in the number of directors.

6.5 NOMINATIONS.

A. BY THE BOARD. Each year, the board will nominate members for election to the board at the annual meeting. The board must do so before the secretary gives notice of the annual meeting. The secretary will send to each member, with the notice of meeting required by section 5.5, a list of the members nominated, but only if the nomination is received before the notice of the meeting is prepared for mailing.

B. FLOOR NOMINATIONS. Any member may nominate one or more candidates during an Association meeting.

6.6 TERM OF DIRECTORS. The initial directors will serve until their replacements are appointed at the first meeting of the Association. The term of office of each director appointed at the first meeting of the Association and at each annual meeting after the first meeting will end when the next annual meeting ends. Despite the expiration of a director's term, however, the director will continue to serve until a successor is appointed or until there is a decrease in the number of director positions.

6.7 TERM OF OFFICE OF ELECTED DIRECTORS.

A. Three (3) directors will be elected at the first meeting of the Association. The term of office of the two (2) directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining one (1) director will end when the next annual meeting after his or her election ends.

B. After the term of office of each of the initial elected directors expires, each replacement director will hold office until the end of the second annual meeting after his or her election. This should be a term of about two (2) years.

C. If the Association increases the number of directors, the terms of the newly created positions will begin as of the date of the meeting at which the increase was approved. The term of office of the newly created positions will be staggered so that the term of about one-half of the total number of director positions will expire each year.

D. Despite the expiration of a director's term as stated in Sections 6.7A and 6.7B, a director will continue to serve until a successor is elected or

appointed, and qualifies, or until there is a decrease in the number of director positions.

6.8 RESIGNATION OF DIRECTORS. A director may resign at any time by giving written notice to the board, the president, or the secretary. Unless required by its terms, a resignation does not have to be accepted by the board to be effective. Instead, it will take effect as of the time stated in the notice. If no time is stated, it will take effect when the director gives notice of his or her resignation.

6.9 REMOVING DIRECTORS.

A. GENERAL. The Association may remove and replace directors only in accordance with the Hawaii Nonprofit Corporations Act, and all applicable requirements and procedures in these bylaws for removing and replacing directors.

B. BY VOTE OF THE OWNERS.

1) The Association may remove any one or more directors from office, with or without cause, at any annual meeting or at any special meeting called for that purpose. The notice of meeting must specifically state that the purpose, or one of the purposes, of the meeting is removal of the director(s). Any director whose removal is proposed must have an opportunity to be heard at the meeting. A director will be removed if a majority of the owners voting vote to remove him or her; provided that unless the entire board is removed, no individual director may be removed if the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect a director at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of the directors were then being elected.

2) If a director is removed in this manner, the Association must then and there elect a replacement director. The replacement will hold office for the rest of the term of the person replaced.

C. BY VOTE OF THE DIRECTORS. If any director misses three regular board meetings in a row, the board, by a vote of a majority of the other directors, may remove him or her. The board may do this at the third or any later meeting. But if the director attends a board meeting before being removed, the director must miss at least three (3)

more regular board meetings in a row before the board can remove him or her.

D. PROCEDURES. Except as otherwise provided in the Hawaii Nonprofit Corporations Act, any meeting for the removal and replacement of directors must be scheduled, noticed and conducted in accordance with these bylaws.

E. BY THE DEVELOPER. The developer may remove any director appointed by the developer. To do so, the developer must give written notice to the board or to the president or secretary of the Association. The removal will take effect when the notice is effective unless the notice says that the removal will take effect on a later date.

6.10 VACANCIES.

A. FILLING VACANCIES. Vacancies in the board caused by any reason other than removal of a director by the Association may be filled by the vote of a majority of the remaining directors, even if there are not enough directors remaining to have a quorum; provided that until the first annual meeting of the Association, only the developer may replace a director appointed by the developer. A vacancy exists when any authorized position of director is not filled. For example, a vacancy exists when:

1) A director dies or resigns. If a resignation will take effect at a later date, a majority of the remaining directors can elect a replacement to take office when the resignation takes effect.

2) A director is removed by the other directors pursuant to section 6.9C.

3) A director is no longer qualified to serve as a director. See section 6.3.

4) The members increase the authorized number of directors but the members fail to fill the new positions at the same meeting.

5) An authorized position is not filled for any other reason by a properly elected director.

B. TERM OF REPLACEMENT DIRECTORS. Except as otherwise required by law, a replacement director will hold office for the rest of the term of the person replaced. A director appointed because the members fail to elect a director will hold office for the term that he or she would have held it if he or she had been elected by the members.

6.11 PLACE OF BOARD MEETINGS. Board meetings will be held at the condominium unless the board decides that meeting elsewhere would significantly reduce the costs to the Association and/or any inconvenience to the directors.

6.12 ANNUAL MEETING OF THE BOARD. Immediately after each annual meeting of the Association, the board must hold a regular meeting at the same place. This meeting will be held to organize the board. The board must also elect any required officers at this meeting. The board may transact any other business. Except as otherwise required by law, no call or notice of this meeting is necessary.

6.13 OTHER REGULAR MEETINGS.

A. MEETING REQUIREMENTS. In addition to the annual meeting, the board must hold at least one (1) other regular meeting each year. The number of meetings and the time and place of these meetings will be set from time to time by the board.

B. NOTICE. Notice of regular board meetings must be given to each director. The notice may be given personally or by mail, email, telephone, fax, or messenger service. It must be given at least thirty (30) days before the date of the meeting. If the notice is mailed, it will be deemed given and received five (5) days after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records.

C. CONTENT OF NOTICE. The notice must state the date, time and place of the meeting. It must also list the items on the agenda.

D. WHEN NOTICE MUST BE RECEIVED. If notice is not given in writing, then it must actually be received to be effective. In all other cases, if notice is given in the manner required by this section, (i) directors cannot object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid. Leaving a message on voice mail will not be treated as "actual receipt" of a notice.

6.14 SPECIAL MEETINGS.

A. HOW CALLED. The president or any two directors may call a special board meeting for any purpose and at any reasonable time.

B. NOTICE. Except in an emergency, as determined by the president, notice of special meetings of the board must be given in the same manner as notice of a regular meeting except that: (i) it must be given at least seventy-two (72) hours, instead of thirty (30) days, before the meeting date, and (ii) the notice must state the nature of the special business to be considered. Subsections 6.13B and 6.13C will also apply to notices of special meetings.

6.15 WAIVER OF NOTICE.

A. ATTENDANCE. Any director who attends a meeting, in person or by proxy, gives up (in legal terms "waives") any right to claim that notice was not given properly. This rule does not apply if, when the meeting begins, the director objects to holding it because notice was not given properly. It also does not apply if notice is required to vote on a certain matter and the director objects to voting on it because notice was not properly given (unless the director votes for or assents to that action).

B. IN WRITING. A director may waive notice of any board meeting by signing a document that (i) waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. If this happens, the fact that notice was not given to that director will not, by itself, make the meeting or any proceedings at the meeting invalid. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

6.16 QUORUM.

A. DEFINITION. When referring to the board, "quorum" means the number or percentage of directors who must be present at a meeting for the board to conduct business. A majority of all directors will be a quorum of the board. "All directors" means all the authorized number of directors, even if a position is not filled.

B. WHEN A DIRECTOR IS "PRESENT." Directors are "present" at a board meeting if they attend it in person or by using a telephone or other

communications equipment as provided in section 6.20.

6.17 DECISIONS OF THE BOARD. At any board meeting at which a quorum is present, the acts and decisions of a majority of the directors voting will be regarded as the acts and decisions of the board. This rule applies unless a different percentage is required or allowed by law or by the declaration, the articles, or these bylaws.

6.18 RULES FOR CONDUCTING BOARD MEETINGS. All meetings of the board must be conducted in accordance with the latest available edition of Robert's Rules of Order.

6.19 MEMBERS MAY ATTEND MOST BOARD MEETINGS.

A. OPEN MEETINGS. All board meetings are open to all members of the Association. Members who are not on the board may not participate in any deliberation or discussion unless a majority of the directors present vote to let them do so. If there is not enough room for all the members wishing to attend at the place of the meeting, the board must adjourn and reconvene the meeting as soon as possible in a place that has enough room. Any member may ask to be connected to any meeting being held by telephone conference call or using other communications equipment that meets the requirements of section 6.20. If, in the opinion of the board, the number of members asking to be connected makes the meeting impractical or impossible, the meeting may not be held by telephone conference call or using other communications equipment.

B. PRIVATE MEETINGS. The board, with the approval of a majority of a quorum of the directors, may adjourn a meeting and reconvene in "*executive session*." This means that only directors and persons invited by the board may attend. In executive session the board may discuss and vote on personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved, and other matters of a similar nature. The general nature of any and all business to be considered in executive session must first be announced in open session.

6.20 TELEPHONE MEETINGS. Regardless of any other provision of these bylaws, and unless the law provides otherwise, the board may permit one or more of the directors to take part in any meeting or

the board may conduct a meeting by telephone or using any other means of communication. The board may do this only if everyone authorized to participate in and actually participating in the meeting (including owners who are not on the board and who may listen and/or participate pursuant to section 6.19A) can hear and be heard by each other at the same time. The board may carry on all business within the board's authority as if everyone participating by telephone or using other communications equipment were physically present at the meeting.

6.21 ADJOURNING BOARD MEETINGS. Any meeting of the board may be "*adjourned*" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the directors voting, whether or not a quorum is present. If a meeting is adjourned for fifteen (15) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by section 6.13A or 6.14A. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the board may do anything that it could have done at the meeting as originally called.

6.22 ACTION WITHOUT A BOARD MEETING. Except as otherwise provided by law, any action that the board is required or permitted to take, by law or by the plan documents, also may be taken without a meeting if all directors consent in writing to that action. Each written consent must describe the action taken, be signed by the director, and be included in the minutes of the meetings of the board. Any action taken in this way has the same force and effect as a unanimous vote of the directors.

6.23 CONFLICTS OF INTEREST. A director who has a conflict of interest on any issue before the board must disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting. A transaction in which a director has a conflict of interest may be approved in the manner provided in the Hawaii Nonprofit Corporations Act.

6.24 PAYMENTS TO DIRECTORS AND OFFICERS.

A. PAYMENT; EXPENSES. No one will receive any compensation for acting as a director or officer of the Association unless that compensation is specifically authorized by vote of a majority of the owners voting at an Association meeting. However, directors and officers may be reimbursed for

transportation expenses incurred and reasonable per diem payments for expenses incurred in connection with their attendance at regular and special meetings of the board, if the board adopts a policy permitting such reimbursements.

B. OTHER WORK. Nothing in these bylaws prevents any director or officer from serving the Association in any capacity other than as an officer or a director and being paid for those services as authorized and approved by the board. But he or she must be excluded from the discussions and voting by the board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

6.25 MINUTES OF MEETINGS OF THE BOARD. A copy of the written minutes of any meeting of the board, or a summary of the minutes, will be sent, within sixty (60) days after the meeting ends, to all members. If notice of a meeting was properly given but a director is absent, the minutes must say so.

6.26 LIABILITY OF THE DIRECTORS AND OFFICERS. The directors and officers of the Association will not be liable to the Association or to the owners, or anyone else for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct.

7. OFFICERS

7.1 OFFICERS.

A. REQUIRED OFFICERS. The Association must have a president, a vice president, a secretary, and a treasurer.

B. OTHER OFFICERS. The Association may have any other officers as may be deemed necessary or useful or as required by the articles. The board will determine the title, term of office, authority and duties of these officers.

7.2 QUALIFICATIONS OF OFFICERS. Any person may hold more than one office, except that neither the secretary nor the treasurer may also be the president at the same time. The president must be a director. The vice president, secretary and treasurer may be directors but it is not necessary.

7.3 APPOINTMENT OF OFFICERS. The board will appoint the officers required by section 7.1A at the annual meeting of the board. The board may appoint

any other officers permitted by section 7.1B, or it may authorize the president or another officer to do so. The board may appoint officers at any board meeting by vote of a majority of the entire board.

7.4 TERM OF OFFICE. All officers will take office when they are appointed unless the board sets a later date. They will hold office only for so long as the board desires.

7.5 RESIGNATION OF OFFICERS. An officer may resign at any time by giving written notice to the Association. An officer's resignation takes effect when the notice of resignation is effective unless the notice sets a future effective date and the board accepts that future effective date. Resignation of an officer will not affect the Association's contract rights, if any, with the officer.

7.6 REMOVAL OF OFFICERS. The board may remove any officer, with or without cause, by vote of a majority of the directors at any regular meeting of the board or at any special meeting called for that purpose. Removal of an officer will not affect any contract rights of the officer.

7.7 VACANCIES. If any required officer resigns or dies, or if his or her office otherwise becomes vacant, then the board must appoint a replacement at once. A majority of the remaining directors may appoint a replacement even if there are not enough directors remaining to have a quorum. If an officer's resignation takes effect in the future and if the board accepts the future effective date, the board may appoint a replacement before the effective date if the board provides that the new officer does not take office until the effective date.

7.8 PRESIDENT. The president is the chief executive officer of the Association. The president has these powers and duties:

- ❖ The president supervises, directs and controls the business and affairs of the Association subject, however, to the control of the board.
- ❖ The president chairs all meetings of the Association and all meetings of the board.
- ❖ The president is a member of all committees.
- ❖ The president has the general powers and duties of management usually authorized for the office of president of a Hawaii corporation. This

includes, among others, the power to appoint committees from among the owners from time to time as the president alone decides are appropriate to assist in conducting the affairs of the Association.

- ❖ The president has any and all other powers and duties assigned to the president by the declaration or these bylaws, or by the board.

7.9 VICE PRESIDENT. If the president is absent or unable to act, or if that office is vacant, the vice president performs all the duties of the president. When doing so, the vice president has all the powers and duties of, and is subject to all the restrictions on, the president. The vice president also has any other powers and performs any other duties assigned to him or her from time to time by the president, the board, the declaration, or these bylaws.

A. OTHER TEMPORARY REPLACEMENT OF THE PRESIDENT. If the vice president is also absent or unable to act, or if that office is also vacant, the board must appoint another of its members to take the place of the president temporarily. The board must do so even if there are not enough directors remaining to have a quorum. The director who is so appointed and acting will also have all of the powers and duties of, and is subject to all the restrictions on, the president.

7.10 SECRETARY.

The secretary has these powers and duties:

- ❖ The secretary must keep the minutes of all meetings of the Association, the board and all committees. For this purpose, the secretary is a member of all committees.
- ❖ The secretary must give all required notices of those meetings.
- ❖ The secretary must keep a list of (i) all owners, and (ii) anyone who is holding, insuring, or guaranteeing a mortgage and who has requested copies of all notices or other Association information and whose name is furnished as required by these bylaws or the declaration.
- ❖ The secretary must keep all other books, records and documents of the Association except for financial records kept by the treasurer.

- ❖ The secretary has the general powers and duties of management usually authorized for the office of secretary of a Hawaii corporation.
- ❖ The secretary has any other powers and performs any other duties assigned to him or her from time to time by the president, the board, the declaration, or these bylaws.

The duties of the secretary may be delegated to and performed by the plan manager or any other person appointed for that purpose. If the secretary is absent or unable to act at any meeting, or if the office is vacant, another person must be appointed to act as the secretary at least temporarily.

7.11 TREASURER.

The treasurer is the chief financial officer of the Association. The treasurer has these powers and duties:

- ❖ The treasurer must keep full and accurate financial and books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.
- ❖ The treasurer must deposit all money and other valuables in the name and to the credit of the Association with the depositories (such as a bank) chosen by the board.
- ❖ The treasurer must pay out the funds of the Association as directed by the board.
- ❖ The treasurer must prepare all financial statements and reports requested by the president or the board.
- ❖ The treasurer has the general powers and duties of management usually authorized for the office of treasurer or chief financial officer of a Hawaii corporation.
- ❖ The treasurer has any other powers and performs any other duties assigned to him or her by the president, the board, the declaration, or these bylaws.

The duties of the treasurer may be delegated to and performed by the plan manager, accountants, or other suitable persons providing professional financial

services. If the treasurer is unable to act or if the office is vacant, another person must be appointed to act as the treasurer at least temporarily.

8. INDEMNIFICATION

8.1 DEFINITIONS. The following words have these special meanings in this section 8:

A. “*Agent*” means any person who is or was a director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise. An Agent is considered to be serving an employee benefit plan at the corporation’s request if the Agent’s duties to the Association also impose duties on, or otherwise involve services by, the Agent to the employee benefit plan or to participants in or beneficiaries of the employee benefit plan. “Agent” also includes, unless the context requires otherwise, the estate or personal representative of an “Agent.”

B. “*Proceeding*” means any threatened, pending, or completed action or proceeding (such as a lawsuit), whether formal or informal. It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding.

C. “*Expenses*” includes, but is not limited to, attorneys’ fees and costs.

D. “*Liability*” means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

8.2 THE ASSOCIATION WILL INDEMNIFY (REIMBURSE) ITS AGENTS. To the extent allowed by law, the Association must indemnify (which means that it will reimburse) each of its Agents with respect to any liability incurred by the Agent in any proceeding. The Hawaii Nonprofit Corporations Act defines how, when, and under what conditions the Association can make those reimbursements. These bylaws authorize and require the Association to make those reimbursements, and to make advances for expenses, to the full extent allowed by law. If available, the Association must buy insurance to cover the reimbursements. The Association may, but need not, buy insurance that provides for payment of

liabilities of an Agent in circumstances where the Association does not have the power to indemnify the Agent for those liabilities.

9. ASSOCIATION RECORDS

9.1 THE ASSOCIATION’S BOOKS AND RECORDS.

A. **WHAT THE ASSOCIATION MUST KEEP.** The Association must keep (i) correct and complete books and records of account of the Association; (ii) minutes of the meetings and all other proceedings of the Association, the board, and any committee; (iii) all notices, objections, waivers, consents, dissents, and other matters related to these meetings; (iv) the original or a copy of all of the plan documents; and (v) anything else required by law. The Association will keep at its principal office those records required to be kept there by law. The board may keep all other books and records of the Association at the principal place of business of the Association or any other place or places selected by the board.

B. **MEMBER’S RIGHT TO INSPECT.** The members may inspect the plan documents at any reasonable time during normal hours. Members may also buy copies of the plan documents at a reasonable cost. Subject to the requirements of the Hawaii Nonprofit Corporations Act, and except as provided in section 9.2, the books and records of account, minutes, papers and other books and records of the Association are open to inspection for any proper purpose at the written request of any member. The inspection may be made at any reasonable time during normal business hours. The inspection may be made in person or by the member’s agent or attorney. Subject to the requirements of the Hawaii Nonprofit Corporations Act, and except as provided in section 9.2, the right to inspect includes the right to copy and make extracts, at the member’s expense. Subject to the requirements of the Hawaii Nonprofit Corporations Act, and except as provided in section 9.2, upon receipt of an authenticated request and any fee charged by the board to pay copying costs, the plan manager will copy and send to the owner a copy of any and all records requested. The board may make reasonable rules: (i) requiring notice to be given to the plan manager by the member desiring to make the inspection or to get copies; (ii) limiting the hours and days of the week for inspection; and (iii) setting the costs of making copies of documents requested by a member.

C. DIRECTOR'S RIGHT TO INSPECT. Subject to the requirements of the Hawaii Nonprofit Corporations Act, and except as provided in Section 9.2, each director has the absolute right at any reasonable time to inspect the books and records of account, minutes, papers and other books, records, and documents of the Association and the physical properties owned or controlled by the Association.

9.2 MEMBERSHIP LIST. The Association must at all times keep a current list of the names and addresses of all members of the Association and the number of votes that each member is entitled to cast. This list is called the "membership list."

A. The Association will furnish a copy of the membership list within a reasonable time after any member asks for it in writing, pays a reasonable fee (to be determined by the board), and complies with any other requirements of the declaration or these bylaws. The declaration contains detailed requirements that must be satisfied before the Association is allowed (i) to provide access to or a copy of the membership list, or any other documents from which a membership list may be compiled, or (ii) to let anyone inspect or make copies or extracts of the membership list or any other documents from which a membership list may be compiled. In some cases, the declaration prohibits the Association from furnishing the membership list or provides an alternative means for a member to mail information to other members. Those provisions of the declaration are made a part of these bylaws, just as if they were repeated here.

B. The board may impose other reasonable conditions intended to assure the confidentiality of the membership list and that the membership list is not used (i) for commercial purposes by anyone other than the developer or companies related to the developer, (ii) in any way that violates state or federal law, or (iii) for any improper purpose.

C. The Association will furnish a copy of the membership list to the developer promptly after the developer asks for it. The requirements of the declaration restricting the release of the membership list to the members do not apply to the developer or companies related to the developer.

9.3 CERTIFICATE OF MEMBERSHIP. The board may, but is not obligated to, issue to the members certificates of membership in the Association in any form that the board chooses.

10. MISCELLANEOUS

10.1 WHO CAN SIGN CHECKS AND SO ON. All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the board. If no resolution is adopted, they must be signed by any two of the president, vice president, secretary or treasurer. The same rule applies to signing and delivering other documents authorized by the plan documents or by action of the board or the Association.

10.2 WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS. Except as otherwise provided in these bylaws, the board may authorize any officer or officers, or agent or agents, to enter into any contract or sign any document for the Association. This authority may be general or it may be limited to specific things. Unless authorized by the board, no officer, agent or employee has any power or authority:

- ❖ To bind the Association,
- ❖ To pledge the Association's credit, or
- ❖ To make the Association liable for any purpose or for any amount.

10.3 AMENDMENTS.

A. THE ASSOCIATION'S RIGHTS. These bylaws may be "amended" (changed) from time to time if (1) the amendment is approved by the vote of a majority of the owners voting, and (2) if the developer still exists, the developer gives its written consent and signs the amendment. There is an exception to this rule: Some parts of the plan documents require the approval of a majority of the owners or more than a majority of the owners before taking certain actions (a "supermajority"). Such a provision cannot be amended unless (1) the number of votes cast by owners voting in favor of that amendment equals or exceeds the number of votes required to take action under that provision (i.e., a majority or a super-majority), and (2) if the developer still exists, the developer gives its written consent and signs the amendment. No amendment made under this subsection 10.3A will take effect until it is signed by any two officers of the Association (and the developer if the developer still exists) and recorded.

B. Board's Rights.

1) The board may revise these bylaws without the vote of the owners but only when expressly permitted by the declaration, the articles, or these bylaws. For example, see section 15.5B.1) of the declaration.

2) The board may amend these bylaws as required to conform to the provisions of the Hawaii Nonprofit Corporations Act, or any other law or regulation adopted by a governmental authority and that applies to the Association or to the plan.

The board may do the things listed in this section 10.3B if the board adopts a resolution authorizing it. No vote or other consent of the Association, the owners, their lenders, or anyone else is necessary despite the requirements of section 10.3A. If the developer still exists, however, then the amendment will not be effective unless the developer gives its written consent and signs the amendment. No amendment made under this section 10.3B will take effect until it is signed by two officers of the Association (and the developer if the developer still exists) and recorded.

C. RESTATEMENT OF BYLAWS. No matter what else the plan documents say, the board and the developer each have the right to restate these bylaws and all amendments to them. Either may do so without the consent of the other and without the vote or other consent of any owner, lender, or anyone else. No restatement of these bylaws will take effect until it is signed by the developer or by two officers of the Association and recorded.

D. THE DEVELOPER'S RIGHTS.

1) NATURE OF THE DEVELOPER'S RIGHTS. Without the consent or approval of any person (including for example the Association, the board, any owner and anyone having a contract to buy a fractional ownership interest), the developer may change these bylaws at any time and from time to time:

(a) And for any purpose before any first deed or agreement of sale is recorded;

(b) To comply with the laws and regulations of the State of Hawaii;

(c) To comply with the laws and regulations of any place (for example, the State of Maine) or the requirements of any government

agency (such as the California Department of Real Estate) in connection with the registration of the condominium or the plan to permit the sale of fractional ownership interests there;

(d) To satisfy requests for changes made to the developer by any commercial lender loaning money to the developer or to individual owners, by any investor in mortgages initially made in favor of the developer, or by any title company licensed to do business in the State of Hawaii;

(e) To facilitate the operation and management of the plan or the sale of the fractional ownership interests, or to facilitate participation in a given exchange program;

(f) In any declaration of annexation adding new unit types or creating new kinds of fractional ownership interests as permitted by the declaration;

(g) In connection with any amendment to the declaration establishing a new unit type; or

(h) To correct any errors or mistakes in any of the plan documents.

2) EFFECT. An amendment made by the developer under this section 10.3D takes effect when it is signed by the developer and recorded. It does not have to be signed by anyone else.

10.4 CAPTIONS; TABLE OF CONTENTS. The developer has tried to divide these bylaws into useful sections and to provide captions describing each section. The developer has also included a table of contents. The captions and table of contents are here only for convenience and as a matter of reference. They do not define, limit or describe the scope or intent of the provisions of these bylaws. Members must read with care each and every part of these bylaws, not just the captions or table of contents.

10.5 PRONOUNS. Pronouns (for example, "his" or "her") used in the plan documents include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

10.6 ENFORCEMENT. A violation of any part of these bylaws by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of these bylaws. Any failure

to enforce any provision of these bylaws does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked or ignored, and no matter how much time has passed following a violation.

10.7 INTERPRETATION. These bylaws should be liberally interpreted to carry out the purpose of creating a uniform plan for sharing the ownership, expenses and use of the vacation property under which the Association carries out and pays for the

operation and maintenance of the vacation property and the plan.

10.8 EFFECT OF INVALID PROVISIONS. The provisions of these bylaws are "severable." This means that if any part of them is not legal or valid, that part can be ignored. But the rest of these bylaws will remain in effect and everyone must obey them.

END OF BYLAWS

The Beach Villas at Kahalu'u Fractional Ownership Plan

Association Rules

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The following rules and regulations have been established for the benefit of all owners and occupants of the vacation unit located in The Beach Villas at Kahalu'u condominium project.

These rules and regulations supplement The Beach Villas at Kahalu'u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership (the "declaration"), but do not change the obligations of an owner under the declaration. If there is ever a conflict between the declaration and these rules and regulations, the declaration will control.

The vacation unit is located within The Beach Villas at Kahalu'u condominium project. These rules and regulations are in addition to the condominium rules. You must also abide by the condominium documents, which include the condominium declaration, condominium bylaws and condominium rules. If there is ever a conflict between these rules and the condominium documents, the condominium documents will control.

RULE 1 DEFINITIONS

Terms defined in the declaration have the same meaning here in these rules. To help you in reading these rules, some definitions from the declaration are repeated or paraphrased below. Some definitions not contained in the declaration are also included.

1.1 "Association" means The Beach Villas at Kahalu'u Fractional Owners Association. It is a Hawaii non-profit corporation. All owners, and only owners, are its members.

1.2 "Condominium" means The Beach Villas at Kahalu'u condominium project established by the condominium declaration.

1.3 "Condominium association" means the Association of Apartment Owners of the Beach Villas at Kahalu'u.

1.4 "Condominium documents" means condominium declaration, condominium bylaws, condominium rules and any other rules or regulations adopted by the condominium association.

1.5 "Owner" and "you" means an owner of a fractional ownership interest, as "owner" is defined in the declaration; provided that if you are using the vacation unit through an exchange program, then during your stay you will be treated as if you were an owner for many purposes.

1.6 "Occupant" means an owner, exchange user, or other person who has the right to occupy the vacation unit. The guest of any of those persons is also an "occupant."

1.7 "Guest" means the family, visitors, renters, employees, servants, tenants, "*licensees*" (persons permitted in the vacation unit) and "*invitees*" (persons invited in) of an owner, an exchange user, or another person who has the right to occupy the vacation unit. An exchange user is not considered a "guest" of the owner whose vacation period he or she uses.

1.8 "Use Period" means one of the six time periods designated as a "use period" in the declaration.

1.9 "Service Period" means

A. The time between check-out time of one person's vacation period and check-in time for the next person's vacation period (a "*minor service period*").

B. The time period designated in the declaration as a major service period.

1.10 "Vacation Period" means the use period during which an owner has the right to use the vacation unit.

**RULE 2
VIOLATIONS**

If you fail to abide by these association rules or the other plan documents, (i) you may be fined or have to pay other money penalties, and (ii) your rights and privileges as an owner, including your rights to use the vacation unit during your vacation period, may be suspended.

**RULE 3
CHECK-IN AND CHECK-OUT TIMES; SERVICE PERIOD**

“Check-in time” will be 5:00 p.m. and “check-out time” will be 9:00 a.m. The time between use periods is reserved exclusively as a service period for cleaning, repairing and maintaining the vacation unit.

**RULE 4
WHAT HAPPENS IF SOMEONE FAILS TO LEAVE**

If you or your guests fail to leave the vacation unit at the end of your vacation period, this may result in severe consequences, as described in the declaration. If you are using the vacation unit pursuant to an exchange through an exchange company, you will be treated as if you were the owner for the purposes of this rule, and the severe consequences set forth in the declaration will apply to you.

**RULE 5
CARE OF INTERIOR FURNISHINGS AND EQUIPMENT**

When you or your guests use the vacation unit, you are responsible for any damage, other than normal wear and tear, done during your vacation period to the vacation unit and the common furnishings available for your use. Any unpaid charges for damage or loss will be added to your bill at check-out time or will be billed directly to you. If you don't pay the charges, then (i) the Association may suspend your use privileges until you pay the charge, and (ii) the Association may fine you. You should report any damage or deterioration of the vacation unit or the common furnishings to the plan manager as soon as possible after you check in. All occupants must remove their personal property from the vacation unit by check-out time. Anything left in the vacation unit after check-out time will be treated as abandoned. The plan manager may throw away, sell, or give away any abandoned things.

**RULE 6
MODIFICATIONS**

You may not make any structural changes, nor reorganize or remove furniture, wall hangings, or floor coverings, nor redecorate the vacation unit in any way.

**RULE 7
HOUSEKEEPING SERVICE**

The plan manager provides housekeeping service during the minor service periods to assure that the vacation unit is clean and neat when you arrive. The board may also decide to provide housekeeping services at other regular intervals in order to maintain the vacation unit and its furnishings. Additional housekeeping service may be available to you for an extra charge. You also will be charged for additional housekeeping service required by reason of your (or your guests') use and occupancy of the vacation unit. Charges for housekeeping service are due and must be paid when you check out.

RULE 8
INVENTORY OF INTERIOR FURNISHINGS AND EQUIPMENT

When you check in, you should conduct a complete inventory of the furnishings and equipment placed in the vacation unit. You should report any missing or damaged items or common furnishings to the plan manager as soon as possible after you check in; otherwise you may be charged for the damaged or missing items. After you have checked out, the plan manager shall inspect the vacation unit and conduct a complete inventory of the furnishings and equipment. If the plan manager finds that there are damaged or missing items, you will be charged for these items.

RULE 9
PASS KEY

The plan manager has a pass key to the vacation unit. In an emergency, the plan manager or its employees may enter the vacation unit. If that happens, the plan manager will tell you, as soon as reasonably possible, why he entered the vacation unit. The plan manager may also enter the vacation unit to conduct routine maintenance and repair. In such a case, you will be given advance notice. Finally, if the board decides to provide periodic housekeeping services during your vacation period, the housekeepers will be allowed to enter the vacation unit in order to perform their duties.

RULE 10
SAFETY AND HEALTH AND OTHER RULES

10.1 Noise. You must be extremely careful not to make any noise that may unreasonably disturb the neighbors. This includes, among other things, noise from the use of musical instruments, hi-fi equipment, or late-evening entertaining.

10.2 Pets. No animals may be brought into or onto the condominium or the vacation unit except for specially trained animals and other animals allowed by law. If you have a disability requiring any special consideration, please notify the plan manager when you check in so that reasonable accommodations can be made for you.

10.3 Lawful Use. You must not use the vacation unit or common furnishings for any immoral, improper, offensive or unlawful use. You must obey all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the vacation unit or common furnishings.

10.4 Trash. You must not throw, place, or keep any refuse, garbage, or trash of any kind in or on the vacation unit other than in the trash disposal facilities.

10.5 Insurance. You must not do anything that may overload or impair the floors, walls or roof of the vacation unit, or that may cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance on the vacation unit maintained by or for the Association.

10.6 Smoking. Smoking is prohibited inside the vacation unit. You may smoke on the lanai of the vacation unit if the door between the lanai and the interior of the vacation unit is closed. Owners and occupants who violate this rule are subject to additional cleaning charges as determined by the plan manager or the board. These charges will include at a minimum the cost of cleaning the carpets, dry cleaning the draperies, and any fee charged by the plan manager for arranging additional cleaning services.

10.7 Signs, Etc. You cannot post any advertisement, bill, poster, or other sign on or in the vacation unit or on any part of the common furnishings.

RULE 11 STORAGE

The plan manager is not responsible for any belongings left by you or your guest at the end of your vacation period. Neither you nor your guests may keep personal property on the premises (except during your vacation period) unless the plan manager designates specific areas (storage lockers, for example) for such purposes. Owners who store things in the storage lockers do so at their own risk. The Association will not be responsible for theft or damage that is not covered by insurance. The insurance deductibles that apply to any theft or damage to items stored in the storage locker must be allocated among the owners in proportion to their share of the total loss or damage.

RULE 12 CONTROL OF CHILDREN

Parents are responsible for the conduct of their children. Do not allow your children to play in any part of the vacation unit or any part of the condominium designated as "off limits" for child play by the Association or the condominium association. "Children" means anyone under the age of majority.

RULE 13 MAXIMUM OCCUPANCY

The maximum allowable occupancy depends on the number of bedrooms in the vacation unit. For a two-bedroom vacation unit the maximum allowable occupancy is four (4) persons. If county law or the condominium documents set a lower limit, that limit will apply. The maximum overnight occupancy limits may also be lower for exchange purposes. Check your exchange materials for the precise exchange occupancies.

RULE 14 GUESTS AND RENTERS

Owners may lend or rent their vacation periods to others and may invite guests to stay with them during their vacation period, subject to these rules:

14.1 Notice. The plan manager will not let anyone into the vacation unit without written permission from the owner who has the right to use it at that time. If you want to let someone else use or rent your vacation period, you must inform the Association in writing at least two weeks in advance of the day when they will check in. You must provide the name and address of each of your guests and renters.

14.2 Check-In. When they check in, your guests and renters will be required to show proof of identification, sign a registration card, and provide a credit card imprint. Guests and renters under twenty-one (21) years of age cannot occupy the vacation unit unless accompanied by you, a guest, or a renter who is twenty-one (21) years of age or older. The plan manager may charge a fee of \$25 for providing check-in and check-out services to your guests or renters. The plan manager may increase the amount of this fee if the board approves the increase.

14.3 Owner's Financial Responsibility. An owner is responsible for any charges incurred by his or her guests or renters. The owner is also responsible to pay for any damage (other than normal wear and tear) caused by his or her guests or renters, and any fees charged by the plan manager for arranging for the repair of any such damage. For these reasons, it is incumbent on the owner to charge a substantial damage deposit.

RULE 15 EXCHANGE USERS

Owners may exchange their vacation periods through an exchange program at their own cost and risk, subject to these rules:

15.1 Notice. The plan manager will not let anyone into the vacation unit without written permission from the owner who has the right to use it at that time. If you want to exchange your vacation period, you must be sure that the exchange company informs the plan manager in writing at least two weeks in advance of the day when the exchange user will check in. The exchange company must provide the name and address of each of exchange user.

15.2 Check-In. When they check in, exchange users will be required to show proof of identification, sign a registration card, and provide a credit card imprint. Exchange users under twenty-one (21) years of age cannot occupy the vacation unit unless accompanied by an exchange user who is twenty-one (21) years of age or older. The plan manager may charge a fee of \$25 for providing check-in and check-out services to exchange users. The plan manager may increase the amount of this fee if the board approves the increase.

RULE 16 HOW THESE ASSOCIATION RULES MAY BE CHANGED

16.1 The Board May Change These Rules. The board of directors of the Association may revise these rules from time to time at any meeting of the board.

16.2 The Association May Change These Rules. At any meeting of the Association, a majority of the owners may change the association rules so long as the notice of meeting stated that the change would be considered at the meeting.

16.3 The Developer May Change These Rules. The developer may change these rules in any of the circumstances described in section 16.1 D. of the declaration. The developer must give a copy of the revised rules to the board.

16.4 Notice of Changes in These Rules. The board must give notice to the owners of any change in the association rules. The board may give this notice by mailing it to the owners or by including it in a newsletter, or by email. It may also give this notice in any other way that is likely to be effective to give notice to the owners.

END OF RULES

EXHIBIT "E"

Unit Nos. 2-101, 2-301 and 2-303

Use Period No. 1	January 30 – March 31
Use Period No. 2	March 31 – May 30
Use Period No. 3	June 4 – August 3
Use Period No. 4	August 3 – October 2
Use Period No. 5	October 2 – December 1
Use Period No. 6	December 1 – January 30
Major Service Period	May 30 – June 4

Unit No. 2-201, 2-202 and 2-203

Use Period No. 1	January 30 – March 31
Use Period No. 2	March 31 – May 30
Use Period No. 3	May 30 – July 29
Use Period No. 4	July 29 – September 27
Use Period No. 5	October 2 – December 1
Use Period No. 6	December 1 – January 30
Major Service Period	September 27 – October 2

LIMITED SUBSIDY AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 20____, by and between THE BEACH VILLAS AT KAHALU’U FRACTIONAL OWNERS ASSOCIATION, a Hawaii non-profit corporation (the "Association"), and KAHALU’U BEACH CLUB LLC, a Hawaii limited liability company (the "Developer").

BACKGROUND

A. The Developer is the developer of The Beach Villas at Kahalu’u Fractional Ownership Plan (the “Plan”).

B. The Plan is governed by certain legal documents, called the “Plan Documents”, as follows:

- The Beach Villas at Kahalu’u Declaration of Covenants, Conditions, Easements and Restrictions for Fractional Ownership, dated _____, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-_____ (herein with any amendments called the “Declaration”).
- The Articles of Incorporation of the Association (herein with any amendments called the “Articles”).
- The Bylaws of the Association (herein with any amendments called the “Bylaws”).
- Any rules and regulations adopted by the Developer or the Association pursuant to the Declaration (herein with any amendments called the “Association Rules”).

Except as otherwise expressly provided in this Agreement, terms defined in the Plan Documents have the same meaning in this Agreement.

C. The Plan Documents provide a plan for sharing the ownership and use of certain condominium apartments in the The Beach Villas at Kahalu’u condominium project, their furnishings, and other property (the “Vacation Property”), and for sharing the costs and expenses of (i) owning, maintaining, and operating the Vacation Property, and (ii) operating the Plan and the Association.

D. Under the Plan Documents, each Owner of a Fractional Ownership Interest must pay a share of the Plan Expenses.

E. The Developer must pay the share of Plan Expenses for each Fractional Ownership Interest while the Developer is the Owner of it. Instead of doing so, however, the Developer may enter into a “Subsidy Contract” with the Association in which the Developer

generally agrees to pay to the Association the difference between the actual expenses incurred by the Association and the Assessments collected from the other Owners.

F. This Agreement is a Subsidy Contract as that term is defined in the Plan Documents. It is intended to set forth in greater detail the manner and extent to which the Developer will be responsible to pay to the Association the difference between the actual expenses incurred by the Association and the Assessments collected from the other Owners.

G. The Developer also wishes to limit or cap the amount of the annual Assessments that other Owners must pay. The Developer will do this by agreeing to pay certain amounts in excess of the cap. This Agreement is intended to describe the terms and conditions under which the Developer will do so and how the Developer can elect to change or eliminate this "buy-down" subsidy. Accounting pursuant to this agreement shall be done periodically on an accrual basis.

TERMS AND CONDITIONS

1. Additional Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings:

1.1 "Subsidy Amount" means, for any given Fiscal Year, the difference between the Actual Costs and the Assessments Collected.

1.2 "Actual Costs" means, for any given Fiscal Year, the total amount of the Plan Expenses actually incurred and that must be paid by the Association during that Fiscal Year. For purposes of this Agreement:

A. Reserve Expenses will be included in the Actual Costs for that Fiscal Year; and

B. Actual Costs will not include the amount of any Special Assessments approved by the Board and, if necessary, the Owners, for capital expenditures, insurance policy deductibles, underinsured losses, or uninsured losses. Actual Costs also will not include any increase in the Plan Expenses resulting from (i) any new category of imposition that comes into effect after the date of this Agreement which is levied or assessed by any local, county, state or federal government, no matter how characterized, or (ii) any increase in the real property taxes and/or transient accommodation taxes.

1.3 "Assessments Collected" means, for any given Fiscal Year, the cumulative total amount of (i) all Regular Assessments paid to the Association by Owners other than the Developer, and (ii) all other amounts paid to the Association by anyone other than the Developer.

1.4 "Developer Buy-Down Amount" means, for any given Fiscal Year, the total amount necessary to reduce the Regular Assessment for each Fractional Ownership Interest owned by anyone other than the Developer to the amount shown on Exhibit "A". Unless Exhibit "A" says otherwise, however, the Buy-Down Amount will not include (and the Developer will

not be required to pay) any portion of the Regular Assessment in excess of the amounts shown on Exhibit "A" to the extent that it results from (i) any new category of imposition that comes into effect after the date of this Agreement which is levied or assessed by any local, county, state or federal government, no matter how characterized, or (ii) any increase in the real property taxes and/or transient accommodation taxes. If this happens, then Owners will have to pay the amount shown in Exhibit "A" plus any additional amount required to pay charges that results from the increase in real property taxes, transient accommodation taxes or any new category of imposition.

1.5 "Reserve Expenses" means those amounts which, under the Association's Budget for any given Fiscal Year, are to be deposited in the Association's Reserve Accounts in that Fiscal Year. Notwithstanding the foregoing, Reserve Expenses shall not include any expense set forth in the Budget which is not actually incurred by Association. For example, if the Plan at the beginning of a Fiscal Year, includes 6 Vacation Units, but only 2 of those Vacation Units are furnished with Common Furnishings on the Starting Date, Reserve Expenses would include reserves for replacement of only the Common Furnishings within the 2 Vacation Units which accrue between the Starting Date and the end of such Fiscal Year, and not within the remaining unfurnished 4 Vacation Units, notwithstanding the provision in the Budget for reserves for Common Furnishings within all 6 Vacation Units. In the foregoing example, Reserve Expenses would include reserves for the entire Fiscal Year for all other depreciable items which are subject to maintenance and replacement by the Association.

1.6 "Fiscal Year" means a Fiscal Year as that term is defined in the Plan Documents; provided that if this Agreement terminates prior to the end of a full Fiscal Year, then "Fiscal Year" shall mean the period from the beginning of that Fiscal Year until the date of termination of this Agreement, pro-rated daily.

2. Payment by Developer.

2.1 Payment of Subsidy Amount. The Developer agrees to pay the Subsidy Amount to the Association upon the following terms and conditions:

A. The Developer shall make the first payment of the Subsidy Amount (excluding any portion of the Subsidy Amount for Reserve Expenses) within forty-five (45) days after the end of the calendar quarter during which the Starting Date occurs. Such payment shall include the portion of the Subsidy Amount (other than Reserve Expenses) due with respect to the period between the Starting Date and the last day of the calendar quarter in which the Starting Date occurs.

B. The Developer shall make subsequent payments of the Subsidy Amount (excluding any portion of the Subsidy Amount for Reserve Expenses) within forty-five (45) days after the end of each calendar quarter. Each such payment shall include the portion of the Subsidy Amount (other than Reserve Expenses) due with respect to the preceding calendar quarter.

C. On or before the last business day of the Fiscal Year, the Developer shall pay the portion of the Subsidy Amount payable for Reserve Expenses. Nothing in this Agreement shall entitle the Developer to pay, for each Fractional Ownership Interest that it owns, less than a Fair Share of the Reserve Expenses for the applicable Fiscal Year; provided that if a Fractional Ownership Interest is sold during the Fiscal Year, the Fair Share of the Reserve Expenses for that Fractional Ownership Interest shall be charged to the purchaser unless the purchaser's sales contract provides otherwise.

D. Within forty-five (45) days after the end of each Fiscal Year, the Association shall reimburse Developer for the amount, if any, by which the total of all sums paid by Developer to the Association during that Fiscal Year as and for the Subsidy Amount exceeds the cumulative total amount of all Assessments which would otherwise have been payable by Developer for such Fiscal Year in the absence of this Agreement with respect to the Fractional Ownership Interests owned by Developer.

2.2 Developer Buy-Down Amount.

A. Developer Buy-Down Option. The Developer has the right, but no obligation, to reduce the amount of the Regular Assessment for Owners other than the Developer. The Developer may do so by paying the Developer Buy-Down Amount.

1. Buy-Down of Condominium Assessments. The Developer has the right to enter into subsidy contracts with the Condominium Association and/or with individual Owners of Fractional Ownership Interests. Any Developer buy-down made pursuant to the Developer's subsidy contract or other agreements with the Condominium Association, or directly with any individual Owners, may have the effect of reducing the Regular Assessment for Owners other than the Developer. In such event, the Developer Buy-Down Amount due under this Agreement shall be reduced by the total amount of any comparable Developer buy-down amount under any subsidy contract or similar agreement between the Developer and the Condominium Association and/or any individual Owner, it being the intent hereof that the Developer shall not be required to pay more than the net amount required to reduce the Regular Assessment for Owners other than the Developer to the amounts stated in Exhibit "A", regardless of whether such net amount is paid pursuant to this Agreement or any other subsidy contract or agreement.

B. Payment of Developer Buy-Down Amount. In the event that the Developer determines to buy down the Regular Assessment for Owners other than the Developer, the Developer shall pay the Developer Buy-Down Amount to the Association upon the following terms and conditions:

1. The Developer shall make the first payment of the Developer Buy-Down Amount (excluding any portion of the Developer Buy-Down Amount for Reserve Expenses) within forty-five (45) days after the end of the calendar month in which the Starting Date occurs. Such payment shall include the portion of the Developer Buy-Down Amount (other than Reserve Expenses) due with respect to the period between the Starting Date and the last day of the calendar month in which the Starting Date occurs.

2. The Developer shall make subsequent payments of the Developer Buy-Down Amount (excluding any portion of the Developer Buy-Down Amount for Reserve Expenses) within forty-five (45) days after the end of each succeeding calendar month. Such payment shall include the portion of the Developer Buy-Down Amount (other than Reserve Expenses) due with respect to the preceding calendar month.

3. On or before the last business day of the Fiscal Year, the Developer shall pay the portion of the Developer Buy-Down Amount payable for Reserve Expenses.

4. Subject to the requirements of Section 2.2.C., below, within forty-five (45) days after the earlier of (i) the end of the Fiscal Year in which this Agreement terminates, or (ii) the date when the Developer elects to discontinue payment of the Buy-Down Amount for new sales, the Association shall reimburse the Developer for the amount of any overpayment, if any. For purposes of this subparagraph, "overpayment" means the amount by which the total of all sums actually paid by Developer to the Association during that Fiscal Year as and for the Developer Buy-Down Amount exceeds the amounts required to reduce the Regular Assessment for each Fractional Ownership Interest owned by anyone other than the Developer to the amount shown on Exhibit "A" (subject, in the case of changes to the Developer Buy-Down Amount, to adjustments in accordance with the provisions of Section 2.2.C., below).

C. Changes to the Developer Buy-Down Amount. The Developer shall have the right to amend Exhibit "A" at any time and without the consent or joinder of the Association, any Owner, or anyone else. The Developer may do so by giving notice to the Association at least fourteen (14) days in advance of the date when the amendment will take effect. The notice must attach a copy of the revised Exhibit "A".

(1) Effect of a Change to Developer Buy-Down Amount. An amendment to Exhibit "A" shall take effect at the time stated in the amendment or in the notice transmitting the amendment to the Association; provided, however, that an amendment shall not relieve the Developer of its obligation to pay such portion of the Buy-Down Amount as may be necessary to maintain, until the end of the Fiscal Year, the current level of the Regular Assessment of all persons (other than the Developer) who are Owners as of the date of the amendment.

For example, suppose that payment of the Developer Buy-Down Amount will reduce an Owner's Regular Assessment for 2009 from \$2,000 to \$1,600. If the Developer amends Exhibit "A" to eliminate the Developer Buy-Down Amount, then:

- The Developer shall continue to be obligated to pay such portion of the Developer Buy-Down Amount as shall be necessary to reduce that Owner's Regular Assessment to \$1,600 for the year 2009. However the Developer would have no obligation to make any Developer Buy-Down Payment as to the year 2010.
- An Owner who purchases his or her Fractional Ownership Interest from the Developer after the Developer amends Exhibit "A" to eliminate the Developer Buy-Down Amount

would be required to pay the full Regular Assessment of \$2,000 for the year 2009. The Developer would have no obligation to pay any portion of such Owner's Regular Assessment.

As another example, suppose that payment of the Developer Buy-Down Amount at the beginning of the Fiscal Year reduced an existing Owner's Regular Assessment for 2009 from \$2,000 to \$1,800. Suppose that halfway through the Fiscal Year the Developer determines to change the Developer Buy-Down Amount as necessary to reduce a new Owner's Regular Assessment to \$1,600. If the Developer amends Exhibit "A" to do this, then:

- The Developer shall continue to be obligated to pay such portion of the Developer Buy-Down Amount as shall be necessary to reduce the existing Owner's Regular Assessment to \$1,800 for the year 2009. However the Developer would have no obligation to pay any additional Developer Buy-Down Amount needed to reduce the existing Owner's Regular Assessment to \$1,600.
- An Owner who purchases his or her Fractional Ownership Interest from the Developer after the Developer amends Exhibit "A" to change the Developer Buy-Down Amount would be required to pay only \$1,600 for the year 2009. The Developer would be obligated to pay any portion of such Owner's Regular Assessment as necessary to reduce the new Owner's Regular Assessment to \$1,600.

(2) Effect of Termination of This Agreement. Termination of this Agreement will be treated as an amendment to Exhibit "A" eliminating the Developer Buy-Down Payment. In such event, the provisions of Section 2.2C.(1) shall apply and the Developer's obligations to pay the Developer Buy-Down Amount with respect to existing Owners shall continue for the balance of the Fiscal Year in which this Agreement terminates.

3. Assignment. The Association hereby assigns to Developer each and every right of Association to pursue any of its remedies against a delinquent Owner (other than the Developer) whose delinquent Assessments or Personal Charges are paid by the Developer. To the extent not otherwise prohibited by law, the Association authorizes the Developer to employ and pay one or more collection agents in connection with the collection of delinquent Assessments and Personal Charges. The Association shall execute such further documentation as Developer shall reasonably request from time to time to perfect this assignment and/or to enforce such remedies as necessary or useful to recover the amount paid by the Developer plus collection agency fees and costs (to the extent not prohibited by law), legal fees and costs, and other costs of collection.

4. Term. The term of this Agreement shall commence on the Starting Date and shall terminate on the earlier to occur of (a) the date upon which Developer shall convey the last Fractional Ownership Interest it owns or (b) the date which is the last day of the Fiscal Year of the Association following the date upon which Developer elects, by written notice to the Association, to terminate this Agreement, provided that that Developer shall not terminate this Agreement until (i) the expiration of the term of its obligation to pay a part of the Assessment payable by an Owner other than the Developer, and (ii) if the Plan is registered in California, the

Developer has provided a bond, cash deposit, letter of credit, or other alternate assurance for payment of Assessments acceptable to the Commissioner of the California Department of Real Estate pursuant to Section 11241 of the California Vacation Ownership And Time Share Ownership Act of 2004 (as it may be amended from time to time) and any regulations adopted pursuant to Section 11241 of that Act. This means that the Developer may elect in any Fiscal Year, including the first year, to terminate this Agreement by giving prior written notice to the Association. Termination of this Agreement shall not prevent the Developer from requiring that the Association enter into a new Subsidy Contract pursuant to the terms of the Plan Documents.

5. Surety Bonds. If and only if the Plan is registered for sale in California, then the Developer shall furnish to the Association two surety bonds (each a "Bond") as follows:

A. Subsidy Bond. The Developer shall furnish a bond (the "Subsidy Bond") in an amount sufficient to provide for the Developer's payment of the Subsidy Amount. The Subsidy Bond shall secure the Developer's obligations to pay the Subsidy Amount.

B. Buy-Down Bond. In the event that the Developer elects to pay the Developer Buy-Down Amount, then the Developer shall furnish a bond (the "Buy-Down Bond") sufficient to provide for the Developer's payment of the Developer Buy-Down Amount. The Buy-Down Bond shall secure the Developer's obligations to pay the Developer Buy-Down Amount.

For example, suppose that payment of the Developer Buy-Down Amount will reduce the Owners' Regular Assessments for 2009 from \$2,000 to \$1,600. In such event, the amount of the Developer Buy-Down Bond would be \$400 ($\$2,000 - \$1,600 = \400) multiplied by the total number of Fractional Ownership Interests. (This example assumes, for the purpose of illustration only, that the Regular Assessment for all Fractional Ownership Interests is the same and that the Buy-Down Amount is identical for each Fractional Ownership Interest.)

C. Delivery of Bonds. The Developer and the Association agree that the Bonds shall be delivered to Old Republic Title & Escrow of Hawaii, Ltd., a Hawaii corporation, pursuant to the terms and provisions contained in escrow instructions (the "Instructions") in such form as the California Department of Real Estate shall approve in connection with the registration of the Plan in California.

6. Effect of Limited Subsidy Agreement Upon Developer's Assessment Obligations. Provided that the Developer is not in default in the performance of any of its obligations hereunder, the Developer shall not be required to pay to the Association the Assessments attributable to Fractional Ownership Interests owned by the Developer pursuant to the terms and provisions of the Plan Documents. In the event that the Developer shall default in the performance of any of its obligations hereunder and such default shall not have been cured within 30 days after notice of default is given to the Developer by the Association, (a) the Developer's obligations to pay to the Association the Regular Assessments attributable to the Fractional Ownership Interests owned by Developer shall resume, (b) Developer's default hereunder shall be deemed a default in the payment of Assessments under Declaration, which

default shall be deemed to have occurred on the date of expiration of the grace period set forth herein or any longer grace period allowed by the Board, and (c) the Association shall have the right to exercise each and all of the rights and remedies set forth herein and in the Declaration with respect to the non-payment of the Regular Assessments by the Developer as the Owner of Fractional Ownership Interests, and as provided under the Bonds; provided, however, that notwithstanding the Developer's failure to cure any default hereunder within the time period specified, the Developer shall have the right thereafter to cure such default, and upon so doing, the Developer may notify the Association of the Developer's intention thereafter to comply with the terms of this Agreement and, if necessary, to reinstate the Bonds, in which case all of the rights, duties and obligations of the Developer and the Association hereunder shall continue unabated and any Regular Assessments paid by the Developer shall be treated as having been paid with respect to Developer's obligations under this Agreement.

7. Miscellaneous.

7.1 Notices. Delivery of all notices described in this Agreement shall be made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices shall be deemed delivered, given and received: (a) the day of sending via same-day commercial delivery service; (b) the following business day after sending via overnight commercial delivery service; or (c) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as follows:

If to the Association:

The Beach Villas at Kahalu'u Fractional Owners Association
78-216 Makole'a Street, #32
Kailua-Kona, Hawaii 96740
Attn: President

If to the Developer:

Kahalu'u Beach Club LLC
78-216 Makole'a Street, #32
Kailua-Kona, Hawaii 96740
Attn: Managing Member

with a required copy to:

Charles E. Pear, Jr., Esq.
McCorrison Miller Mukai MacKinnon LLP
Five Waterfront Plaza
500 Ala Moana Blvd., Suite 400
Honolulu, Hawaii 96813

The addresses and addressees for the purpose of this paragraph may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is

received, the last address and addressee stated by notice, or as provided herein if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

7.2 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of such provision or of any other provisions hereof.

7.3 Merger. All understandings and agreements heretofore had between the parties respecting the subsidization contemplated by this Agreement are merged by this Agreement and the exhibits attached hereto, all of which fully and completely express the agreement of the parties. There are no agreements except as specifically set forth in this Agreement or to be set forth in the instruments or other documents delivered or to be delivered hereunder.

7.4 Amendments.

A. Except as provided in Sections 2.2C. and 7.1, above, no change in or addition to, or waiver or termination of this Agreement or any part thereof shall be valid unless in writing and signed by or on behalf of each of the parties hereto.

B. The parties agree to change this Agreement as requested by the Developer at any time and from time to time:

1. To comply with the laws and regulations of the State of Hawaii or any political subdivision thereof;

2. To comply with the laws and regulations of any other place (for example, the State of New York) or the requirements of any governmental agency (such as the California Department of Real Estate) in connection with the registration of the Condominium or the Plan to permit the sale of Fractional Ownership Interests there;

3. To satisfy the requests for change(s) made to the Developer by any commercial lender loaning money to the Developer or to individual Owners, by any investor in mortgages initially made in favor of the Developer, or by any title company licensed to do business in the State of Hawaii; or

4. To correct any error or mistake in this Agreement, as determined by the Developer.

7.5 Paragraph Headings. The paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement.

7.6 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and each of their respective successors and assigns.

7.7 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.

7.8 Delivery of Limited Subsidy Agreement and Instructions. The Developer shall furnish to the Association an executed copy of this Agreement and, if applicable, a copy of the Instructions along with a copy of the Subsidy Bond and, if applicable, the Buy-Down Bond no later than ten (10) days after the Starting Date.

7.9 Regulations and Laws. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any provision of this Agreement and any statute, law, ordinance, or regulation (whether now existing or adopted after the date hereof) contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provisions of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.

7.10 THE ASSOCIATION AND THE DEVELOPER WAIVE ANY RIGHT THEY MAY HAVE UNDER ANY APPLICABLE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT OR LEGAL ACTION WHICH MAY BE COMMENCED BY OR AGAINST THE OTHER CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT, OR PERFORMANCE OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT. In the event any such suit or legal action is commenced by either the Association or the Developer, the other party hereto agrees, consents, and submits to the personal jurisdiction of the Circuit Court of the Third Circuit of the State of Hawaii and the United States District Court for the District of Hawaii, with respect to such suit or legal action, and the Association and the Developer also consent and submit to and agree that venue in any such suit or legal action is proper in said Court and county. The Association and the Developer waive any and all personal rights under applicable law or in equity to object to the jurisdiction and venue provided for in this Section 7.10. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

7.11 Counterparts. This Agreement and the Instructions may be executed in counterparts, and all counterparts together shall be construed as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Limited Subsidy Agreement as of the date first above written.

“ASSOCIATION”

THE BEACH VILLAS AT KAHALU’U
OWNERS ASSOCIATION,
a Hawaii non-profit corporation

“DEVELOPER”

KAHALU’U BEACH CLUB LLC,
a Hawaii limited liability company

By: _____

Name: _____

Its _____

By: _____

Name: _____

Its _____

EXHIBIT "A"

REGULAR ASSESSMENTS

(Used to determine the Developer Buy-Down Amount)

[NOTE: All amounts are in U.S. Dollars]

UNIT TYPE	Every-Other-Year	Every-Year
One-Bedroom Unit	\$ _____	\$ _____
Two-Bedroom Unit	\$ _____	\$ _____
Three-Bedroom Unit	\$ _____	\$ _____

Valid through _____, 20__.

Exhibit 2

The Beach Villas at Kahalu'u

Fractional Ownership Plan

Budget for 2007 - 2008

	Unit No. 2-202	Unit Nos. 2-101, 2-201, 2-203, 2-301 and 2-303
<i>Condominium Association</i>		
<i>Maintenance Fees</i>	\$732	\$691
TOTAL	<u>\$732</u>	<u>\$691</u>
 <i>Fractional Ownership Plan Related Expenses</i>		
Electricity	\$175	\$165
Phone	\$0	\$0
Cable	\$42	\$40
Housekeeping	\$100	\$94
Maintenance & Repairs	\$65	\$61
Deep Cleaning	\$58	\$55
Association Expenses	\$21	\$20
Accounting & Billing	\$15	\$14
Pest Control	\$25	\$24
Management Office Expenses	\$75	\$71
Interior Reserves	\$298	\$281
Audit	\$100	\$94
Insurance (D&O, property and liability)	\$200	\$189
Plan Management Fee	\$250	\$236
TOTAL	<u>\$1,424</u>	<u>\$1,344</u>
 <i>Property Taxes</i>	 \$581	 \$548
TOTAL	<u>\$581</u>	<u>\$548</u>
 Total Estimated Regular Assessment for Fractional Ownership Plan**	 <u>\$2,737</u>	 <u>\$2,582</u>

** The total estimated regular assessment is the sum of the condominium association maintenance fees, fractional ownership plan related expenses and property taxes. These estimates are based on a 1/6th interest in the vacation unit and not a 1/12th interest in a vacation unit. If you own a 1/12th interest in a vacation unit, then the estimated maintenance fees would be one-half of the amount listed in this Exhibit.