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/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

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**THE KAPALUA BAY VACATION OWNERSHIP PROJECT  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**THE KAPALUA BAY VACATION OWNERSHIP PROJECT  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made this 9<sup>th</sup> day of June, 2006, by KAPALUA BAY, LLC, a Delaware limited liability company ("KB"), whose principal place of business and mailing address is 1209 Orange Street, Wilmington, Delaware 19801.

This is a vacation ownership project. This means that the right to use an apartment in the project circulates during each year from one person to another, with this pattern of use being repeated year after year, and that each person with fee simple interest also has a Club Interest in an apartment.

In this document, KB is called the "Developer" of The Kapalua Bay Vacation Ownership Project (the "Club"). KB is also the developer of, and owns and/or operates certain apartments, services, amenities and facilities in the Kapalua Bay Condominium ("Condominium") located in Kapalua, Island and County of Maui, State of Hawaii.

**CHAPTER 1**

**NATURE OF THE PROJECT**

1.1 **THE CONDOMINIUM.** Each owner of a vacation ownership interest ("Club Interest") will have the right to use an apartment within the Condominium which generally consists of separate dwelling units called "apartments," (hereinafter also referred to as "Club Units") and "Common Elements," which include the land and, except for the apartments themselves, all improvements on the land. Each Club Unit has an undivided percentage or "Common Interest" ownership in the Common Elements. The property in the Club includes Club Units located within the Condominium and any other apartments which are subsequently annexed to the Club. The Club Units presently in the Club are located within two (2) buildings in the Condominium which are known as Buildings 3 and 4. The developer of the Condominium (the "Condominium Developer") has the reserved right, but is not obligated to, annex additional land and/or to annex additional apartments to the Condominium, and the Developer has the reserved right, but is not obligated, to add apartments to the Club. The Condominium Developer shall not annex additional land and/or apartments to the Condominium if such annexation, or any improvements upon or within such annexed land or apartments, causes or results in liens upon the interests of any Owner (excluding interests of the Developer or the Condominium Developer) in their apartments and appurtenant rights in the Common Elements, and any annexation in contravention hereof shall be void and without effect. This prohibition and limitation is intended to bind the Condominium Developer, its successors and assigns in interest in the property which is subject to the Condominium Documents, and, to that end, is and shall be deemed to impose an equitable servitude upon, and to be a covenant running with the land as to, that property interest. Each Club Unit presently included or later annexed into the Club also is, or will be, governed by the documents which created and govern the Club. The following are certain terms pertaining to the Condominium:

A. **CONDOMINIUM DOCUMENTS.** The legal documents which created and govern the Condominium and the Condominium Association, including the following:

1. **CONDOMINIUM DECLARATION.** The instrument creating and governing the Condominium, called the "Declaration of Condominium Property Regime of Kapalua Bay Condominium," is dated April 18, 2006 and recorded at the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2006-083256 ("Condominium Declaration").

2. **CONDOMINIUM BY-LAWS.** The By-Laws of the Association of Apartment Owners of Kapalua Bay Condominium ("Condominium By-Laws") which govern the operation of the Association of Apartment Owners of the Condominium which has been recorded concurrently with the Condominium Declaration.

3. **CONDOMINIUM MAP.** A Condominium Map ("Condominium Map") consisting of a set of drawings showing, among other things, the layout, location, apartment numbers and dimensions of the

apartments in the Condominium, and the floor plans and elevations of the buildings in the Condominium. This Condominium Map is filed in the Bureau as Condominium Map No. 4222.

4. **CONDOMINIUM RULES.** Those certain rules and regulations ("Condominium Rules") adopted by the Condominium Association in accordance with the Condominium Declaration or Condominium By-Laws.

5. **CHANGES AND ADDITIONS.** All valid amendments, modifications and supplements to the Condominium Documents.

The Condominium Declaration and Condominium Map are more specifically described in Exhibit "A" attached hereto. The Developer shall have the right to subsequently amend Exhibit "A" to describe the Condominium Documents and any amendments thereto.

B. **CONDOMINIUM ASSOCIATION.** An association ("Condominium Association") of all of the owners of apartments in the Condominium created pursuant to, and acting as a group in accordance with, the Condominium Declaration and the Condominium By-Laws. The Condominium Association manages the Condominium.

C. **APARTMENT DEED.** The instrument ("Apartment Deed") which was or will be used originally to transfer a one-twelfth (1/12) fee simple interest in a Club Unit (and its Common Interest) from the Developer to the first owner of that Club Interest.

1.2 **THE CLUB AND THE PROGRAM.** The "Club" and the "Program" are defined below, but generally also involve different concepts, documents and entities, as follows:

A. **THE CLUB.** Is The Kapalua Bay Vacation Ownership Project, which is the common scheme and plan which governs the individuals and all other matters under and in accordance with this Declaration and the other Club Documents, and which have anything to do with the Club Units which become subject to this Declaration.

B. **CLUB DOCUMENTS.** The "Club Documents" which are the legal documents creating and governing the Club, and which consist of the following:

1. **CLUB DECLARATION.** This "The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions", together with lawful amendments hereto ("Declaration").

2. **CHARTER.** The Articles of Incorporation of The Kapalua Bay Vacation Owners Association ("Charter") which has been or will be filed with the Department of Commerce and Consumer Affairs of the State of Hawaii to create the Association, and which establishes the basic rules governing it and its membership. A copy of the Charter is attached hereto as Exhibit "B."

3. **BY-LAWS.** The By-Laws of The Kapalua Bay Vacation Owners Association ("By-Laws") adopted or to be adopted by the Association containing rules governing the operation of the Association. A copy of the By-Laws is attached hereto as Exhibit "C."

4. **RULES AND REGULATIONS.** The rules and regulations ("Rules and Regulations") for the Program adopted for the Association by the Developer or the Program Operator in accordance with Paragraph 4.12 hereof.

5. **CHANGES AND ADDITIONS.** All amendments, modifications and supplements to the Program Documents.

C. **VACATION OWNERSHIP PROGRAM.** The "Program" or "Membership Program," shall mean The Ritz-Carlton Club program benefits and services created and operated by the Program Manager as they

may exist from time to time, which Members participate in by virtue of ownership of a Club Interest or by other means established by the Program Manager, e.g., the benefits and services made available to associate Members. As a Member, an Owner receives a Club Interest in a Club Unit together with the right to occupy the Club Unit and to compete with other Members who own similar Club Interests in the Club or accommodations in a Member Club for so long as the Club remains a Member Club, in accordance with the provisions of the Program Documents.

D. **PROGRAM DOCUMENTS.** The "Program Documents" which are the legal documents creating and governing the Program, and which consist of the following:

1. **AFFILIATION AGREEMENT.** Means the agreement among the Developer, the Association, the Program Manager and the Management Company which provides the Members and Local Members with the right to make reservations for use of a Club Unit pursuant to an Allocation or otherwise make use of a Club Unit at the Club or, in the case of Members, at other Member Clubs, and to otherwise participate in the Membership Program benefits. The Affiliation Agreement is an appurtenance to the ownership of a Club Interest.

2. **RESERVATION PROCEDURES.** Means the procedures governing the reservation and use of Club Interests in the Club (as similar reservation procedures govern the same at other locations within the Membership Program), which rules and regulations have been promulgated, adopted and/or amended from time to time by the Program Manager.

E. **ASSOCIATION.** The Kapalua Bay Vacation Owners Association ("Association"), which consists of all the Owners of Club Interests in the Club acting as a group in accordance with the Club Documents and the Program Documents. Although the Association is not identical to the Condominium Association, each person who owns a Club Interest in a Club Unit is an "apartment owner" in the Condominium and, therefore, is also a member of the Condominium Association. The Association manages the Club through its:

1. **BOARD.** The Board of Directors ("Board") of the Association.

2. **MANAGEMENT COMPANY.** The "Management Company," which is an agent appointed by the Developer or the Board on behalf of the Association according to Paragraph 4.10 hereof to operate the Club.

F. **PROGRAM MANAGER.** Is the person who manages and operates the Membership Program.

G. **PROPERTY.** The "Property," which shall include:

1. **CLUB UNITS.** The "Club Units," which shall consist of the apartments identified in Exhibit "A" attached hereto, together with the Common Interests appurtenant thereto, in the Condominium. The term "Club Unit" shall also include each apartment and its Common Interest subsequently annexed to the Declaration and this Program by a declaration of annexation in accordance with Chapter 13 below.

2. **COMMON FURNISHINGS.** The "Common Furnishings," which shall include all items owned or rented by the Owners or by the Association for use by the Owners or for the operation or maintenance of the Program, including, without limitation, all furniture, appliances, equipment and furnishings (such as linens and kitchenware) in the Club Units. Each Owner shall, together with his Club Interest, receive an undivided one-twelfth (1/12) interest in the Common Furnishings in the Club Unit in which the Owner holds his Club Interest.

H. **CLUB INTERESTS.** "Club Interests," which shall include the following interests or rights which are indivisible and inseparable:

1. **OWNERSHIP SHARE.** As to each Club Interest, an "Ownership Share" in one of the Club Units. An Ownership Share has a one-twelfth (1/12) fractional undivided interest, as tenant in common, in a Club Unit.

2. **RIGHT TO USE.** The right to reserve and then use the Club Unit in accordance with the terms of the Program Documents; and

I. **OWNERS.** "Owners" of Club interests, including:

1. Each person who initially acquires a Club Interest from the Developer, and such Owner's heirs, devisees, successors, personal representatives and assigns; and

2. The Developer, with respect to each Club Interest it owns.

J. **MEMBER.** The Owner vested with legal title to a Club Interest or owns an accommodation at another Club and who, by virtue thereof and pursuant to the terms of the Program Documents, has membership privileges in the Membership Program on a mandatory basis.

K. **LOCAL MEMBER.** An Owner who owns a Club Interest at the Club or owns an accommodation at a Member Club but has not acquired exchange privileges under the Membership Program (Club System Exchange) as provided in the Program Documents.

L. **DEVELOPER.** KB as the "Developer" of the Club. KB is a limited liability company which was created and exists under Delaware law, and is authorized to do business in the State of Hawaii. Its business and post office address is 120 Kane Street, Kahului, Hawaii 96732. The term "Developer" shall also include the Developer's successors and permitted assigns.

1.3 **THE KAPALUA CLUB.** The Kapalua Club is a non-proprietary, non-voting resort membership club located within the Kapalua resort community. The facilities of The Kapalua Club, which include golf, tennis, beach and swimming facilities among others, are owned by Maui Land & Pineapple Company, a Hawaii corporation (the "Kapalua Club Owner"). The Kapalua Club is operated by Kapalua Land Company, Ltd., also a Hawaii corporation (the "Operator"). Various types of memberships are offered in The Kapalua Club. Memberships in The Kapalua Club are offered pursuant to, and are governed by, a Membership Plan, Rules and Regulations and Membership Agreements (as any of the same may be amended from time to time, collectively, the "Membership Documents"). With respect to each Owner of an interest in the Club Units, the Association will acquire and hold Ritz-Carlton Club, Kapalua Bay Memberships on behalf of such Owners, who will be designated users thereunder, subject to approval for membership privileges. These memberships will be paid for by the Developer. The Common Expenses payable by Owners of interests in the Club Units will include the dues and annual fees payable for the Ritz-Carlton Club, Kapalua Bay Memberships pursuant to the Membership Documents, which will be paid by the Association to The Kapalua Club. An Owner's obligation to pay Common Expenses shall be secured by a lien against an Owner's Club Interest in favor of the Association, subject, however, to the rights of any mortgagees as to said Club Interest. The Association shall, in the event of an Owner's failure to pay such Common Expenses, have all the remedies set forth in Article 10 below, including, without limitation, the right to enforce such lien by foreclosure. The covenants herein are intended to and shall run with the Club Interests in perpetuity. Pursuant to the Membership Documents, the Kapalua Club Owner and Operator, for themselves, and on behalf of their respective successors and assigns, have reserved the right to modify the Membership Documents, the right to modify, add to, alter or eliminate any of the facilities available for use by members of The Kapalua Club, as well as the right to terminate memberships subject to the terms of the Membership Documents, all as more particularly provided therein. The Kapalua Club Owner and/or Operator has the ability to establish from time to time, the dues, fees and charges payable by members in respect of membership in The Kapalua Club, except that with respect to Ritz-Carlton Club, Kapalua Bay Memberships, the dues cannot be increased by more than fifteen percent (15%) over the prior year's dues. Notwithstanding the foregoing, however, the dues for Ritz-Carlton Club, Kapalua Bay Memberships can be increased by more than fifteen percent (15%) in any year where new "Club Facilities" (as such terms are defined in the Membership Documents) are opened for member use or for the year following the year in which new Club Facilities are opened for member use, as determined in the discretion of the Kapalua Club Owner and/or Operator. Each Owner of a Club Unit entitled to enjoy membership privileges at The Kapalua Club, may enjoy such privileges subject to the terms of the Condominium Documents, Program Documents, Club Documents and the Membership Documents. In the event of any conflict between the Membership Documents and any of the other documents listed above, the Membership Documents shall control.

## CHAPTER 2

### CREATION OF THE CLUB

2.1 **DEVELOPER'S DECLARATION.** The Developer hereby establishes the Club and submits all of its estate, right, title and interest in the Club Units to the Club. The Club shall affect all interests in the Property of whatever nature. What is set forth in the Club Documents and the Program Documents shall be binding upon and shall inure to the benefit of the Property and all interests in the Club, the Developer, all Owners, the Association, and all other persons having or acquiring any estate, right, title or interest in the Property or the Club, and their respective heirs, devisees, personal representatives, successors and assigns.

2.2 **OWNER'S ACCEPTANCE.** The execution or acceptance by an Owner of an instrument transferring a Club Interest shall evidence such Owner's acceptance and agreement that the covenants, conditions, restrictions, agreements and other provisions stated in the Club Documents and the Program Documents shall govern and bind the Association, the Club and such Owner's Club Interest therein, and such Owner and his heirs, devisees, successors, personal representatives, assigns and all other persons claiming by, through or under said Owner.

All Owners shall be entitled to the rights, privileges and benefits granted by the Club Documents and Program Documents, including the right to enforce the provisions set forth in the Club Documents and Program Documents.

Each Owner shall comply with the Condominium Documents, the Club Documents and the Program Documents notwithstanding the means by which such person acquires his or her Club Interest. The Club Documents shall constitute equitable servitudes and liens, and covenants running with the land.

## CHAPTER 3

### CREATION OF CLUB INTERESTS AND RESERVATION AND USE RIGHTS

3.1 **CREATION OF CLUB INTERESTS.** Each Club Unit is hereby divided into twelve (12) separate Club Interests. Each Club Interest shall also be comprised of certain reservation and use rights described in Paragraph 3.7 below, and membership in the Association. The Club Units in the Club, together with the undivided interests in the Property, are owned in fee simple. Accordingly, a Club Interest will not terminate unless this Declaration terminates.

#### 3.2 NATURE OF OWNERSHIP SHARE OF A CLUB UNIT.

A. **OWNERSHIP SHARE.** Each Ownership Share, or Club Interest, is comprised of a one-twelfth (1/12) fractional undivided interest, as tenant in common, in a Club Unit.

B. **SPECIAL QUALITIES OF THE OWNERSHIP SHARE.** No person shall own a separate part of a Club Unit. Instead, each Owner of a Club Interest in a Club Unit will own a fraction of an entire Club Unit as a tenant in common with the other Owners of that Club Unit. No Owner, however, shall have or acquire any right in the undivided interests of the other Owners. Each Owner may transfer his or her undivided interest separately from the other Owners in the Club Unit. At death, this interest will be transferred according to the Owner's will or it will be transferred to the person who inherits from such Owner by law, if there is no will. The Owner's undivided interest will not automatically transfer to the other Owners who survive such Owner's death.

#### 3.3 ALLOCATION AND USE PERIODS.

A. **ALLOCATION.** Those periods of time allocated to each Club Interest Owner as designated in the Apartment Deed or other instrument of conveyance. Each one-twelfth (1/12<sup>th</sup>) interest shall carry with it an Allocation consisting of the rights to the use, occupancy and possession of a Club Unit for twenty-one (21) days in accordance with the Club Documents and Program Documents. Initially, each Allocation shall be identified

by a Club Interest number that identifies the specific Use Periods per year for each Club Interest as set forth on the Club Calendar. An Allocation may also be identified by a specific week number, a specific number of weeks, a type of week (whether fixed, floating, holiday or otherwise), by specific seasons or by any other method, formula or description established in the deed of conveyance, in the Club Documents or in the Program Documents. Allocated Use Periods may be fixed time periods, floating time periods that require the Owner to reserve use in accordance with procedures adopted by the Association, time periods that are related to holidays or time periods that rotate periodically on a predetermined calendar or schedule. Use of Allocated Use Periods may be subject to compliance with Reservation Procedures. The Developer reserves the right, for as long as it owns Club Units or Club Interests therein, to change the method of identification of each Allocation.

**B. RESERVED ALLOCATION.** The portion of the Allocation as established in the Reservation Procedures or other Program Documents, for which a Member has usage of the specific Club Unit identified in the Apartment Deed during a specific period or periods of time each year pursuant to the Club Calendar for a given location.

**C. USE PERIOD.** The days subject to use each year as Reserved Allocation or otherwise by each Member or Local Member in one or more Club Units as controlled by the Reservation Procedures.

**3.4 CHECK-IN/CHECK-OUT DAY AND TIME.** The "check-in/check-out day" for each Use Period in each Club Unit will be determined by the Program Manager. There may be only one check-in/check-out day for all Club Units, and the Program Manager may change the scheduled check-in/check-out day for any Club Unit during any Use Year in its sole discretion. There is no requirement that the check-in/check-out day be identical for each Club Unit or that any particular Club Unit have the identical check-in/check-out day each Use Year or during any Use Year, or that a mix of check-in/check-out days among all Club Units be identical for each Use Year or during any such Use Year. The precise "check-in and check-out times" for each day shall be stated in the Rules and Regulations.

**3.5 UNIT TYPES.** Each Unit in the Club is designated by a "Unit Type" classification as described in Exhibit "E."

**3.6 RESERVATION AND USE RIGHTS.**

**A. USE RIGHTS.** Club Interests shall have associated with them use rights which exist under one (1) of two (2) different Club Calendar use options. Subject to all the terms and conditions contained elsewhere in this Declaration and in the other Club Documents and the Program Documents, the ownership of each Club Interest shall entitle its owner to (i) the exclusive right during specified Use Periods during each Club Calendar Year (pursuant to the relevant Club Calendar) to use and occupy a Club Unit and the Common Furnishings therein, and (ii) the non-exclusive right to use and enjoy the Common Elements other than the Limited Common Element areas not appurtenant to such Club Unit, during the Owner's Use Periods, provided such Owner shall have confirmed such use and occupancy in accordance with the requirements and procedures set forth in the then-current Reservation Procedures. The Reserved Allocation for a Winter Interest shall consist of three (3) weeks of Allocation in the Season periods identified as "Winter," two (2) of which shall be consecutive. The Reserved Allocation for a Summer Interest shall consist of three (3) weeks of Allocation in the Season periods identified as "Summer," two (2) of which shall be consecutive. In Club Calendar option 1, the two (2) consecutive weeks of Reserved Allocation are fixed. In Club Calendar option 2, only the two (2) consecutive weeks of Reserved Allocation in the December "holiday" period are fixed; the remaining consecutive weeks of Reserved Allocation rotate each Club Calendar Year. The exact Use Periods of such Reserved Allocation shall be noted in the relevant Club Calendar but must be confirmed for usage by the Club Interest Owner within the confirmation period identified in the Reservation Procedures (or may, in the alternative, be subject to automatic confirmation by the Program Manager). The Program Manager has reserved the right to modify the number of Club Calendar use options that may exist in the Membership Program.

Other use rights may be contained in the Reservation Procedures. No use or occupancy by any Owner will be permitted if such Owner is delinquent in the payment of any amounts owed to the Association.

B. **RESERVATION PROCEDURES.** All Members and Local Members shall be entitled to confirm Reserved Allocation (if it is not automatically confirmed by the Program Manager) or otherwise make reservations for Use Period(s) pursuant to the Reservation Procedures established from time to time by the Program Manager. The Reservation Procedures shall specify the manner in which reservations are to be requested and confirmed. The right to use Reserved Allocation, if not confirmed in accordance with the terms of the Reservation Procedures, may be lost and does not accrue for use in subsequent years. The Reservation Procedures shall contain such schedules, conditions, restrictions and limitations as are deemed necessary or desirable by the Program Manager. The Program Manager may from time to time, without the consent of the Members or Mortgagees, amend the Reservation Procedures.

C. **SPACE AVAILABLE USE PERIODS.** Space Available Use Periods shall mean any period of time not otherwise reserved which is used by a Member pursuant to the Reservation Procedures and is in excess of the Use Period(s) the Member is entitled to reserve, and for which the Owner must pay a Per Diem Fee (as such term is defined in the Program Documents). The purpose of this period is to allow Members to use and occupy Use Periods, or portions thereof, on a space available basis that might otherwise remain unoccupied.

D. **RENTAL.** No Owner other than the Developer may rent any portion of a Use Period, including Reserved Allocation.

E. **AMENDMENT TO RULES AND REGULATIONS.** The Board shall have the reserved right to amend the Rules and Regulations with the concurrence of the Management Company; provided, however that no such amendment shall be inconsistent with this Declaration; and provided, further, that no such change to the Rules and Regulations shall deprive any Owner of his fundamental rights hereunder.

3.7 **RIGHTS DURING CONFIRMED USE PERIOD.** Subject to the Condominium Documents and Program Documents, during his confirmed Use Period, each Owner shall have:

A. The exclusive right to occupy and use a Club Unit and its Common Furnishings; and

B. The nonexclusive right to use and enjoy the Common Elements in the Condominium along with other occupants and Condominium Owners, subject to the provisions of the Condominium Declaration.

#### CHAPTER 4

##### THE ASSOCIATION AND MANAGEMENT OF THE PROGRAM

4.1 **THE ASSOCIATION.** Hawaii's Time Share Law, Hawaii Revised Statutes Chapter 514E, as amended, requires each vacation ownership program to have an association which shall be a nonprofit corporation whose members will include each Owner in the Club. The association for the Club will be the Association. Pursuant to the documents creating and governing the Association, including the Charter and By-Laws, the Association shall be a Hawaii nonprofit corporation, and Owners will be the voting members of the Association. The Developer, as an Owner of Club Interests in the Club, will also be a member of the Association and may attend and participate in the meetings and other activities of the Association, its Board of Directors and committees, but will not be entitled to vote on any matter, except that, to the extent that the Developer continues to own Club Interests, the Developer shall have the same voting rights as any other Owner for each Club Interest owned by the Developer.

4.2 **MEMBERSHIP IN THE ASSOCIATION.** Each Owner is automatically a member of the Association and only Owners may be Association members. Upon the conveyance of a Club Interest to any person, such person (the "New Owner") becomes the Owner and an Association member for such Club Interest, and the person from whom the New Owner acquired the Club Interest ceases to be the Owner and an Association member with respect to such Club Interest.



4.3 **ASSOCIATION ADMINISTRATION.** The Association will administer its affairs through:

A. Its Board, which is the Board of Directors of the Association elected by its voting members or as otherwise appointed in accordance with the By-Laws; and

B. The Management Company which will act as the administrator for the Club pursuant to an Association Operating Agreement.

4.4 **MANAGEMENT OF THE CLUB THROUGH THE ASSOCIATION.** Each Owner agrees that he will manage the Club through the Association according to the provisions of the Club Documents. No Owner will manage the Club by himself or with any group of other Owners outside of the Association. Each Owner:

A. Gives the Association all rights and powers to manage according to the provisions of the Club Documents; and

B. Agrees that what the Association decides and does in accordance with the Club Documents is binding on said Owner.

4.5 **MANAGEMENT OF THE PROGRAM BY THE CLUB MANAGER.** Each Owner acknowledges and agrees that the Program will be managed by the Program Manager according to the provisions of the Program Documents. Each Owner further agrees that what the Program Manager decides and does in accordance with the Program Documents is binding on said Owner.

4.6 **THE ASSOCIATION'S POWERS AND DUTIES.** Subject only to the Club Documents, the Program Documents and the laws of the State of Hawaii, the Association can do all things it considers to be necessary, desirable or appropriate:

A. For the operation, management, administration and protection of the Club; and

B. For the maintenance, repair, alteration, addition, improvement, rebuilding and restoration of the Property.

4.7 **SPECIFIC POWERS AND DUTIES.** Some of the specific things the Association may or must do are explained throughout this Declaration and the other Club Documents. They are not stated or summarized in any one paragraph. All of the Association's powers and duties, however, are not described expressly and specifically in the Club Documents. This does not mean that the Association does not have a power or duty that is not expressly and specifically described. Rather, the Club Documents are to be interpreted to give the Association broad and general powers and duties pursuant to Paragraph 4.6, and it may exercise these powers and duties, even on matters that are not expressly and specifically covered in the Club Documents.

4.8 **REPRESENTATION OF MEMBERS.** The Board or the Management Company, if authorized by the Board, may represent the Association (or any two or more members in the same situation as a class) in any lawsuit, arbitration or other legal proceedings relating to the Club or Condominium, and may also initiate, defend, join in, or settle any such proceedings. For this purpose, each Association member hereby appoints the Board and the Management Company, if authorized by the Board, as such member's special attorney-in-fact to do all things and perform all acts in connection with such proceedings. However, any member shall have the right to pursue or defend any such proceedings on his own behalf, or on behalf of the Association or any other member, if the law expressly grants to the member this right or if such member is directly affected.

A. **VOTING RIGHTS.** A member shall have one vote for each Club Interest owned. When more than one person owns a Club Interest, all such Owners are Association members, but only one vote can be cast per Club Interest, in accordance with the provisions of the By-Laws. The By-Laws govern the manner by which Association members may exercise their voting rights and other decision-making procedures. In the event of a conflict between the By-Laws and this Declaration, this Declaration controls and must be obeyed.

**B. VOTING PERCENTAGE.** For the purposes of the Club Documents, including this Declaration and the By-Laws, the phrase "a majority (or any other specified percentage) of Owners" shall mean the majority, or other specified percentage (as the case may be), of votes attributed to the Club Interests involved, including those owned by the Developer, unless it is otherwise expressly stated that the Developer or Club Interests owned by the Developer are excluded.

**4.9 APPOINTMENT OF INITIAL BOARD.** The initial Board shall consist of the individuals appointed in the Charter or any other individuals subsequently appointed by the Developer prior to the first annual meeting of Owners. This Board will act until the first annual meeting of Owners, at which a new Board shall be elected by the Owners.

**4.10 AUTHORITY OF THE BOARD.** The Board may exercise all of the powers of the Association and must perform all of its duties under the Club Documents, except as otherwise expressly limited by the Club Documents.

**4.11 MANAGEMENT COMPANY.**

**A.** The Developer may, but shall not be required to, appoint the initial Management Company to operate the Club. On behalf of the Association, the Developer may hire itself or a related or affiliated entity as the first Management Company and may also hire a subcontractor to perform some or all of the obligations as Management Company. The Board, on behalf of the Association, must retain a Management Company at all times and may, but shall not be obligated to, delegate to the Management Company all of the Association's powers and duties, unless the Club Documents indicate that the Association or Board must itself exercise a particular power or perform a particular duty. Absent any such restriction, the Board may, but shall not be required to, delegate such power and duty to the Management Company.

**B.** Each contract with the Management Company, and every subcontract between the Management Company and a subcontractor, shall include the following:

1. The term may not exceed five (5) years, but may provide for automatic 1 to 3-year renewals after the end of the initial term, unless a written notice cancelling the contract is given by either party at least ninety (90) days before the renewal date;

2. The Management Company shall be always subject to the direction of the Board;

3. Upon the approval of the Board, the Management Company may delegate its powers and duties to one or more sub-agents for any period and upon such terms it determines to be proper;

4. The Board must have the right to cancel the contract upon the Management Company's default thereof; and

5. The Management Company may resign only upon written notice to the Board at least ninety (90) days in advance and the submission of all books and records relating to the management and operation of the Program to the Board.

**4.12 DELEGATION OF BOARD POWERS AND DUTIES.** Subject to applicable law, the Charter and this Declaration, the Board may delegate its powers and duties to the extent permitted by the By-Laws, and may also employ other persons to perform services, including, but not limited to, attorneys and accountants.

**4.13 RULES AND REGULATIONS.** The Developer or the Management Company may adopt and amend the Rules and Regulations at any time until the closing of the first sale of a Club Interest. Each Owner must comply with the Rules and Regulations. At any time after the closing of the first sale of a Club Interest, the Board may review the Rules and Regulations and, in accordance with Paragraph 3.6.E above, may adopt any amendments hereto or new rules it deems appropriate. The Rules and Regulations shall not conflict with the other Club

Documents and shall apply equally to all Owners and their Club Interests (except to the extent of the Developer's special rights and privileges under the Club Documents).

#### 4.14 REPRESENTATION OF OWNERS.

A. **CONDOMINIUM ASSOCIATION MEETINGS.** The Board shall vote on behalf of the Owners of all Club Interests in each Club Unit at all meetings of the Condominium Association of which these Owners are members.

At least twenty (20) days before the annual meeting of the Condominium Association and ten (10) days before any special meeting of the Condominium Association, the Board shall obtain the agenda (to the extent available) and all other information which is reasonably available on the matters to be voted upon at such meeting. The Board shall mail the agenda and information to each Owner, together with a ballot to be returned by each Owner. The ballot will request that each Owner indicate (to the extent feasible) the manner such Owner desires to vote upon each matter on the agenda. The Board shall appoint a representative to vote on behalf of the Owners of all Club Interests in each Club Unit. The representative will vote in the manner that a majority of the Owners in each Club Unit indicate on their ballots. If no ballots are returned or if there is no majority for any Club Unit, the Board, through its representative, may cast a vote on behalf of such Club Unit in the manner it considers to be in the best interests of the Owners.

In the event that the Board does not have sufficient time to send out ballots, the Board, through its representative, may vote on behalf of each Club Unit as it determines to be in the best interests of the Owners.

Each Owner hereby grants to the Board the right and power to act for such Owner at any meeting of the Condominium Association. For this purpose, each Owner hereby appoints the Board as such Owner's special attorney-in-fact and grants to the Board his proxy. No further authorization or proxy is necessary. If requested by the Board, however, each Owner will execute and deliver to the Board all documents the Board reasonably requests so that it may act for the Owner as provided in this Paragraph 4.14 A. All Board action pursuant to this Paragraph 4.14 A. shall be binding on all Owners.

B. **LEGAL PROCEEDINGS.** The Board or the Management Company, if authorized by the Board, may represent the Association (or any two (2) or more Owners in the same situation as a class) in any lawsuit or other legal proceedings pertaining to the Association, the Condominium Association, the Units or the Condominium. The Board or the Management Company, if authorized by the Board, may commence, defend, join in, or settle any such proceedings. For this purpose, each Owner hereby appoints the Board and the Management Company as such Owner's special attorney-in-fact to do all things and perform all acts in connection with such proceedings. Any Owner may, however, pursue or defend any such legal proceedings on his own behalf, or in the name of the Association or any other Owners, if the law generally gives the Owner this right or if such Owner is directly affected. Each member of the Board may be served with the papers involved in any lawsuit or other legal proceedings.

#### 4.15 LIMITATIONS ON THE ASSOCIATION'S POWERS AND DUTIES.

A. **NO OBLIGATION TO ACT.** Notwithstanding anything contained in the Club Documents to the contrary, the Association (and the Board, the Management Company and any other party acting on its or their behalf) is not required to take any action if the Association does not possess sufficient funds, and need not act until it raises sufficient funds from the Owners, to pay for any such action.

B. **OWNER VETO POWER.** Unless a higher percentage of Owners is expressly required by the Club Documents, a majority of owners may veto any action of the Board or the Management Company, or may direct that certain actions be taken. If, however, the veto or direction conflicts with the Club Documents, the Club Documents must first be amended pursuant to this Declaration.

The Board shall not be responsible for any of its acts or omissions taken in accordance with this paragraph, and all Board actions shall be binding upon all Owners.

C. **GENERAL LIMITATIONS ON CONTRACTS.** Neither the Board nor the Management Company may enter into any contract for the provision of goods or services for the Club for a period exceeding one (1) year, unless such contract is first submitted for a vote by the Owners, and a majority of all Owners (excluding Developer) vote for the contract. This rule shall not, however, apply to:

1. Any contract for utility services with a company whose rates are regulated by any governmental or quasi-governmental agency, provided that the term of any such contract shall not exceed the shortest term for which the utility company will contract at the regulated rate;

2. Prepaid casualty and/or liability insurance policies, provided, however, that a policy shall not be for a term of more than three years and must permit short rate cancellation by the insured;

3. A lease or other agreement for Common Furnishings, laundry room fixtures and equipment, cable television services and equipment or satellite dish equipment and services and agreements for burglar alarm services and equipment, provided that any such lease or agreement does not have a term exceeding five (5) years, and provided further that the lessor or provider is not an entity in which the Management Company or the Developer have a direct or indirect interest of 10% or more;

4. An Exchange Agreement; and

5. A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

4.16 **LIMITATION OF LIABILITY.** The Developer, the Management Company, the Association, the Board and the Program Manager (and anyone acting on their behalf) shall not be responsible for the acts or omissions of any Owner or Occupant.

## CHAPTER 5

### EXCHANGE PROGRAMS

5.1 **EXCHANGE PERMISSIBLE.** Exchange of Use Periods by Owners is permissible in accordance with the Reservation Procedures.

## CHAPTER 6

### USE PROVISIONS

6.1 **ACCESS TO UNITS.** No Owner (except the Developer) may enter into his Club Unit or any other Club Unit in the Condominium, except for the use by an Owner of his Club Unit (by virtue of such Owner's use of his Reserved Allocation) or any Club Unit as may be assigned to the Owner by the Program Manager, and the Common Elements of the Condominium during such Owner's confirmed Use Period (or during any Use Period acquired through Club System Exchange, as such term is defined in the Reservation Procedures), unless:

A. Such Owner is an authorized Guest of another Owner; or

B. Such Owner is acting under the authority of the Program Manager.

6.2 **OCCUPANCY AND USE RESTRICTIONS. TIMESHARING, PURSUANT TO CHAPTER 514E OF THE HAWAII REVISED STATUTES, AS AMENDED, AND THE ADMINISTRATIVE RULES PROMULGATED THEREUNDER, AND TRANSIENT VACATION RENTAL USE, ARE EXPRESSLY PERMITTED WITHIN CLUB UNITS.** Notwithstanding the foregoing, in accordance with Section 3.6.D. above, no Owner other than the Developer may rent any portion of a Use Period, including Reserved Allocation. Further, no Club Unit may be used to conduct any other trade or business, including any type of non-equity membership

program, except for the apartments which are not part of the Club and are used by the Condominium Developer for commercial purposes. No pets shall be allowed in any Club Unit, except that visually impaired persons, hearing impaired persons and physically impaired persons shall be allowed to keep certified seeing-eye dogs, certified signal dogs and certified service dogs, respectively, in their assigned Units. Further, nothing herein shall hinder full access to the Club Units and/or other portions of the Condominium by persons with disabilities. The number of Occupants in each Club Unit shall be limited to the maximum number allowed by law and the Program Documents. No vacation ownership, time share, fractional ownership, or similar type of program shall be operated by a party other than the Program Manager while the Program remains in effect.

6.3 **GUEST AND VISITOR USE.** An Owner may permit Guests to use the Owner's designated Club Unit or the Club Unit otherwise assigned to such Owner during such Owner's confirmed Use Period in accordance with the Reservation Procedures. Each Owner, Member occupying a Club Unit through Club System Exchange, and other Occupant shall be responsible for his or her Guests.

6.4 **MODIFICATION OF UNITS.** The Board and, to the extent such authority is delegated, the Program Manager, and not the individual Owners, shall have the exclusive right to make all decisions relating to, and shall be responsible for:

- A. The color, decor and Common Furnishings for the Club Units; and
- B. All changes, additions and other Improvements to the Property.

6.5 **MAINTENANCE AND REPAIR.** The Board and, to the extent such authority is delegated, the Management Company, and not the individual Owners, shall have the exclusive right to make all decisions relating to, and shall be responsible for, the normal and other maintenance and repair of the Property. Each Occupant has the duty, however:

- A. Not to damage, beyond ordinary wear and tear, any part of the Property; and
- B. To keep the Club Unit occupied by such Occupant (and the Common Furnishings in that Unit) in good order and condition (except for ordinary wear and tear).

6.6 **RIGHT OF ENTRY.** Each Occupant shall permit the agents, employees and representatives of the Management Company to enter such Owner's assigned Club Unit:

- A. To inspect the Club Unit; and
- B. To maintain, repair and replace any part of the Unit or the Common Furnishings in the Club Unit.

The Management Company shall provide reasonable notice before entering any Club Unit, and shall use reasonable efforts to avoid or reduce interference with an Occupant's use. In case of any emergency, however, the Management Company may enter at any time without notice, and may also enter to stop any nuisances. Note, however, that the Condominium Documents grant to the Condominium Association the right to enter the Units.

6.7 **OCCUPANTS.** Each Occupant shall comply with all of the Club Documents, the Program Documents, the Condominium Documents and all laws of the County of Maui, the State of Hawaii and the United States. No Occupant may act in any way

- A. That causes any danger to any person or property
- B. That is unlawful or disorderly;
- C. That would damage or injure the welfare or interests of: (1) any other Owner of a Club Unit or interest in any Club Unit or the Owner of any other Unit or apartment in the Condominium; (2) the Developer,

Program Operator, the Management Company or managing agent of the Condominium; or (3) the Condominium Association or the Association;

D. That is in violation of any provision of the Club Documents, the Program Documents or Condominium Documents;

E. That would be harmful or offensive;

F. That would cause any other nuisance; or

G. That is otherwise inconsistent with the operation of the Condominium as a first class resort destination.

Each Occupant shall be responsible for and shall pay all costs and damages caused by such Occupant's failure to comply with the foregoing. Each Occupant other than an Owner, shall, if requested by the Developer, the Management Company or the Program Manager, execute an agreement to comply with the Club Documents, the Program Documents and the Condominium Documents before such Occupant is permitted to occupy.

#### 6.8 VACATING UNITS.

A. **DUTIES OF OCCUPANTS TO VACATE.** Each Occupant shall: (1) vacate the Club Unit occupied at the end of his Use Period; (2) leave the Club Unit and Common Furnishings in such Club Unit in good and sanitary condition (except for ordinary wear and tear); and (3) comply with all Rules and Regulations relating to check-out.

B. **REMOVAL OF PERSONAL EFFECTS.** At the end of the Use Period, each Occupant must remove all personal effects such as clothing, food, liquor and luggage. No party, including the Developer and Management Company, other than such Occupant, shall be responsible for any personal effects that are left in the Club Unit. Moreover, personal effects not removed at the end of the Use Period will be considered abandoned. The Management Company may dispose of them in any appropriate manner and shall be entitled to keep the sales proceeds therefrom.

#### 6.9 TRESPASS AND DAMAGE TO CLUB UNITS.

A. **DEFINITIONS.** The following terms shall have the meanings described below:

1. **TRESPASSER.** A "Trespasser" is any Owner, Member occupying a Club Unit through Club System Exchange ("Exchange User") or other Occupant who:

- (a) Does not vacate a Club Unit at the end of his Use Period;
- (b) Uses a Club Unit during another Owner's Use Period without permission; and
- (c) By any other act or failure to act, prevents another Owner from using a Club Unit such Owner is entitled to use.

2. **VANDAL.** A "Vandal" is any Owner, Exchange User or other Occupant who damages a Club Unit or the Common Furnishings therein such that the Club Unit cannot be occupied during any one or more later Use Periods.

3. **INJURED PERSON.** An "Injured Person" is any Owner, Exchange User or Occupant who cannot use a Club Unit as a result of a Trespasser or Vandal. There may be several Injured Persons. For example, a Club Unit may be damaged so that it cannot be used for many later Use Periods. Each person who had the right to use the Club Unit during these Use Periods is an Injured Person.

4. **FAIR RENTAL VALUE.** "Fair Rental Value" is the cost of renting, on a daily basis, a comparable place to reside either in the Condominium or elsewhere on the island on which the Condominium is located.

B. **EVICTIION FOR TRESPASS OR VANDALISM.** Each Trespasser and Vandal may be removed from the Property immediately upon the occurrence of the vandalism or trespass, and, to the fullest extent permitted by law, waives all eviction notices required by law.

C. **COSTS AND LIQUIDATED DAMAGES.** Each Trespasser and Vandal shall reimburse the Management Company and each Injured Person for all of their costs and expenses caused by his actions, including, but not limited to, costs of alternative living arrangements and additional travel costs, and all collection and enforcement costs. In order to obtain other accommodations, it may be necessary to rent for a period of time longer than the period that use is actually prevented, in which event, the cost of such other accommodations includes all of the rent for this longer period of time. The Management Company shall determine whether it is necessary to rent for a longer time, which decision shall be final.

D. **DUTIES OF THE ASSOCIATION.** The Management Company shall take all reasonable steps to evict the Trespasser or Vandal, and shall assist each Injured Person to locate alternative accommodations, at its expense. The Management Company shall attempt to collect all costs and liquidated damages for the Injured Person, if requested. Such expenses shall be refunded to the Management Company by the Trespasser or Vandal.

6.10 **COMPLIANCE WITH PROGRAM DOCUMENTS.** Each Occupant may be required to execute an agreement to comply with certain provisions of this Chapter 6 and certain other parts of the Club Documents and Program Documents. An Owner may be denied occupancy if he refuses to execute such an agreement.

6.11 **DEVELOPER RESERVATION AND USE RIGHTS.** Notwithstanding anything contained in the Club Documents or the Program Documents to the contrary, the Developer shall have and hereby reserves the following special rights and privileges:

A. **DEVELOPER'S CLUB INTERESTS.** The Developer shall be entitled to reserve and have confirmed Use Periods for Club Interests it owns on the same basis as other Owners;

B. **RENTAL OF CONFIRMED USE PERIODS AND UNUSED USE PERIODS.** The Developer may use its own confirmed Use Periods for any purpose, including for rental, sales and other commercial activities permitted by law, free from the restrictions imposed by the Club Documents and the Program Documents. The Developer shall be solely entitled to the revenues derived from its own confirmed Use Periods.

6.12 **PROGRAM MANAGER USE RIGHTS.** Notwithstanding anything contained in the Club Documents or the Program Documents to the contrary, the Program Manager shall have the following special rights and privileges:

A. **UNRESERVED, UNCONFIRMED OR UNUSED USE PERIODS.** The Program Manager shall be entitled to use Use Periods (whether or not owned by the Developer) which for any reason are not reserved, or if reserved, are not confirmed, or if reserved and confirmed, are not used. These Use Periods are called "Unused Use Periods."

B. **RENTAL OF UNUSED USE PERIODS.** The Program Manager may use Unused Use Periods for any purpose, including for rental, sales and other commercial activities permitted by law, free from the restrictions imposed by the Club Documents and the Program Documents. The Program Manager shall be solely entitled to the revenues derived from the Unused Use Periods.

C. **USE OF COMMON ELEMENTS.** At all times during which it is an Owner of any Club interest or any Club Unit, the Developer may use the Common Elements of the Condominium for any purpose permitted by law and the Condominium Documents, free from the restrictions imposed by the Program Documents, provided that any such use shall not unreasonably interfere with the use of the Condominium by the other Owners.

D. **PROGRAM NAME CHANGE.** The Program Manager may at any time change the name of the Program, and may record such documents as may be necessary to effect any such name change.

6.13 **GOVERNING LAW.** Hawaiian Revised Statutes Chapter 486K shall govern the rental of all Use Periods in the Club.

6.14 **COMPLIANCE WITH USE RESTRICTIONS.** The use restrictions and obligations imposed on the use of the Property are cumulative and not exclusive. Each Owner, Occupant, Trespasser and Vandal shall comply with each and every one of the restrictions imposed in the Club Documents and the Program Documents.

## CHAPTER 7

### TRANSFER OF CLUB INTERESTS

7.1 **OWNERS MAY TRANSFER OR MORTGAGE THEIR CLUB INTERESTS.** Owners have the right to sell, transfer, convey and mortgage their Club Interest, subject always to the Club Documents and the Program Documents. If an Owner owns more than one Club Interest, he may treat each such Club Interest separately.

7.2 **OTHER RIGHTS OF OWNERS.** Two (2) or more people together may own an entire Club Interest, but only if they own an undivided interest in the Club Interest.

7.3 **PARTIAL TRANSFERS.** Except for agreements of sale, no Owner may transfer or mortgage, or agree to transfer or mortgage a portion of a Club Interest separately from the other parts thereof, nor divide it into two (2) or more smaller Club Interests.

#### 7.4 WAIVER OF RIGHTS.

A. **TENANTS IN COMMON.** Each Owner owns a share of his Club Unit as a tenant in common. Under the law, each Owner, as a tenant in common, possesses certain rights, privileges and duties which are, however, subject and subordinate to the Club Documents and the Program Documents. In the event of any conflict, the Club Documents and the Program Documents shall control.

B. **PARTITION.** "Partition" is a legal proceeding or method of resolving disputes between co-owners with respect to their jointly-owned property whereby the property is divided and distributed to each Owner on a prorata basis. If the property cannot be legally divided, it may be sold and the sales proceeds divided among the co-owners.

1. **WAIVER OF PARTITION RIGHT.** Each Owner hereby waives, for and during the period that this Declaration remains effective, all rights to own any part of the Club Unit in which such Owner possesses a Club Interest.

2. **NO PARTITION OF OWNERSHIP INTERESTS.** No Club Interest may be partitioned; provided, however, that any co-owner of a Club Interest may initiate legal proceedings to sell the entire Club Interest and divide the sales proceeds among all co-owners of said Club Interest.

#### 7.5 LIMITATION ON TRANSFERS.

A. **AFFECT ON OTHERS.** The right to transfer and mortgage a Club Interest is limited to each Owner's respective interest in the Club Interest, and no Owner may transfer, mortgage or otherwise affect another Owner's Club Interest.

B. **LIMITATION ON TRANSFER RIGHTS.** The right to transfer and mortgage shall not apply to the Property, any Club Unit or the Common Furnishings. An Owner shall not transfer or mortgage the Property, any Club Unit or the Common Furnishings, or any part or interest therein, except such Owner's own Club Interest.



C. **ASSOCIATION FUNDS.** No Owner shall transfer, mortgage or otherwise adversely affect funds held by the Association or the Management Company, except to the extent required by this Declaration.

D. **PROTECTION OF OTHER CLUB INTERESTS.** No Owner shall take any action or fail to take any action which will subject any other Owner's Club Interest, the Property, any Club Unit, or Association funds to any lien, attachment or other similar proceedings, which may result in sale or threatened sale of the Club Interest of any other Owner, any Club Unit, or any portion thereof, in which such Owner has an interest, except such Owner's Club Interest, or any other portion of the Property; or which would result in a sale or threatened sale or other action which would cause any interference in the use and enjoyment by any other Owner of such Owner's Club Interest.

7.6 **INDEMNIFICATION.** Each Owner hereby agrees with the other Owners and the Association, the Program Manger, the Management Company and their agents that he will fully comply with Paragraph 7.5 above, and agrees to defend, indemnify and hold each of them harmless from and against any and all claims, liabilities, damages, judgments, costs and expenses, including attorneys' fees, which any of them incurs as a result of such Owner's failure to comply fully with said Paragraph 7.5 and this Paragraph 7.6.

Any Owner affected by the failure of another Owner to comply with Paragraph 7.5 above and this Paragraph 7.6 shall have the right to act on his own behalf, or together with any other Owner similarly affected, to protect himself or he may act under the authority of the Association, in connection therewith. The Association or the Management Company may, but is not required to, settle or compromise any threatened or actual act or omission, advance all or any part of the amount claimed without the obligation to first determine whether such amount is proper or whether the claim is valid. The Association and the Management Company shall have the right to protect or act on behalf of any Owner to the same extent as an Owner may protect himself. The Association and the Management Company and their agents shall have the right to protect any part of the Property or the funds it holds, and may also advance to any Owner all amounts paid and costs (including attorneys' fees) incurred by such Owner in connection with such Owner's exercise of his rights hereunder. The defaulting Owner shall reimburse the non-defaulting Owner, the Association and the Management Company for all such advances upon demand therefor.

7.7 **PROHIBITED ACTS VOID.** To the fullest extent permitted by law, any act or omission of an Owner in violation of Paragraphs 7.3, 7.4, 7.5 and 7.6 above shall have no force or effect.

7.8 **TRANSFER OF CLUB INTEREST.**

A. **IDENTIFICATION OF CLUB UNIT AND RESERVATION AND USE RIGHTS.** All instruments purporting to transfer any Club Interest should identify the transferor's Club Unit and Ownership Share for the Club Interest being transferred, and, to the extent set forth in Exhibit "D" attached hereto, the identification number assigned to such Club Interest; provided that if the identification number is set forth in any instrument of conveyance such as a deed, or in any mortgage or other document, the Club Interest which is identified by such identification number and all rights incident to ownership of such Club Interest shall be deemed to be covered and conveyed by such document notwithstanding that the Club Interest or any of its attributes are not described therein or may be inaccurately described therein.

B. **NOTICE TO THE ASSOCIATION AND PROGRAM MANAGER.** Within ten (10) days after any transfer of a Club Interest, one of the parties to the transfer shall notify the Association and the Program Manager in writing of the transfer. The notice must contain: (1) the name and address of the parties involved; (2) the date of the transfer; and (3) a true copy of the legal transfer document.

C. **FAILURE OF NOTICE.** Unless and until the notice required by this Paragraph 7.8 is properly made

1. The Association and the Program Manager are not obligated to recognize the person receiving the transfer (the "transferee") as an Owner for any purpose;

2. The Association and the Program Manager may continue to recognize the person making the transfer (the "transferor") as the Owner whereupon the transferor shall remain fully liable as an Owner; and

3. The Association and the Program Manager may deal exclusively with the transferor; provided, however, that all communications to the transferor will have the same effect as if given to the transferee.

**D. RELEASE FROM FURTHER OBLIGATIONS.** No transferor shall be liable for any matter occurring after his transfer is recognized; provided, however, that such transferor shall remain liable for all matters occurring or arising prior to such transfer. A transferor shall be released from this liability when he has paid all sums and performed all of his other duties required as of the time the transfer is recognized.

**E. TRANSFER FEES.** A transfer fee in an amount described in the Rules and Regulations may be assessed on each transfer.

**F. INITIATION FEE.** The Program Manager shall charge an initiation fee upon each transfer of a Club Interest, which initiation fee may be increased or decreased by the Program Manager in the Program Manager's sole discretion. Such initiation fee may be waived by the Program Manager in accordance with the terms of the Reservation Procedures. A transferee who fails to pay the required initiation fee shall be a "Local Member," rather than a Member, of the Program, and shall not have Club System Exchange privileges in the Program.

**7.9 EFFECT OF TRANSFER.** Any transfer of a Club Interest shall also automatically transfer to the transferee the interest of the transferor in all funds in the hands of the Association, the Management Company or the Program Manager, as well as Common Furnishings relating to said Club Interest notwithstanding the absence of any provision specifically transferring said funds.

**7.10 SUBORDINATE TO CLUB DOCUMENTS AND PROGRAM DOCUMENTS.** All Club Interests transferred or mortgaged (or covered by an agreement to transfer or mortgage) shall be subject and subordinate to, and shall continue to be governed by, the Club Documents and the Program Documents. Accordingly, each person who receives any transfer or mortgage (or an agreement to transfer or mortgage) of a Club Interest shall comply fully with all of the Club Documents and the Program Documents, notwithstanding any agreement to the contrary by the parties involved in the transfer or mortgage (or agreement to transfer or mortgage). In the event of any conflict between the Club Documents, the Program Documents and the transfer, mortgage or agreement to transfer or mortgage, the Club Documents or Program Documents, as appropriate, shall control.

Nothing contained in this paragraph shall invalidate any mortgage made in good faith and for value as a result of a violation of the Club Documents or the Program Documents; provided, however, that the Club Documents and the Program Documents shall still control.

**7.11 OBSERVANCE OF CONDOMINIUM DOCUMENTS.** Each Owner shall fully comply with the Condominium Documents for the benefit of each and every Owner, the Management Company, the Program Manager, and the Association.

**7.12 LIENS ON CLUB INTERESTS.** Each Club Interest shall be subject to a lien to secure payment. In the event that the transferor has not paid all charges assessed against such transferor or his Club Interest by the Association, the Club Interest received shall be subject to foreclosure and sale in accordance with the provisions hereof.

As a part of any transfer or pledge of a Club Interest, any party may request from the Management Company a written report or certificate on all unpaid charges, which certificate shall be delivered within ten (10) business days thereafter. The certificate shall constitute a limitation on the lien rights of the Association and the Management Company, but only as against the person receiving the transfer or pledge, in which case only, the Association and Management Company may not claim or foreclose on a lien for any such charge incurred before the date of the certificate, unless such charge is disclosed in the certificate, or for any charge in excess of the amount

enclosed in the certificate.

**7.13 LIST OF OWNERS.** The list of current Owners including mailing addresses and telephone numbers, books of account, minutes of Association and Board meetings and all other records of the Club shall be maintained by the Association or the Management Company and shall be made available for inspection and copying by any Owner or by his duly appointed representative at any reasonable time for a purpose reasonably related to membership in the Association.

The records shall be made available for inspection at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the governing body to defray the costs of reproduction, the Management Company or other custodian of records of the Association and/or the Club shall prepare and transmit to the Owner a copy of any and all records requested.

The Association may, as a condition to permitting an Owner to inspect the list of current Owners or to its furnishing information from the list, require that the Owner agree in writing not to use, or allow the use of information from the list for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association.

The Board shall establish reasonable rules with respect to:

- A. Notice to be given to the Management Company or other custodian of the records by the Owner desiring to make the inspection or to obtain copies.
- B. Hours and days of the week when a personal inspection of the records may be made.
- C. Payment of the cost of reproducing copies of records requested by an Owner.

Every Board member shall have the absolute right at any time to inspect all books, records and documents of the Association and all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records subject only to the limitations set forth above.

**7.14 RIGHT OF FIRST REFUSAL TO PURCHASE.** In the event an Owner desires to sell or convey or otherwise transfer ownership of such Owner's Club Interest in the Club and for so long as Developer has Club Interests to sell in the Club or the Developer or an affiliate of Developer manages the Club, whichever shall be later, Developer shall have the right of first refusal to purchase the Club Interest under the same terms and conditions (including financing terms) as may be offered to or by a bona fide third party. Accordingly, each Owner desiring to sell his Club Interest must notify Developer in writing of his intent to list or sell his Club Interest. The Owner's written notice to the Developer must include the proposed listing, offer price and general terms of the proposed listing or sale. Upon receipt of such written notice, the Developer shall have fifteen (15) days within which to notify the Owner in writing as to whether the Developer elects to exercise its right of first refusal set forth herein. If Developer elects to exercise its right of first refusal, closing shall occur no later than sixty (60) days after Developer notifies the Owner in writing (within such fifteen (15) day period) of its decision to purchase the Club Interest. If Developer elects not to exercise its right of first refusal or fails to notify the Owner in writing of Developer's election to exercise its right of first refusal within such fifteen (15) day period, the Owner shall be entitled, for a period of seven (7) months thereafter, to list Owner's Club Interest with a third party real agent or sell the Club Interest to a third party for a price equal to or greater than the price offered to Developer without further notice to Developer.

## CHAPTER 8

### FINANCES

8.1 DEFINITIONS. The following terms shall have the meanings described below:

A. COMMON EXPENSES. "Common Expenses" are all costs of maintaining the Property and operating the Club, including, without limitation, all charges imposed on all Club Units, notwithstanding the party billed therefor. Consequently, all such charges billed to the Association, the Developer, the Management Company or any Owners are Common Expenses and shall be shared among all Owners as stated in this Chapter. Without limiting the generality of the foregoing, Common Expenses shall include:

1. The cost of all insurance purchased by the Association or the Management Company;
2. All uninsured liabilities and damages;
3. All amounts necessary for any permitted purchase of a Club Interest by the Association or the Management Company;
4. All fees and other expenses paid to the Program Manager related to the operation of the Program (the "Program Membership Dues");
5. Amounts for contingencies and reserves, including the following:
  - (a) Unpaid charges to Owners (including unpaid Personal Charges) which the Program Operator determines to be uncollectible;
  - (b) Any deficiency for any reason in funds to pay costs on a current basis;
  - (c) Sums collected for Operating Reserve Expenses which are deposited in the Operating Reserve Account described in Paragraph 8.4; and
  - (d) Sums collected for Replacement Reserve Expenses which are deposited in the Replacement Reserve Accounts described in Paragraph 8.5.
6. All other common expenses of the Club, including, without limitation, any Special Charge or any special assessments imposed on all Units by the Condominium Association;
7. All real property and other governmental taxes and related charges on all Club Units;
8. The cost of all utilities charged to the Club Units;
9. The cost of housekeeping service on all Club Units;
10. Membership Program Dues under The Ritz Club's Club Membership Program;
11. Annual dues for membership in The Kipahua Club;
12. The cost of professional fees and expenses of third parties providing services to the Association;
13. All reserves for replacement and maintenance of the Property as may be required by statute or regulation, or as may otherwise be required by the Board; and

14. All other costs incurred by the Association or the Management Company, except for Personal Charges, provided, however, that all Personal Charges which the Management Company or the Board determines to be uncollectible, may, at the discretion of the Management Company or the Board, become Common Expenses.

B. **UNIT TYPES.** Each of the Club Units currently in the Club is configured as two and three bedroom apartments. The Club Units and the type of each are identified on Exhibit "E" as such.

C. **SHARES.** "One Share" means for each Club Interest in a two bedroom Unit, the amount of Common Expenses allocable to such Club Interest as calculated by the Management Company. For a Club Interest in a three bedroom unit, "One Share" shall be the product of one share of Common Expense for a Club Interest in a two bedroom unit multiplied by a factor of one hundred twelve percent (112%).

D. **BASIC CHARGE.** The "Basic Charge" is the regular charge for each Club Interest equal to One Share of Common Expenses, as estimated in the Budget, plus any applicable late charges and interest and all costs of collecting unpaid Basic Charges, which include, but are not limited to, court costs and attorneys' fees ("Collection Costs").

E. **SPECIAL CHARGE.** A "Special Charge" is an additional charge assessed on an as-needed basis for each Club Interest equal to One Share of the amount necessary to pay Common Expenses on a current basis, as estimated in a Supplemental Budget, plus any applicable late charges and interest and all Collection Costs on unpaid Special Charges.

F. **PERSONAL CHARGE.** A "Personal Charge" is a charge for all expenses resulting from the act or omission of any Owner, Exchange User or Occupant (except the failure to pay any Basic Charge or Special Charge) including without limitation:

1. Any expense resulting from the act or omission of any Owner or Occupant, including, without limitation:

(a) the cost of long distance telephone charges or telephone message unit charges and other special services or supplies attributable to the occupancy of such Owner's Club Unit during such Owner's Use Period and the expense of additional housekeeping services requested by such Owner or Occupant during such Owner's Use Period;

(b) the cost to repair any damage to any portion of the Condominium or to repair or replace any Common Furnishings on account of loss or damage caused by such Owner or Occupant; or

(c) the cost to satisfy any expense to any other Owner(s) or to the Association due to any intentional or negligent act or omission of such Owner or Occupant, or resulting from the breach by such Owner or Occupant of any provisions of the Club Documents or the Program Documents.

2. Any transient occupancy tax levied pursuant to the laws of the State of Hawaii and payable by any Owner which the Association is or shall be required or entitled to collect on behalf of the levying authority; and

3. A charge to Owners residing in countries other than the United States and Canada, and/or Owners who reside in the United States or Canada but who have mailing addresses, telephone numbers or fax numbers outside of the United States and Canada, to offset the additional costs incurred in supporting and communicating with international Owners, as more fully described below.

In amplification of the foregoing, the act or negligence of any Occupant shall be deemed to be the act or negligence of the Owner who permits such Occupant to use and occupy any portion of the Condominium.

Personal Charges are not assessments and the remedies available to the Association against any Owner for nonpayment of such Owner's Personal Charges are those remedies provided in Paragraph 8.14 and Paragraph 8.19, below.

Owners who reside in countries other than the United States and Canada, and/or Owners who reside in the United States or Canada who have mailing addresses, telephone numbers or fax numbers outside of the United States and Canada, in addition to other charges assessed pursuant to this Declaration, shall be charged an annual fee (the "International Owner's Surcharge"), which relates to the added costs for postage, personal delivery, increased frequency of and costs associated with long-distance telephone calls, translation costs, additional costs for telefacsimile communications and labor costs for additional, special support staff. The Program Manger shall establish the International Owner's Surcharge and may, from time-to-time, increase this charge to reflect any increase in the cost of providing these services; provided, however, any such increase shall not exceed one hundred and fifteen percent (115%) of the International Owner's Surcharge in the immediately preceding year, unless approved in advance by a majority of all Owners who are subject to the International Owner's Surcharge.

The Personal Charges of each Owner, Exchange User and Occupant shall also include all Personal Charges against his Guests.

## 8.2 ASSESSMENT OF CHARGES.

A. **THE BUDGET AND SHARE OF PROGRAM EXPENSES.** Prior to the commencement of each fiscal year, the Management Company shall cause to be prepared an estimate ("Budget") of Common Expenses for such fiscal year, subject to the review and approval by the Board; provided, however, that any such Budget shall not reflect more than a twenty-five percent (25%) increase in Common Expenses over the prior year's Budget unless a majority of the Owners (excluding the Developer) decide otherwise. The Budget shall contain allowances for contingencies and reserves and surplus funds from earlier years as required by Paragraph 8.7 and must establish and maintain a Replacement Reserve Account as required by Paragraph 8.5.

The Budget shall consist of at least the following information:

1. The estimated revenue and expenses of the Association on an accrual basis;
2. The amount of the Operating Reserve Account and the Replacement Reserve Account;
3. An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the common areas and facilities for which the Association is responsible; and
4. A general statement setting forth the procedure used by the Board and Program Operator in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common areas and facilities for which the Association is responsible.

Concurrently with the preparation of the Budget, the Management Company shall determine the total number of Club Interests not owned by the Association. This will then be used to determine the fraction or percentage constituting One Share of Program Expenses for that particular fiscal year. Once fixed for each fiscal year, the One Share will not be changed, except in accordance with Paragraphs 8.2 B. and 8.8 below, even if the Developer subsequently makes a first transfer of a Club Interest in a new Club Unit during the same year.

B. **ADJUSTMENTS TO THE BUDGET.** The Board may, in its discretion, adjust the Budget during any year. An adjustment in the Budget shall not entitle any Owner to a refund of any Charge already paid nor relieve any Owner from the payment of any Charge due, but unpaid.

C. **BASIC CHARGES.** The Management Company shall assess each Owner for his Basic Charge. Except as provided in Paragraph 3.7 E.3., Basic Charges shall be payable in advance in annual installments,

unless the Management Company adopts a different payment schedule: provided that installments may not be due more often than monthly.

D. **INITIAL BUDGET.** The Developer may establish the Budget and assess Basic Charges until a Board is elected at the first annual meeting of the Association.

8.3 **ACCOUNTS.** The Management Company shall establish: (A) one or more General Accounts; (B) an Operating Reserve Account in accordance with Paragraph 8.4; and (C) Replacement Reserve Accounts as described in Paragraph 8.5. General Accounts must be established with a federally insured bank, savings and loan association, trust company or other financial institution authorized to do business in the State of Hawaii. All funds received, except those received for the other accounts, shall be deposited into the General Account, and may be used only to pay Common Expenses. The Management Company may deposit such funds in an out-of-state financial institution or in other investments upon approval of the Department of Commerce and Consumer Affairs ("DCCA").

8.4 **OPERATING RESERVE ACCOUNT.**

A. **RESERVE AMOUNT.** If required by the Board, a sum of money as determined by the Board shall be maintained in the Operating Reserve Account. The amount shall be reflected on the Management Company's books as paid-in-surplus and will not be treated as income.

B. **FUNDING OF ACCOUNTS.** Upon acquiring his Club Interest, each initial Owner shall pay the amount stated in Paragraph 8.4 A. to the Management Company for deposit into the Operating Reserve Account. Each Owner's share in the Operating Reserve Account shall be automatically transferred to any new Owner.

C. **USE OF FUNDS.** All funds in the Operating Reserve Account shall be used to pay any Common Expenses other than capital improvements in the event the Management Company does not or will not have sufficient funds to make all payments due on a current basis. The Management Company may also take funds from the Operating Reserve Account to pay for any Owner's past due Charges, but only to the extent of such Owner's payment into the Operating Reserve Account. Each Owner on whose behalf funds are so applied must pay the amount applied back into the Operating Reserve Account, and such Owner will be assessed for this amount as a Personal Charge.

8.5 **REPLACEMENT RESERVE ACCOUNTS.** "Replacement Reserve Accounts" are accounts into which funds are deposited for the purpose of financing future capital Improvements to maintain the Property, such as major remodeling and replacement of the Common Furnishings. Some of these accounts will be established by the Condominium Association and be funded through Condominium assessments.

Concurrently with its preparation of the Budget, the Management Company shall determine which capital Improvements may be needed within any period of time, and will then determine:

A. The estimated cost for each Improvement; and

B. The amount to be saved in each year to accumulate sufficient funds to pay the estimated cost of the Improvement when needed.

The Management Company may consider interest earned on the savings in making its determination. The amounts to be saved each year for each capital Improvement shall be included in the Budget for that year and assessed to each Owner as a part of his Basic Charge. The amounts collected shall be deposited into a savings account or accounts established for capital Improvements included in the Budget provided that an allocation of funds to specific capital Improvements shall be made by the Management Company.

Each Owner's interest in all Replacement Reserve Accounts shall be automatically transferred to any new Owner of the Club Interest.

**8.6 MANAGEMENT OF ACCOUNTS.** Each of the Operating Reserve Accounts and Replacement Reserve Accounts (collectively, the "Accounts") shall be separate interest bearing accounts, and shall be maintained at a federally insured bank, savings and loan association or trust company authorized to do business in the State of Hawaii, or with any other reputable depository approved by the Board and the DCCA. The funds also may be invested in treasury bills, certificates of deposits, or similar obligations fully guaranteed as to principal by any agency of the United States of America.

The Management Company may make withdrawals from these Accounts for the purposes allowed by the Club Documents. In the event that: (A) the amount in any Account proves to be greater than the cost or estimated cost of the Improvement, or for any reason, the Improvement is not made within a reasonable time after the plan date for such Improvement; or (B) the Management Company reduces the amount per Owner to be kept in the Operating Reserve Account, the appropriate amount shall be withdrawn from that Account and One Share of this amount shall be given to each Owner for each Club Interest owned by such Owner.

**8.7 SURPLUS FUNDS.** Any surplus funds remaining at the end of any year in any Account shall be applied to pay Common Expenses (except for capital improvements) during the next year. At each annual meeting, the Association must adopt a resolution requiring this application of surplus funds. For this purpose, each Owner gives the President of the Association a proxy, and hereby appoints the President such Owner's special attorney-in-fact, to adopt such a resolution.

**8.8 SPECIAL CHARGES.**

**A. THE SUPPLEMENTAL BUDGET.** In the event the Management Company does not or will not have sufficient funds from the Owners to pay all Common Expenses on a current basis, the Management Company shall prepare a revised Budget. Upon review and approval by the vote or written consent of a majority of owners (excluding the Developer) at a meeting of such Owners at which a quorum is present, the Revised Budget shall become the "Supplemental Budget" for such year. A Supplemental Budget may be established as many times each year as is necessary, and may also be established to address any extraordinary items which are major items of expense that the Management Company determines must be paid, but which were not addressed in the current Budget or in any Replacement Reserve Account. Notwithstanding the foregoing, the Board may impose special assessments which in the aggregate in any fiscal year do not exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the special assessment is levied; may impose special assessments for the repair and rebuilding of apartments in the Club which in the aggregate in any fiscal year do not exceed ten percent (10%) of the budgeted gross expenses of the Association for the fiscal year in which the special assessment is levied; however, notwithstanding the foregoing limitations, the Condominium Association shall levy any special assessment of the Association which is duly authorized in accordance with the Condominium Declaration and/or Condominium Bylaws.

**B. ASSESSMENT OF SPECIAL CHARGES.** Once a Supplemental Budget is established, the Management Company shall assess each Owner a Special Charge. Except as provided in Paragraph 3.7 E.3., a Special Charge may be assessed in one lump sum or in equal installments over the balance of the year, as determined by the Management Company; provided, however, that installments may not be due more often than monthly.

**8.9 COMMENCEMENT OF CHARGES.** Notwithstanding anything contained in the Club Documents to the contrary, no charge shall be assessed with respect to any Club Unit until the first day of the month following the first transfer by the Developer of a Club Interest in a Club Unit whereupon all Club Interests, including those owned by the Developer, will be assessed Charges. The Developer may, however, elect to pay a subsidy on its Club Interests in lieu of Basic Charges and Special Charges, and may enter into a subsidy agreement with the Association with respect to such matters.

**8.10 DELIVERY OF FINANCIAL STATEMENTS.** The Management Company shall deliver to each Owner a copy of the Budget, each Supplemental Budget, if any, and the Annual Report for each year

The Budget shall be delivered to each Owner at least forty-five (45) days but not more than sixty (60) days before the commencement of the fiscal year of the Association. The Budget for the first fiscal year must, however,



sent out as soon as reasonably possible.

The Annual Report shall be prepared by an independent accountant in any fiscal year in which the Association's gross receipts exceeds \$25,000, and shall be delivered within 120 days after the end of the fiscal year of the Association, and shall contain:

- A. A balance sheet showing the assets, liabilities and net worth as of the end of the fiscal year;
- B. An operating statement for the fiscal year;
- C. A statement of the net changes in the financial condition of the Program for the fiscal year;
- D. Any other information required by the law of Hawaii and any state or country in which the Program is registered for public sale;

E. A list of the names, mailing addresses and telephone numbers of the members of the Board, and

F. In lieu of the distribution of the information set forth in Paragraph 8.10 A. through E. above, the Board may elect to distribute a summary of such items to all Owners along with a written notice that the information in Paragraph 8.10 A. through E. above is available at the business office of the Association or at another suitable location within the boundaries of the Property, and that copies will be provided upon request and at the expense of the Association. If any Owner requests that a copy of the information in Paragraph 8.10 A. through E. above be mailed to the Owner, the Association shall provide the copy to the Owner by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Owners shall be in at least 10-point boldface type on the front page of the summary of the information in A-E above.

**8.11 PAYMENT OF CHARGES.** Except as otherwise provided below, each Owner shall pay when due all Charges assessed to his Club Interest. Each Owner, Exchange User and Occupant shall pay all of his Personal Charges. In lieu of paying Basic Charges and Special Charges on the Club Interests owned by the Developer, the Developer may elect to pay the difference ("subsidy") between the actual Common Expenses attributable to the Club Unit and the aggregate Charges assessed against all other Owners of that Club Unit.

**8.12 NO WAIVER OF RIGHTS.** No Owner, Exchange User or Occupant shall be relieved of his duty to pay Charges by waiving any of his rights as an Owner by abandoning his Club Interest or by abandoning use of his Use Period.

**8.13 PAYMENT DATE.** The Management Company shall decide when all Charges will be due, but in no event may such Charges be due sooner than twenty (20) days after the invoice therefor is mailed to the Owner or Occupant, except that all Personal Charges shall be paid in full at check-out time.

**8.14 LATE CHARGES.** Interest at the rate of twelve percent (12%) per annum (or such other rate as may be established in the Rules and Regulations), or the maximum rate allowable by law, whichever is lower, shall be assessed on each Charge not paid when due. A late charge as set forth in the Rules and Regulations will also be assessed against the defaulting Owner for the extra handling costs. All costs, including attorneys' fees and court costs, to collect Charges and to enforce any other duties under the Club Documents or the Program Documents shall also be assessed against the defaulting Owner if incurred by the Association, the Management Company or the Program Documents.

**8.15 SECURITY DEPOSIT.** The Management Company shall have the right to require advance payment, by way of monthly installments, to an escrow account, or a security deposit, from any Owner, Exchange User or Occupant for the payment of all Charges of such Owner, Exchange User or Occupant. In the case of Basic

Charges, the Management Company shall have the right to establish an advance escrow procedure to assure the payment of Basic Charges by all Owners on commencement of the Association fiscal year.

The Developer, the Association, the Board, the Management Company and Program Manager shall not be responsible for any unpaid Personal Charges. However, if an Exchange User fails to pay for any personal charge, such expense may become a cost of the Association. Each Owner, Exchange User and Occupant must pay his Personal Charges whether or not he made an advance payment, a security deposit, or received a refund of any amount paid in advance or deposited.

8.16 **AGENCY.** Although the Association, the Board and the Management Company may act as agent for the Owners, they shall not have any personal liability for Common Expenses or Personal Charges. Their obligations as agents is limited to the transmission of the payments received from each Owner and Occupant to the persons to be paid.

8.17 **NONPAYMENT AND LIEN RIGHTS.**

A. **SECURED LIEN.** Each Club Interest shall be automatically subject to a secured lien in favor of the Association to secure the payment of each Charge to an Owner together with all interest, late charges and collection and enforcement costs thereon. Notwithstanding the foregoing, a secured lien shall not apply to any of the Personal Charges set forth in Paragraph 8.1 F.1.(b) through (c) above or to those Personal Charges set forth in Paragraphs 8.1 F.1.(a) above which are incurred by Exchange Users or Occupants other than an Owner.

B. **FORECLOSURE.** In the event of any failure to pay all Charges against a Club Interest, the Management Company, on behalf of and in the name of the Association shall have the right to take all action to foreclose on this lien.

C. **SECURITY INTEREST IN PROCEEDS.** Said secured lien shall extend to cover all money and other proceeds and amounts received on account of a Club Interest and its use, including all rents, insurance and condemnation proceeds, sales proceeds, and cash and non-cash proceeds as defined in Section 490:9-306 of the Hawaii Revised Statutes, as amended.

D. **PERFECTION OF LIEN AND SECURITY INTEREST.** This Declaration is a security agreement, and each Owner agrees to comply with it. To establish, maintain and perfect the lien and security interest created by this Declaration, and to protect it against the claims of other persons, each Owner shall, at the request of the Association or Management Company execute, deliver and record any and all documents, including, but not limited to, all further security agreements or financing statements and all other matters requested by the Association or Management Company.

8.18 **NOTICE OF SECURED LIEN.** The secured lien shall automatically attach to each and every Club Interest and all proceeds therefrom, even before any Charge is due, without the necessity of any further action or notice. This lien shall be prior and superior to all other rights in that Club Interest. Notwithstanding anything contained in the Club Documents to the contrary, the lien and security interest created by this Declaration shall be subject and subordinate to purchase money first mortgages and security interests given by an Owner in good faith and for value to any prior Owner or to any other lender, which purchase money first mortgages and security interests shall be superior to the Association's liens and security interests.

8.19 **PERSONAL LIABILITY OF OWNER.**

A. **LIABILITY FOR CHARGES.** An Owner shall pay all of his Personal Charges, but only those Basic Charges and Special Charges due or incurred while such Owner is recognized as an Owner, and remains personally liable for these Charges, together with interest, late charges and collection costs thereon, notwithstanding the recognition of the subsequent transfer of such Owner's Club Interest to a new Owner.

B. **CONTINUATION OF LIEN.** A new Owner shall not be personally liable for any Charges and obligations of the prior Owner due or incurred prior to the time the new Owner was recognized, unless such new

Owner has agreed in writing to pay such Charges; provided, however, that the Club Interest acquired by the new Owner shall remain subject to a secured lien for all of the prior Owner's unpaid Charges (including interest, late charges and collection and enforcement costs). Consequently, in addition to legal proceedings against the prior Owner for payment, the Association or the Management Company may also initiate an action for foreclosure of such Owner's Club Interest, in which event such Club Interest may be foreclosed upon and sold and the proceeds thereof shall be applied toward the payment of all amounts owed to the Association and Management Company. The new Owner shall be entitled to the sales proceeds, if any, remaining after all amounts owing are paid in full. If this lien is foreclosed, the Owner will lose the Club Interest.

## CHAPTER 9

### RESPONSIBILITY FOR VISITORS

9.1 **LIABILITY FOR GUESTS.** Each Owner shall be personally liable for the following obligations relating to his Guests:

#### A. AGREEMENT.

1. Such Owner's Guests shall comply with the Club Documents, the Program Documents, the Condominium Documents and the First Deed applicable to the Club Unit being occupied;

2. Such Owner's Guests shall make all required payments and shall act in a manner consistent with the Club Documents, the Program Documents and the Condominium Documents; and

3. Such Owner shall ensure that his Guests fully comply with the foregoing.

Each Owner shall be fully responsible for his Guests, and all damages and liabilities caused by them, together with all interest, late charges and collection and enforcement costs charged to them, including, without limitation, all damages and liabilities caused and incurred to the extent that any such Guest is a Trespasser or Vandal. All such damages, interest, charges and costs shall be assessed as a Personal Charge to such Owner.

Each Owner is jointly and severally liable with his Guests, meaning that liability can be imposed on the Owner alone if the Guest does not pay for damages and liabilities caused by such Guest.

B. **INDEMNIFICATION.** Each Owner shall indemnify, protect and hold all other Owners, the Management Company, the Program Manager and the Association harmless from and against any and all claims, liabilities, damages, judgments, costs and expenses, including interest, late charges and collection and enforcement costs (including attorneys' fees and court costs), incurred as a result of the failure of such Owner's Visitors or Guests to comply with the Club Documents, the Program Documents and the Condominium Documents, or the failure of the Owner to perform all of his obligations under this Paragraph 9.1. Each Owner will also be assessed for the foregoing as a Personal Charge.

9.2 **CHARGES BY GUESTS.** A lien and security interest shall automatically attach to each Owner's Club Interest, and the proceeds thereof, to secure payment for all Personal Charges incurred as a result of such Owner's Guests. If these Charges are not paid when due, the Association or the Management Company may foreclose and sell such Owner's Club Interest to recover sums sufficient to pay the Charges.

9.3 **LIABILITY OF EXCHANGE USERS AND OCCUPANTS.** Each Exchange User and other Occupant shall be personally liable for his Guests to the same extent (including all promises, guarantees and indemnities) as an Owner in accordance with Paragraph 9.1 above. Each Exchange User and Occupant shall be jointly and severally liable with his Guests, and will be assessed for the foregoing as a Personal Charge.

9.4 **JOINT AND SEVERAL LIABILITY.** Each co-owner shall observe and perform all promises made by all Owners of the Club Interest, and the Association and Management Company may collect all payments due

against co-Owners separately, or against any two or more co-Owners together, notwithstanding the failure of any other co-Owner to pay his share. Co-owners shall also be jointly and severally liable for each other's Guests.

## CHAPTER 10

### DEFAULT AND ENFORCEMENT

**10.1 ENFORCEMENT.** An Owner, Exchange User, Occupant or other person ("Defaulting Party") who violates any part of the Club Documents or the Program Documents ("Act of Default") will be considered in default, thus triggering the provisions of this Chapter. A Defaulting Party shall also include any Trespasser or Vandal.

The Association and/or the Management Company may require a Defaulting Party to comply with the Club Documents or the Program Documents, and may seek any relief and shall have all remedies for an Act of Default provided by law or equity and the Club Documents or the Program Documents. No Owner individually or with any other Owner or through the Association may enforce compliance or seek any relief or remedy in his own name, except as permitted by Paragraphs 4.13 B., 6.9 and 7.6 hereof.

### 10.2 NON-JUDICIAL REMEDIES.

**A. ABATEMENT AND RIGHT OF ENTRY.** The Association and the Management Company or their agents shall have the right, but not the obligation, to abate any activity in violation of the Club Documents or the Program Documents, and, if necessary, to enter any Club Unit at any time in order to do so. In that connection, the Association and Management Company may, in their reasonable discretion, use any means and reasonable force; provided, however, that the Association, the Board, the Management Company, and anyone else acting on their behalf, shall not be responsible for any resulting damage or liability, or for the failure to abate any such violation.

**B. ADVANCES.** The Association or the Management Company may, but is not required to, advance funds to enforce compliance or to correct a violation or to correct and repair any damage caused. The Association or the Management Company may, but is not required to, advance funds to any other person who is damaged, injured or threatened by an Act of Default to compensate them for their expenses, including attorneys' fees. The Defaulting Party shall reimburse, as a Personal Charge, the Association or Management Company, as the case may be, for all such advances.

**C. OFFSET.** The Association and Management Company may, but are not required to, offset any funds in their possession, except sums in a Replacement Reserve Account, deposited by a Defaulting Party, to collect any amount owed by Defaulting Party, and such Defaulting Party shall replace all funds so offset.

**D. SUSPENSION OF USE AND OTHER RIGHTS AND PRIVILEGES; FINES.** The Association or Management Company may assess a fine against a Defaulting Party in accordance with the Program Rules, and during the continuance of any Act of Default, may also suspend or take away from the Defaulting Party:

1. The right to reserve and/or use his Use Period;
2. The right to exchange the use of his Use Period;
3. Other privileges of ownership and Association membership, including voting rights;
4. Liability and housekeeping services to the Club Unit that such Defaulting Party is entitled to receive, including special services, such as optional housekeeping service.

A suspension or fine will become effective when notice of it is sent to the Owner; provided, however, that the Management Company may not suspend an Owner's use rights if an Exchange User has a confirmed reservation to

use such Owner's Use Period. The Management Company shall notify the Program Manager of any suspension. Unless the suspension is due to the Owner's failure to pay all Charges and other amounts owed to the Association or the Management Company, the Defaulting Party must be given notice and the opportunity to present a defense to the Board against the suspension or fine, at a "hearing." The notice must be in writing and must be sent to the Defaulting Party at least twenty-five (25) days before the hearing. The written notice must state the purpose of the hearing, the reasons for suspension, and the place and date of the hearing. A copy of the notice must be sent to the Management Company, who may also participate in the hearing and present to the Board its reasons for the proposed disciplinary action. The Board's decision made after the hearing will be final, whether or not the Defaulting Party or the Management Company participates in the hearing. The Board must give written notice of its decision to the Defaulting Party and the Management Company.

E. **EVICTION.** If the Program Manager has suspended an Owner's right to use his Use Period, it may use his Use Period and permit others to use it, and in that connection may without delay cause the eviction of the Owner and any Guest or Occupant of such Owner, and the Management Company and Program Manager shall not be liable for any damages in that connection. The Program Manager may also rent the Use Period and apply the amounts received, after deducting its costs, to the Owner's debts.

F. **RECEIVERSHIP.** Without a suspension, the Program Manager may take possession of all rents and other amounts accruing from the Use Period of an Owner in default, and, for this purpose, is authorized by each Owner to act as that Owner's attorney-in-fact. The Management Company may charge a reasonable fee, as stated in the Rules and Regulations, for acting as an Owner's "receiver," and it must apply all rents and other amounts collected (after deducting its fee) to the Owner's debts in connection with the Units.

G. **POWER OF SALE.** The Association or Management Company acting on behalf of the Association may also foreclose on a Defaulting Party's Club Interest to collect sums due, as provided below, except if sums due are for those Personal Charges set forth in Paragraph 8.1 F.4 through 8.1 F.9 above; those Personal Charges set forth in Paragraphs 8.1 F.1 and 8.1 F.2 above which are incurred by Exchange Users or Occupants other than an Owner; or to the costs of enforcing the Club Documents or the Program Documents, as set forth in Paragraph 8.1 F.3 above.

10.3 **JUDICIAL REMEDIES.** Legal proceedings may be filed against the Defaulting Party for any remedy or relief generally granted or allowed by law or equity or specifically granted or allowed by the Club Documents or the Program Documents, including, without limitation, legal proceedings:

- A. To collect money;
- B. To abate any violation (For this purpose, each violation is declared to be a "nuisance");
- C. To specifically enforce the Club Documents or the Program Documents against the Defaulting Party; or
- D. To foreclose on a secured lien and any other lien granted or permitted by law or equity.

10.4 **FORECLOSURE.** The Association may treat its lien and security interest as a mortgage on the Club Interest, and, therefore, may foreclose in any manner permitted by the law. The Association may foreclose and sell an Owner's Club Interest by initiating foreclosure under power of sale, or through judicial foreclosure proceedings.

In exercising its right to foreclosure under power of sale, the Management Company may, in the name of the Association or the Defaulting Party, execute and deliver any legal document sufficient to transfer title to that Owner's Club Interest to a purchaser. For this purpose the Management Company is hereby appointed the attorney-in-fact for each Owner.

**PROCEDURES.** The Association must satisfy all of the following to effect any foreclosure proceeding:

1. **NOTICE OF DEFAULT.** The Association or the Management Company acting on behalf of the Association must deliver to the Defaulting Party notice of default stating:

- (a) The date and nature of the default;
- (b) The total of any unpaid amounts; and
- (c) A demand for payment.

2. **A NOTICE OF INTENT TO FORECLOSE.** If the default is not cured within ten (10) days after the notice of default is given, a notice of intent to foreclose shall be delivered to the Defaulting Party and recorded. The notice of intent to foreclose must be executed by an authorized officer of the Association or by the Management Company acting on behalf of the Association, and must state:

- (a) The name of the Defaulting Party;
- (b) The identity of his Club Interest;
- (c) The amount claimed to be due (after any proper offset);
- (d) That the notice is made by the Association or the Management Company under the terms of the Club Documents or the Program Documents;
- (e) That a lien is claimed against the Club Interest for the amount stated, plus interest, late charges and collection and enforcement costs; and
- (f) That the Association or the Management Company intends to have the Club Interest sold.

A notice of intent to foreclose may cover more than one default, and may include subsequent defaults between the date of the first notice and the date of the sale without the necessity of delivering a new notice of intent.

3. **ADDITIONAL REQUIREMENTS FOR FORECLOSURE UNDER POWER OF SALE.** If the Management Company intends to foreclose under power of sale, the notice of intent to foreclose must also:

- (a) State the time, date and place proposed for the sale;
- (b) Be published in a newspaper having a general circulation in the county in which the Club Unit in which the Club Interest is owned once each week for three (3) successive weeks. There must be three (3) publications. The first publication must be not less than four (4) weeks before the date of the sale, and the last publication must be not less than fourteen (14) days before the date of the sale; and
- (c) Be posted on the Club Unit in which that Owner has his Club Interest, or in such other conspicuous location as may be legally permissible, not less than twenty-one (21) days before the sale.

4. **NOTICES TO CREDITORS AND THE STATE OF HAWAII.** This applies to any creditor under a mortgage encumbering a Club Interest. Any of these creditors may request in writing that the Association or Management Company send it copies of any notices of default and/or intent to foreclose. Upon such a request by a creditor, provided that such creditor submits together with the request its name and address, the Association or Management Company shall send to the creditor a copy of each notice within seven (7) days after it is given to the Defaulting Party. Notices of default and/or any intent to foreclose shall also be sent to the Department of Taxation of the State of Hawaii, if required by law.

5. **AFFIDAVIT.** After the sale, the Association or Management Company must record the notice together with an affidavit describing the steps taken to complete the foreclosure by power of sale.

B. **POSTPONEMENT OF SALE.** The Association or Management Company may postpone the sale one (1) or more times by public announcement.

C. **CURE BEFORE SALE.** If all defaults are cured before the sale occurs, the Association or Management Company shall cancel the sale and record a Notice of Cancellation.

D. **ELIGIBLE PURCHASERS.** The Association or any other party may purchase the Club Interest at the foreclosure sale. The Association may offset the amount claimed against its bid at the sale. A purchaser at foreclosure has no duty to make sure that the sale proceeds are applied properly.

E. **APPLICATION OF PROCEEDS.** The proceeds from the foreclosure sale shall be applied first, to the costs and expenses of sale, including any court costs and attorney's fees and costs; next, to payment of all of the Owner's debts; and lastly, any remaining amount, to the Owner.

F. **CONSEQUENCES OF FORECLOSURE SALE.**

1. **PURCHASER AT FORECLOSURE.** The person who purchases a Club Interest at a foreclosure sale becomes an Owner who is entitled to enjoy the benefits of, and is required to observe and perform, the provisions of the Club Documents and the Program Documents. Such purchaser shall pay all his Charges, but is not responsible for any Charges that became due or were incurred before the Club Interest was transferred to him. Such purchaser's Club Interest shall be subject to the secured lien to protect against nonpayment of all Charges due or incurred after the sale, but is no longer subject to a secured lien for Charges that were due or incurred before the sale.

2. **WAIVER OF REDEMPTION RIGHTS.** Upon the completion of the foreclosure sale, the Defaulting Party and all persons claiming through him, shall have no right to redeem or get the Club Interest back. Each Owner hereby agrees that he has released and waived all these redemption rights. The purchaser shall acquire the Club Interest free and clear of all claims of the Defaulting Party and all persons claiming through him.

3. **COLLECTION OF DEFICIENCY.** In the event that the foreclosure sale may not produce sufficient funds to pay all Charges, plus interest, collection and enforcement costs due and payable by the Defaulting Party, the Defaulting Party must pay the deficiency. The Association itself, or through the Management Company, may initiate legal proceedings against the Defaulting Party to collect this unpaid amount, plus interest thereon and collection costs.

4. **LIABILITY DISCLAIMER.** The Association, the Board, the Management Company, the Program Manager, and their respective agents and employees shall not be liable to any Owner for any action taken or not taken in accordance with the provisions of this Chapter.

## CHAPTER 11

### INSURANCE AND CONDEMNATION.

11.1 **GENERALLY.** The Board shall ensure, at a minimum, that the Association obtain, or cause to be obtained, on behalf of each Owner, the insurance required by the Condominium Bylaws for Owners of Apartments in the Project. In the event of any conflict between this Chapter and the Condominium Documents regarding insurance, the Condominium Documents shall control. The Association shall at a minimum, maintain property insurance pursuant to the coverage requirements in the Condominium Documents, but in addition to the areas insured under the Condominium Documents, the property insurance for all Club Units shall also provide coverage for all fixtures, installations or additions, floor coverings, wall coverings, and ceiling coverings comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual

Club Units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as existed at the time the first Club Interest therein was initially conveyed if the original plans and specifications are not available, but excluding any improvements or betterments to the Club Unit by the Club Unit Owner and all personal property of the Club Unit Owner, its guests, agents and invitees.

The Board shall have the right and power to increase coverages or obtain more beneficial terms than those stated in this Chapter, as it may deem necessary and in the best interests of the Association and its members. The Board also may purchase additional types of insurance whether or not described in this Chapter. The Board shall review the insurance program at least once a year.

The Board also has the right and power to decide to reduce insurance coverage or obtain less beneficial terms, if it determines that the coverages or terms are too expensive or not affordable. The Board could also eliminate certain coverages or terms if it is advised that they are not obtainable. The Board may accept such deductibles and uninsured retentions as it shall determine in its business judgment. The Board will not be liable for any decision it makes on insurance, unless it was guilty of intentional misconduct. Similarly, neither the Developer nor the Management Company will be liable either, unless they were guilty of intentional misconduct.

**11.2 OWNER'S INSURANCE.** In addition to the insurance to be obtained by the Association on behalf of Owners set forth in Section 11.1 above, Owners shall each be required to obtain the following insurance:

A. **CASUALTY.** Insurance coverage for the Owner's improvements and betterments and personal property located within the boundaries of the Club Unit occupied by an Owner and elsewhere, such as within the Common Element areas and Limited Common Element areas, in an amount not less than the full insurable value or replacement cost of such property and any improvements and betterments and personal property of the Owner, but as indicated in Section 11.1 above, shall not include fixtures, installations or additions, floor coverings, wall coverings, and ceiling coverings comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Club Units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as existed at the time the first Club Interest therein was initially conveyed if the original plans and specifications are not available, which shall be insured by the Association. Such coverage shall insure all areas not covered by the Association including but not limited to those areas as defined as outside the scope of the Association's insurance above.

B. **LIABILITY.** Liability insurance for bodily injury and property damage in an amount of not less than three hundred thousand dollars (\$300,000) per occurrence; and

C. **OTHER.** At their own option any such other insurance as the Owner may elect to procure including but not limited to additional living expenses and loss of use of the Club Unit.

Each insurance policy issued to a Owner providing any such coverage shall be without rights of subrogation against the Association, the Condominium Association, and the Management Company(ies) that operates the Association or the Condominium Association. The Association shall not be responsible, however, for any claims, losses, injuries or damages that result from the acts or omissions of the Owners, their agents, invitees or guests that occur at the Project or for claims, losses, injuries or damages, that occur within the Club Unit when used, occupied or rented by the Owner. All real property, including improvements and betterments, or personal property located within the boundaries of the Club Unit occupied by an Owner which is excluded from the coverage to be provided by the Association as set forth above shall be insured by the individual Owner.

## CHAPTER 12

### MAINTENANCE AND REPAIR

**12.1 MAINTENANCE AND REPAIR OF COMMON ELEMENTS.** Except as may be provided in the Condominium Documents for certain Limited Common Elements, the Condominium Association shall be responsible for the maintenance and repair the Common Elements and the rebuilding and restoring of the buildings



and other improvements, including the apartments and Units. All decisions of the Condominium Association with respect thereto in accordance with its Condominium Documents shall be binding on all Owners

To the extent provided in the Condominium Documents, all costs incurred in maintaining and repairing the Common Elements shall be assessed to each Unit as part of the common expenses and each Owner shall pay such Owner's share of these costs. In the event that the Condominium Association does not possess sufficient funds to pay the costs of rebuilding, each Unit will be assessed by the Condominium Association to raise the necessary funds. The Association will, in turn, assess a Special Charge to each Owner who must then pay such Owner's share.

**12.2 APPLICATION OF INSURANCE AND CONDEMNATION PROCEEDS.** All insurance and condemnation proceeds for each Unit shall be applied first as the Condominium Association shall decide in accordance with the Condominium Documents. The proceeds for any Common Furnishings shall be applied as the Association shall decide in accordance with Paragraph 12.3. Any excess or unused proceeds shall be received by the Board as trustee for the Owners. One Share of these excess proceeds shall then be distributed to each Owner for each Club Interest owned by such Owner.

**12.3 AUTHORITY OF THE ASSOCIATION.** Generally, The Association shall have the general powers and duties to the extent granted to it hereunder, including the following provisions:

A. The Association shall maintain and repair each Club Unit and the Common Furnishings in a neat and attractive condition, including without limitation:

1. Cleaning and preparing each Club Unit for the next Occupant, and performing other routine and special maintenance and repair to each Club Unit;

2. Maintaining, repairing and replacing the Common Furnishings, including the authority to lease or purchase, without the need for the approval of any party;

3. Making all capital improvements for which a Replacement Reserve Account has been set up, or, if it decides that the improvement is not needed as planned, it shall revise the Account accordingly; and

4. Restoring Common Furnishings and the interior of any Club Unit that have been damaged or destroyed, and applying all available insurance and condemnation proceeds for such purpose.

B. The Association may, but is not required to:

1. Make changes, additions and improvements to the Property beyond needed maintenance and repair.

2. Provide optional housekeeping service to Occupants during their Use Period. If this service is provided, it will be furnished to each Occupant only at his request and added expense, as a Personal Charge.

In the event that there are not sufficient funds available to pay for any authorized work, the Board may assess a Special Charge to the Owners to make up the difference.

## CHAPTER 13

### ANNEXATION, AMENDMENT AND TERMINATION OF THE PROGRAM

**13.1 ANNEXATION OF UNITS.** Without the consent of any Owner or any other person, the Developer shall have the exclusive right to add one or more apartments in the Condominium as a Unit to the Club at any time until December 31, 2026.

13.2 **DECLARATION OF ANNEXATION.** The Developer may add Units to the Club by executing and recording a declaration of annexation containing:

- A. A legal description of the Unit to be added and the names and addresses of its owners of record;
- B. A statement submitting that Unit to the Club and the Club Documents;
- C. A schedule of Use Periods for each Unit being added; and
- D. Such other or further information as the Developer may, in its sole discretion, set forth.

13.3 **APPLICABILITY OF CLUB DOCUMENTS AND PROGRAM DOCUMENTS.** The Club Documents and the Program Documents shall govern each added Club Unit, all Club Interests and other interests in it. Each person owning a Club Interest or other interest in each added Club Unit shall comply with the Club Documents and the Program Documents. Any mortgage or lien against the Club Unit on the date it is annexed shall be subject and subordinate to the Club Documents and the Program Documents and the lien rights granted to the Association by the Program Declaration, except as otherwise indicated herein.

13.4 **REMOVAL OF UNITS.**

A. **DEVELOPER'S RIGHTS.** To the extent that the Developer is the Owner of all Club Interests in a Club Unit, it may remove that Club Unit from the Club by executing and recording a declaration of removal.

B. **DESTRUCTION OR CONDEMNATION OF CLUB UNIT.** The Association may remove a Club Unit from the Club if that Club Unit is destroyed and it has decided not to rebuild it, or if it is condemned. To remove a Club Unit, the Association shall execute and record a declaration of removal. The Board may remove a Club Unit even if all Charges with respect to said Club Unit have not been paid. The Owners of Club Interests in that Club Unit shall, however, remain personally liable for all Charges then accrued, and the Association's lien and security interest will remain on the Club Unit and its proceeds until all such Charges (including interest, late charges, and collection and enforcement costs) are paid in full. The Association shall also retain all its rights and remedies to collect.

C. **CONTENTS OF DECLARATION OF REMOVAL.** A Declaration of Removal shall contain:

- 1. A legal description of the Club Unit being removed;
- 2. If applicable, an affidavit to the effect that the Club Unit was destroyed and is not being rebuilt, or was condemned; and
- 3. A statement that, upon recordation, the Club Unit is no longer subject to the Club, the Club Documents, the Program or the Program Documents.

Upon the recordation of the declaration of removal, the Club Unit will be removed from the Club and will not be subject to the Club Documents or the Program Documents.

13.5 **AMENDMENT OF THIS DECLARATION.**

A. **DEVELOPER'S RIGHT.** Without the consent of any other person, the Developer may amend the Club Declaration and the other Club Documents:

- 1. To amend any provision and for all purposes, before it transfers any Club Interests in the Club; or

2. Subject to the provisions of Paragraph 13.5.C. below, at any time within twenty (20) years from the recordation date hereof for the following purposes only: (a) to bring the Club Documents into compliance with the laws and rules of any state or country in which the Developer intends to sell Club Interests including, without limitation, to add as an exhibit to this Club Declaration, the subsidy agreement referred to in Paragraph 8.9 above; (b) to satisfy requests for changes made to the Developer by any institutional lender of the Developer, 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; and (c) as otherwise provided in this Chapter 13.

To the extent required by law, except with respect to items specified in Paragraph 13.5.C.1. below, all Owners and other persons hereby appoint the Developer and its successors and assigns as their attorney-in-fact with the right of substitution, to act on their behalf to execute, deliver and record all documents necessary to effect any of the amendments referred to in this Paragraph 13.5A., subject, however, to the proviso set forth in said Paragraph 13.5A. Such special power of attorney with the power of substitution, shall be coupled with an interest and is irrevocable for the term of the Developer's reserved right to amend, and shall not be affected by the death, disability or incapacity of any party or parties.

**B. OWNERS' RIGHT.** The Owners may amend this Declaration at any regular or special meeting of the Association, if a majority of all Owners (including a minimum of 25% of the total Club Interest other than the Developer) vote for such amendment. If, however, a percentage greater than such a majority is required by law or by any other provision of the Club Documents, Owners of such percentage of Club Interests must approve such amendment.

**C. NECESSARY APPROVALS.**

1. **WHEN OWNER'S WRITTEN CONSENT REQUIRED.** The Club Documents may not be amended without written consent of a particular Owner and such Owner's Mortgagee to materially diminish such an Owner's ownership rights or to change:

- (a) Any such Owner's Ownership Share of a Club Unit;
- (b) The amount of any such Owner's Reserved Allocation; or
- (c) Any such Owner's voting rights; provided that no such consent shall be required in the event of the annexation or deannexation of Club Units to the Club which may impact on relative voting rights.

2. **WHEN DEVELOPER'S CONSENT REQUIRED.** Without the Developer's written consent, the Club Documents may not be amended:

- (a) To change the rights and privileges of the Developer under the Club Documents; or
- (b) To bring the Club Documents into non-compliance with the laws and rules of any state, province or country in which the Developer intends to sell Club Interests.

**D. EFFECTIVENESS OF AMENDMENT.** Any amendment complying with this Paragraph 13.5 shall become effective when: (1) it is executed by at least two (2) officers of the Association; (2) these officers execute a sworn statement that the requirements of this Paragraph 13.5 have been satisfied; and (3) if the document to be amended has been recorded, the amendment and the officers' sworn statement is also recorded. Any amendment made by the Developer pursuant to Paragraph 13.5 A., however, shall be executed only by the Developer, and the officers' sworn statement shall not be necessary. Each amendment, when effective, shall be binding upon and shall inure to the benefit of all persons and all things involved with the Club.

13.6 **TERMINATION OF THE CLUB.** The Club, and the Club Documents, shall remain in effect until termination upon the occurrence of any of the following:

- A. All Club Units are removed from the Club pursuant to Paragraph 13.4;
- B. All Club Units in the Club are destroyed and the decision not to rebuild them has been made;
- C. All Club Units in the Club are condemned; or
- D. All Club Units are removed from the Condominium Declaration and the provisions of Chapter 514A of the Hawaii Revised Statutes, as amended.

Notwithstanding the termination of the Club and Club Documents, the Owners shall remain personally liable for all their Charges then accrued and the Association will continue to exist, and its lien and security interest will remain on the Owner's interest in the Club Units and its proceeds until all such Charges (including interest, late charges and collection and enforcement costs) have been paid in full, and the Association's affairs are taken care of. The Association shall also retain all of its other rights and remedies, including, but not limited to, its other rights and remedies to collect.

13.7 **THE RULE AGAINST PERPETUITIES.** If any provision of the Club Documents or the Program Documents would violate the Rule Against Perpetuities or any other rule of law relating to the period that these restrictions may be imposed on the Property, such provision shall remain in effect only until the earlier of:

- A. The maximum period permissible by law; or
- B. Twenty one (21) years after the death of the last survivor of the now living descendants of George W. Bush, the President of the United States, and Elizabeth, Queen of England.

## CHAPTER 14

### DEVELOPER'S OBLIGATIONS

14.1 **DEVELOPER'S OBLIGATIONS TO THE CLUB.** For so long as (a) an improvement to be constructed by Developer as a part of the Club (for which a bond or other security posted by Developer to assure completion of such improvement remains unexonerated) has not been completed, or (b) a Subsidy Agreement continues in effect, or (c) Developer owns in excess of twenty percent (20%) of all Club Interests in the Club, Developer shall, within thirty (30) days after the end of each quarter of the Fiscal Year, furnish to each member of the Board at his or her residence, a Developer's Report (more particularly defined in Paragraph 14.2 below). If the Developer's Report is not received by the Board members within forty five (45) days after the end of a quarter, or if the Developer's Report received evidences a failure by Developer to fulfill any obligation of Developer to the Association, the Board shall hold a special meeting to consider and to vote on the question of initiating action against the Developer and/or Developer's surety to enforce Developer's unfulfilled obligations.

If within seventy-five (75) days following the end of the calendar quarter with respect to which the Developer's Report was either not submitted or reflected a failure by Developer to fulfill its obligations to the Association, the Board fails to meet to consider and vote on the question of enforcing Developer's obligations or if, within said seventy-five (75) day period, the Board refuses to initiate action to enforce the Developer's unfulfilled obligations, the director of the Association elected solely by the votes of Owners other than Developer shall be empowered to initiate action in the name of the Association and at the Association's expense, including, without limitation, arbitration proceedings as more particularly provided below. If such director initiates an action in the name of the Association, the Board shall thereafter take such steps as are necessary and appropriate in furtherance of the purpose of the action.

Any disagreement or controversy between the Developer and the Association with respect to the question of the fulfillment of the Developer's obligations to complete and pay for any Improvements included in the Program, to pay for Basic or Special Charges as the Owner of the Developer Club Interests in the Program or to pay the costs of operating the Program and maintaining it under a Subsidy Agreement shall, at the request of either party, be submitted to arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration shall be held in Honolulu, Hawaii. Issues of arbitrability shall be determined in accordance with the federal substantive and procedural laws relating to arbitration; all other aspects of the dispute shall be interpreted in accordance with, and the arbitrator shall apply and be bound to follow, the substantive laws of the State of Hawaii.

The fee necessary to commence arbitration shall be paid by the party initiating the arbitration proceedings. The cost of arbitration shall ultimately be borne as determined by the arbitrator. If arbitration is requested by the director elected solely by the votes of the Owners other than Developer as provided above, the Association shall promptly reimburse such director for that and any other costs reasonably incurred in initiating the arbitration proceedings.

**14.2 DEVELOPER'S REPORT.** A statement containing the following information, where applicable:

A. A status report covering each improvement, if any, included in the Club which was scheduled for completion during the quarter according to the planned construction statement for the Club and each still uncompleted improvement that was scheduled for completion during an earlier quarter;

B. The number of Club Interests owned by Developer as of the first and last day of the quarter;

C. If no subsidy is in effect during a quarter, the total Basic and Special Assessments which Developer became obligated to pay during the quarter;

D. If no subsidy is in effect during a quarter, the total Basic and Special Charges actually paid by Developer to the Association during the quarter;

E. If no subsidy is in effect during a quarter, the amount of any delinquency by Developer in the payment of Basic and Special Charges that has not been cured as of the date of such Developer's Report; and

F. An itemized report of funds, goods and services furnished by Developer or caused to be furnished to the Association (if any) under the subsidy, if any, including, without limitation, payment of any reserves thereunder.

## CHAPTER 15

### MISCELLANEOUS

**15.1 NOTICES.** All notices shall be made in writing, except in those circumstances where the Club Documents or the Program Documents expressly permit verbal notice. Written notices may be delivered, transmitted by electronic mail, telecopied or mailed, postage prepaid, addressed to an Owner at the last address he provides to the Association for delivery of notices. If an Owner does not provide the Association with an address, the notice will be addressed to such Owner's last known address. Notices to the Association, the Management Company and the Program Manager shall be in writing and must be personally delivered, transmitted by electronic mail, telecopied or mailed to the address given for each of them by written notice to all Owners.

Written notices shall be considered mailed and received upon delivery, telecopy or four (4) days after they are deposited in the U.S. mail in the manner stated above. All notices made in compliance with this Paragraph 15.1 shall be considered received, even if the addressee does not actually receive notice.

If more than one person is listed as an Owner of a Club Interest, notice to all Owners of that Club Interest may be made by providing notice to any one of them.

Each Owner, the Association, the Management Company and the Program Manager may change his address for the purposes of this paragraph by giving written notice of the change. Unless written notice of an address change is actually received, however, the last address will be considered as the address for all purposes.

15.2 **POWER OF ATTORNEY.** In this document, each Owner hereby appoints the Association and the Management Company, together or separately, as his attorney-in-fact for several purposes, including, without limitation, the purposes set forth in Paragraphs 4.7, 4.13, 8.7, 10.2F., 10.4 and 13.5A. hereof. For each of these purposes, each Owner also: (A) authorizes the Association and the Management Company to substitute each other or any member of the Board to act as his attorney-in-fact; and (B) agrees that he cannot take away the power and right of the Association or the Management Company to substitute these persons to sign for him. Since the Association and the Management Company have an interest in the matters on which each Owner grants it these powers, they are coupled with an interest and are irrevocable. Each Owner agrees that these special powers of attorney cannot be terminated during the term of this Program, even if he becomes disabled or dies.

15.3 **APPLICABLE LAW.** All terms and provisions of this Declaration and the other Club Documents shall be governed by the laws of the State of Hawaii.

15.4 **SEVERABILITY.** If any term stated in this instrument is subsequently determined to be invalid, illegal or unenforceable, that determination shall not affect the validity, legality or enforceability of the remaining terms stated in this instrument unless that is made impossible by the absence of the omitted term.

15.5 **NO WAIVERS.** No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

15.6 **HEADINGS AND CAPTIONS.** The headings and captions of paragraphs and subparagraphs are inserted for convenience, reference, and identification purposes only, and shall in no way control, define, limit or affect the scope or intent of any provision of this Agreement. All Exhibits referred to herein as being attached hereto shall be incorporated herein by such reference.

(The remainder of this page has been intentionally left blank)

THE DEVELOPER, by signing this document below, makes this Declaration on this 9<sup>th</sup> day of June, 2006.

KAPALUA BAY, LLC,  
a Delaware limited liability company

By KAPALUA BAY HOLDINGS, LLC,  
a Delaware limited liability company, its sole member  
Its Member

By MLP KB PARTNER LLC,  
a Hawaii limited liability company,  
Its Managing Member

By MAUI LAND & PINEAPPLE COMPANY, INC.  
a Hawaii corporation,  
Its Managing Member

By Ryan Churchill  
Ryan Churchill  
Its Vice President

STATE OF Hawaii  
COUNTY OF Mauai

SS:

On this 9<sup>th</sup> day of June, 2006 before me personally appeared Ryan Churchill, 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.

Rhonda M. Pang  
Name: Rhonda M. Pang  
Notary Public, State of Hawaii  
My commission expires: 5/25/07

C.S.

## APPENDIX I

### DEFINITIONS AND EXHIBITS

A. **DEFINITIONS.** The terms listed below shall have the following meanings:

1. "ACCOUNTS" shall mean the Operating Reserve Accounts and Replacement Reserve Accounts.
2. "ACT OF DEFAULT" shall mean a violation of any part of the Program Documents.
3. "ALLOCATION" shall mean the total number of days each year, as established in the Club Documents, for which a Member or Local Member is entitled to use a Club Unit without incurring a per diem charge. Two (2) Club Calendars are available at the Local Home Club. In accordance with and subject to the Club Calendar applicable to an Allocation, a Member or Local Member has the right to use, occupy and possess a Club Unit for three (3) weeks in each Club Calendar Year. All Allocation is Reserved Allocations (as defined below). No Allocation can be used outside of the (Home Club's) Club Calendar Year in which it was originally allocated. Each day of the Club Calendar Year belongs to a specific Season. During each Club Calendar Year, the Season in which a Member's or Local Member's Reserved Allocation, Reserved Allocation Exchange or Converted Reserved Allocation falls shall be governed by the Season in which the first day of occupancy of such Reserved Allocation, Reserved Allocation Exchange or Converted Reserved Allocation begins on the Club Calendar, regardless of whether the last day of occupancy of such Reserved Allocation, Reserved Allocation Exchange or Converted Reserved Allocation occurs on a day which falls in another Season on the Club Calendar.
4. "APARTMENT OR APARTMENTS" shall mean an apartment or apartments within a condominium project, which generally consist of separate dwelling and/or commercial units.
5. "APARTMENT DEED" shall mean the instrument which was or will be used originally to transfer a fee simple interest in an apartment (and its Common Interest) from the Condominium Developer to the first owner of that apartment.
6. "APARTMENT OWNER" shall mean, among other people, each person who owns a Club Interest in an apartment in the Condominium.
7. "ASSOCIATION" shall mean the Kapalua Bay Vacation Owners Association consisting of all Owners of Club Interests in the Program acting as a group in accordance with the Program Documents.
8. "BASIC CHARGE" shall mean the regular charge for each Club Interest equal to One Share of the Program Expenses, as estimated in the Budget, plus any applicable late charges and interest and all costs of collecting unpaid Basic Charges, which include, without limitation, Collection Costs.
9. "BOARD" shall mean the Board of Directors of the Association.
10. "BUDGET" shall mean the estimate of Program Expenses for each fiscal year prepared by the Program Operator in accordance with Paragraph 8.2 A. of the Declaration.
11. "BUREAU" shall mean the Bureau of Conveyances of the State of Hawaii.
12. "BY-LAWS" shall mean the By-Laws of The Kapalua Bay Vacation Owners Association adopted or to be adopted by the Association, containing rules governing the operation of the Association.
13. "CHARGES" shall mean and include all Basic Charges, Special Charges and Personal Charges, collectively.



14. "CHARTER" shall mean the Articles of Incorporation of the Kapalua Bay Vacation Owners Association which has been or will be filed with the Department of Commerce and Consumer Affairs of the State of Hawaii to create the Association and to establish the basic rules governing the Association and its membership.
15. "CHECK-IN/CHECK-OUT DAY" shall mean for each Time Period and Use Period, and each Club Unit, any day of the week, as may be scheduled each Use Year by the Program Operator. There is no requirement that the check-in/check-out day be identical for each Unit or that any particular Unit have the identical check-in/check-out day each Use Year or during any Use Year, or that the mix of check-in/check-out days among all Units be identical for each Use Year or during any such Use Year.
16. "CHECK-IN/CHECK-OUT TIMES" shall, for each day, mean the times specified in the Program Rules.
17. "CLUB CALENDAR" shall mean the annual calendar(s) promulgated by the Program Manager and made available to all Members and Local Members which identifies Seasons, Shoulder Periods (if applicable), Reserved Allocation, and other pertinent information for the Local Home Club in a given year. Additionally, Clubs other than the Local Home Club shall have Club Calendars specifically related to such Clubs. At the Local Home Club, two (2) Club Calendars are available, however only one Club Calendar will be applicable to each Allocation. The "Club Calendar Options" include:
  - (a) Club Calendar Option 1 are identified as interests 1 through 12 and includes two (2) consecutive fixed weeks in a Season, as identified on the applicable Club Calendar, with the remaining one (1) week of the Member's or Local Member's Reserved Allocation rotating through non-contiguous periods of the same Season, as identified on the applicable Club Calendar. A limited number of Local Members or Members may purchase two (2) consecutive fixed weeks which will include both the nights of December 24 and December 31 of each year, with the remaining one (1) week of such Member's or Local Member's Reserved Allocation rotating through a non-contiguous period in the Winter Season, as identified on the applicable Club Calendar. No other Members or Local Members will be guaranteed usage of a holiday period.
  - (b) Club Calendar Option 2 are identified as interests 13 through 24 and includes two (2) consecutive weeks which rotate each Club Calendar Year within a Season, with the remaining one (1) week of the Member's or Local Member's Reserved Allocation rotating through non-contiguous periods of the same Season, as identified on the applicable Club Calendar. A limited number of Local Members or Members may purchase two (2) consecutive fixed weeks which will include both the nights December 24 and December 31 of each year, with the remaining one (1) week of such Member's or Local Member's Reserved Allocation rotating through a non-contiguous period in the Winter Season, as identified on the applicable Club Calendar. No other Members or Local Members will be guaranteed usage of a holiday period.

The Program Manager shall determine in its sole discretion which of the two (2) Club Calendars apply to the particular Club Units.

18. "CLUB CALENDAR YEAR" shall mean the relevant period of time described in the Club Calendar.
19. "CLUB DECLARATION" shall mean The Kapalua Bay Vacation Ownership Program Declaration of Covenants, Conditions and Restrictions, together with all lawful amendments thereto.

20. "CLUB DOCUMENTS" shall mean the legal documents creating and governing the Club which consist of the Program Declaration, Charter, By-Laws, Rules and Regulations, and all amendments, modifications and supplements to the Club Documents.
21. "CLUB INTEREST" shall mean for each Club Interest, an undivided one-twelfth (1/12) interest as tenant in common with the holders of other undivided interests in and to a Club Unit in the Condominium plus (i) the exclusive right during specified Use Periods during each Club Calendar Year (pursuant to the relevant Club Calendar) to use and occupy a Club Unit and the Common Furnishings therein, (ii) the non-exclusive right to use and enjoy the Common Elements other than the Limited Common Element areas not appurtenant to such Club Unit, during the Owner's Use Periods; and (iii) membership in the Association.
22. "CLUB UNITS" shall mean and shall consist of the apartments identified in Exhibit "A" attached to the Declaration, together with the Common Interests appurtenant thereto, in the Condominium. Additionally, "Club Units" shall include each apartment, and its Common Interest, subsequently annexed to the Declaration and the Club.
23. "COLLECTION COSTS" shall mean all costs of collecting unpaid Basic Charges including, but not limited to, court costs and attorneys' fees.
24. "COMMON ELEMENTS" shall mean and include the portions of a condominium project including the land and, except for the apartments, all improvements on the land.
25. "COMMON EXPENSES" shall mean all costs of maintaining the Property and operating the Club, including, without limitation, all charges imposed on all Units, notwithstanding the party billed therefor.
26. "COMMON FURNISHINGS" shall mean and include all items owned or rented by the Owners or the Association for use by Owners or for the operation or maintenance of the Project, including, without limitation, all furniture, appliances, equipment and furnishings (such as linens and kitchenware) in the Club Units.
27. "COMMON INTEREST" shall mean an undivided percentage ownership in the Common Elements of a condominium project.
28. "CONDEMNATION" shall mean the taking over by the government of all or part of the Property.
29. "CONDOMINIUM" shall mean that certain condominium project known as Kapalua Bay Condominium, located at Kapalua, Island and County of Maui, State of Hawaii.
30. "CONDOMINIUM ASSOCIATION" shall mean the Association of Apartments Owners of Kapalua Bay Condominium created pursuant to, and acting as a group in accordance with, the Condominium Declaration and the Condominium By-Laws.
31. "CONDOMINIUM BY-LAWS" shall mean the By-Laws of the Association of Apartment Owners of Kapalua Bay Condominium.
32. "CONDOMINIUM DECLARATION" shall mean the Declaration of Condominium Property Regime of Kapalua Bay Condominium dated April 18, 2006, and recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256.
33. "CONDOMINIUM DEVELOPER" shall mean the developer of the Condominium.

34. "CONDOMINIUM MAP" shall mean a set of drawings showing, among other things, the floor plans and elevations of the buildings in the Condominium, filed in the Bureau as Condominium Map No. 4222.
35. "CONDOMINIUM RULES" shall mean the rules and regulations adopted by the Condominium Association in accordance with the Condominium Declaration or Condominium By-Laws.
36. "DEFAULTING PARTY" shall mean an Owner, Exchange User, Occupant or other person who violates any part of the Club Documents or the Program Documents.
37. "DEVELOPER" shall mean KB, and its successors and permitted assigns.
38. "ENFORCEMENT COSTS" shall mean all costs of enforcing the Club Documents or the Program Documents, including fines, court costs and attorneys' fees.
39. "FAIR RENTAL VALUE" shall mean the cost of renting, on a daily basis, a comparable place to reside either in the Condominium or elsewhere on the island on which the Condominium is located.
40. "FIRST DEED" shall mean the recorded document initially transferring a Club Interest to the first Owner other than the Developer.
41. "GENERAL ACCOUNT" shall mean the account into which all funds received by the Management Company are deposited, other than those amounts received for other specifically designated accounts.
42. "GUEST" shall include the family, guests and other people allowed or invited onto the property by an Owner, Exchange User or Occupants. Guests, however, are not Exchange Users themselves.
43. "INJURED PERSON" shall mean any Owner, Exchange User or Occupant who cannot use a Club Unit as a result of a Trespasser or Vandal.
44. "KB" shall mean Kapalua Bay, LLC.
45. "MAJORITY (OR ANY OTHER SPECIFIED PERCENTAGE) OF OWNERS" shall mean the Owners, including the Developer, of a majority, or other specified percentage (as the case may be), of the Club Interests involved, including those owned by the Developer, unless it is otherwise expressly stated that the Developer or Club Interests owned by the Developer are excluded.
46. "MANAGEMENT COMPANY" shall mean the agent appointed by the Developer and/or the Association to operate the Club in accordance with Paragraph 4.11 of the Club Declaration.
47. "MEMBER" shall mean all Owners of Club Interests, as members of the Program who are not Local Members, as described in the Program Documents.
48. "MORTGAGEE" shall mean any lender under a mortgage of an Owner's Club Interest.
49. "NEW OWNER" shall mean any person whose acquisition of a Club Interest is recognized, and such Owner becomes the Owner and a Member for such Club Interest.
50. "OCCUPANT" shall mean an Owner, Exchange User and their Guests, when they are on any part of the Property, including the Guests of an Occupant who is not an Owner or Exchange User.
51. "ONE SHARE" shall mean the proper share amount calculated in accordance with Paragraph 8.1 C of the Club Declaration.

52. "OPENING DATE" shall mean September of 2008.
53. "OPERATING RESERVE ACCOUNT" shall mean the account into which funds are deposited for the purpose of paying any Operating Reserve Expenses.
54. "OPERATING RESERVE EXPENSES" shall mean expenses incurred to pay any Program Expenses other than capital expenditures in the event the Management Company does not or will not have sufficient funds to make all payments due on a current basis.
55. "OWNER" or "OWNERS" shall mean and include (i) each person who acquires a Club Interest from the Developer and such person's heirs, devisees, successors, personal representatives and assigns, and (ii) the Developer with respect to each Club Interest it owns.
56. "OWNERSHIP SHARE" shall mean an Ownership Share in a Club Unit in the Club.
57. "PARTITION" shall mean a legal proceeding or method of resolving disputes between co-owners with respect to their jointly-owned property whereby the property is divided and distributed to each owner on a prorata basis. If the property cannot be legally divided, it may be sold and the sales proceeds divided among the co-owners.
58. "PROGRAM" OR "MEMBERSHIP PROGRAM" shall mean The Ritz-Carlton Club, Kapalua Bay Vacation Ownership Program benefits and services created and operated by the Program Manager as they may exist from time to time, which Members participate in by virtue of ownership of a Club Interest or by other means established by the Program Manager, e.g., the benefits and services made available to associate Members. As a vacation ownership program, an Owner receives a Club Interest in a Club Unit together with the right to occupy the Club Unit and to compete with other Members who own similar Club Interests in the Club or accommodations in a Member Club for so long as the Club remains a Member Club, in accordance with the provisions of the Program Documents.
59. "PROGRAM DOCUMENTS" shall mean the legal documents creating and governing the Membership Program which consist of the Affiliation Agreement and the Reservation Procedures, and all amendments, modifications and supplements to the Program Documents.
60. "PROGRAM MANAGER" shall mean the agent appointed by the Developer and/or the Association to operate the Program in accordance with Paragraph 4.10 of the Declaration.
61. "PROPERTY" shall mean and include the Club Units and the Common Furnishings as described in Paragraph 1.2.D. of the Club Declaration.
62. "RPA" shall mean a rental pool arrangement as that term is defined in the Securities and Exchange Commissions Securities Act Release No. 33-5347 (17 CFR § 231.5347 (January 18, 1973)) or any other similar arrangement which will be transferred to an Owner upon the purchase of his Club Interest.
63. "REPLACEMENT RESERVE ACCOUNTS" shall mean the accounts into which funds are deposited for the purpose of paying Replacement Reserve Expenses.
64. "REPLACEMENT RESERVE EXPENSES" shall mean expenses incurred to maintain the Property, including expenses incurred for major remodeling and replacement of Common Furnishings.
65. "RESERVATION PROCEDURES". Means the procedures governing the reservation and use of Club interests in the Program (as similar reservation procedures govern the same at other locations within the Membership Program), which rules and regulations have been promulgated, adopted and/or amended from time to time by the Program Manager, in its sole discretion without the

consent of the Owners or Mortgagees. The Reservation Procedures shall contain such schedules, conditions, fees, restrictions and limitations as are deemed necessary or desirable by the Program Manager.

66. "RULES AND REGULATIONS" shall mean the rules and regulations for the Club adopted for the Association by the Developer or the Management Company in accordance with the Club Declaration.
67. "SEC" shall mean the Securities and Exchange Commission.
68. "SEASONS" shall mean the Winter Season and Summer Season, identified on the Club Calendar.
69. "SHARE" shall have the meaning given such term in Paragraph 8.1 C. of the Club Declaration.
70. "SPECIAL CHARGE" shall mean an additional charge assessed on an as-needed basis for each Club Interest, as calculated pursuant to Paragraph 8.1 E. of the Club Declaration.
71. "SUBSIDY" shall mean the amount which the Developer may elect to pay equal to the difference between the actual Common Expenses attributable to the Unit and the aggregate Charges assessed to all other Owners of that Club Unit.
72. "SUMMER SEASON" shall mean the Season identified as such on the Club Calendar. An Ownership Share in the Summer Season shall be known as a Summer Interest.
73. "SUPPLEMENTAL BUDGET" shall mean a revised budget prepared by the Management Company in the event that the Management Company does not or will not have sufficient funds from the Owners to pay all Common Expenses on a current basis.
74. "THE KAPALUA CLUB" shall mean the non-proprietary, non-voting private membership club operated by Kapalua Land Company, Ltd., that Owners of Club Interests are required to join.
75. "TRANSFeree" shall mean the person receiving the transfer of a Club Interest.
76. "TRANSFEROR" shall mean the person making the transfer of a Club Interest.
77. "TRESPASSER" shall mean any Owner, Exchange User or other Occupant who (i) does not vacate a Unit at the end of his Use Period, (ii) uses a Unit during another Owner's Use Period without permission, and (iii) by any other act or failure to act, prevents another Owner from using a Club Unit such Owner is entitled to use.
78. "UNIT TYPE" shall mean the classification assigned to each Club Unit in the Club, as described in Exhibit "E" attached to the Club Declaration.
79. "UNUSED USE PERIOD" shall mean Use Periods other than these owned by the Developer, which for any reason are not reserved, or if reserved, are not confirmed, or if reserved and confirmed, are not used.
80. "USE PERIOD" shall mean any period of time during which a Club Interest Owner uses an accommodation at the club.
81. "USE YEAR" shall mean the approximate one (1) year period beginning on the first "check in" day for each Unit in a calendar year and ending on the first "check out" day for that Club Unit the following calendar year.

82. "VANDAL" shall mean any Owner, Exchange User or any Occupant who damages a Club Unit or the Common Furnishings therein such that the Unit cannot be occupied during one or more later Use Periods.
83. "WINTER SEASON" shall mean the Season designated as such on the Club Calendar. An Ownership Share in the Winter Season shall be known as a "Winter Interest".

**B. EXHIBITS.**

Exhibit "A"	Property Description
Exhibit "A-1"	Apartments
Exhibit "B"	Articles of Incorporation
Exhibit "C"	By-Laws
Exhibit "D"	Schedule of Club Interest Identification Numbers
Exhibit "E"	Unit Types

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

ITEM ONE (HOTEL PARCEL):

Kapalua Development (Large-Lot) Subdivision  
Lot A-4-A-1

All of that certain parcel of land situated on the Northwesterly side of Lower Honoapiilani Road at Honokahua, Napili 2 & 3, Lahaina, Island and County of Maui, State of Hawaii, more particularly described as follows:

Lot A-4-A-1 of KAPALUA DEVELOPMENT (LARGE-LOT) SUBDIVISION, being portions of the land described in and covered by R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia and R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, and thus bounded and described:

Beginning at a point on the most Easterly corner of this Lot, the coordinates of said point beginning referred to Government Survey Triangulation Station "HAWEA" being 814.48 feet South and 989.83 feet East and running by azimuths measured clockwise from true South:

1. 20° 46' 26.73 feet along the Northwesterly side of Lower Honoapiilani Road to a point;
2. Thence along same on a curve to the left having a radius of 846.51 feet, the chord azimuth and distance being:  
18° 02' 80.74 feet;
3. 15° 18' 22.45 feet along same to a point;
4. 120° 37' 204.91 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-3-A-1 of Kapalua Development (Large-Lot) Subdivision to a point;
5. 101° 19' 107.00 feet along same to a point;
6. 156° 12' 86.44 feet along same to a point;
7. 66° 12' 137.72 feet along same to a point;
8. 336° 12' 19.94 feet along same to a point;
9. 66° 12' 39.00 feet along same to a point;
10. 336° 12' 15.97 feet along same to a point;
11. 336° 12' 14.81 feet along same to a point;
12. 336° 12' 14.75 feet along same to a point;
13. 336° 12' 10.85 feet along same to a point;

- |     |      |         |        |   |
|-----|------|---------|--------|---|
| 14. | 94°  | 50'     | 104.90 | feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point;  |
| 15. | 130° | 00'     | 90.86  | feet along same to a point;   |
| 16. | 110° | 00'     | 34.70  | feet along same to a point;   |
| 17. | 87°  | 00'     | 40.63  | feet along same to a point;   |
| 18. | 70°  | 01' 50" | 44.48  | feet along same to a point;   |
| 19. | 64°  | 30'     | 155.64 | feet along the remainders of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis and R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point; |
| 20. | 70°  | 01' 50" | 138.97 | feet along the remainder of R.P. 1663, L.C. Aw. 5524, Apana 1 to L. Konia, being also along Lot A-2-A of Kapalua Development (Large-Lot) Subdivision to a point;  |

Thence along the shoreline as confirmed by the State of Hawaii on January 12, 1977 for the next seven (7) courses, the direct azimuths and distance being:

- |     |      |         |        |  |
|-----|------|---------|--------|--|
| 21. | 155° | 03'     | 231.15 | feet;  |
| 22. | 101° | 49'     | 237.81 | feet;  |
| 23. | 131° | 47'     | 270.90 | feet;  |
| 24. | 154° | 35' 30" | 198.62 | feet;  |
| 25. | 300° | 22'     | 370.37 | feet;  |
| 26. | 208° | 16' 30" | 392.73 | feet;  |
| 27. | 235° | 40'     | 139.44 | feet;  |
| 28. | 251° | 38' 20" | 212.47 | feet along remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis to a point;  |
| 29. | 240° | 10' 20" | 253.00 | feet along same to a point;  |
| 30. | 332° | 46' 45" | 275.14 | feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of Kapalua Development Subdivision to a point;                                   |
| 31. | 242° | 46' 45" | 214.25 | feet along same to a point;  |
| 32. | 332° | 46' 45" | 99.00  | feet along same to a point;  |
| 33. | 150° | 01' 10" | 259.55 | feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, being also along Lot A-5-A-1 of Kapalua Development Subdivision (Bay Villas Reception Center) to a point; |
| 34. | 2°   | 03'     | 99.00  | feet along same to a point;  |

EXHIBIT "A"  
(Page 2 of 13)



35. 303° 58' 170.00 feet along same to a point;
36. 290° 28' 4.82 feet along same to a point of beginning and containing an area of 18.494 acres, more or less

Being all of the land conveyed by Warranty Deed with Reservations and Covenants recorded August 31, 2004 at the Bureau of Conveyances of the State of Hawaii as Document No. 2004-178884.

Grantor: Maui Land & Pineapple Company, Inc., a Hawaii corporation  
 Grantee: Kapalua Bay, LLC, a Delaware limited liability company

ITEM TWO (PARKING LOT PARCEL):

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 2236, Land Commission Award Number 8522-B, Apana 1 to Kale Davis), situate, lying and being on the Northwesterly side of Lower Honoapiilani Road at Honokahua, Napili 2 and 3, Lahaina (Kapalua), Island and County of Maui, State of Hawaii, being Lot A-5-A-1, of the "KAPALUA DEVELOPMENT SUBDIVISION, (BAY VILLAS RECEPTION CENTER)", a portion of Lot A-5-A and thus bounded and described as per survey map dated December 14, 1989, to-wit:

Beginning at a point at the South corner of this Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 814.48 feet South and 989.83 feet East and running by azimuths measured clockwise from true South:

1. 110° 28' 74.82 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the Northeast side of Lot A-4-A of the Kapalua Development Subdivision;
2. 123° 58' 170.00 feet along same;
3. 182° 53' 99.01 feet along same;
4. 170° 51' 10" 259.58 feet along same;
5. 243° 30' 59.50 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the South side of Lot A-6 of the Kapalua Development Subdivision;
6. 192° 25' 65.00 feet along same;
7. 273° 05' 75.41 feet along same;
8. 359° 48' 45" 70.53 feet along the remainder of R.P. 2236, L.C. Aw. 8522-B, Apana 1 to Kale Davis, same being along the Southwest side of Lot A-5-A-2 of the Kapalua Development Subdivision;
9. 87° 57' 10" 14.98 feet along same;
10. thence along same in a curve to the left having a radius of 1100 feet, the chord azimuth and distance being:  
 157° 20' 18.99 feet;
11. 26° 17' 10" 14.72 feet along same;

EXHIBIT "A"  
 (Page 3 of 13)

12. 359° 48' 45" 60.18 feet along same;
13. 90° 21' 14.03 feet along same;
14. Thence along same on a curve to the left having a radius of 8.00 feet, the chord azimuth and distance being:  
47° 30' 25" 6.97 feet;
15. 352° 57' 35" 5.38 feet along same;
16. Thence on a curve to the left having a radius of 18.00 feet, the chord azimuth and distance being:  
331° 33' 40" 14.23 feet;
17. 310° 30' 43.83 feet along same;
18. 324° 10' 278.77 feet along same;
19. Thence along the Northwest side of Lower Honoapiilani Road on a curve to the left having a radius of 355.40 feet, the chord azimuth and distance being:  
31° 10' 40" 128.45 feet;
20. 20° 46' 39.28 feet along same to the point of beginning and containing an area of 94,623 square feet, more or less.

Being all of the land conveyed by Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178885.

Grantor: Maui Land & Pineapple Company, Inc., a Hawaii corporation  
 Grantee: Kapalua Bay, LLC, a Delaware limited liability company

AS TO ITEMS ONE AND TWO:

Together with a nonexclusive easement for access over and across all of that certain parcel known as Lot 2-A-1-B-4 of the Kapalua Development Subdivision, provided that said easement shall automatically terminate upon the dedication of said parcel to the County of Maui or any other governmental entity for use as a public Roadway, as provided further that Maui Land & Pineapple Company, Inc., shall have the right to relocate such easement from time to time so long as access from a public Roadway to the hotel is not thereby unreasonably disturbed, being more particularly described as follows:

Kapalua Development Subdivision  
 Description of Lot 2-A-1-B-4

That certain parcel of land situated Westerly of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) and at the North end of Lower Honoapiilani Road at Napihi 2 & Honokahua, Lahaina, Island and County of Maui, State of Hawaii, being more particularly described as follows:

Lot 2-A-1-B-4 of the Kapalua Development Subdivision, being portions of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Lania and Royal Patent 2236, Land Commission Award 8522-B, being more particularly described as follows:

beginning at a point at the Southeast corner of said Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 2,200.09 feet South and 363.67 feet East and running 36 months measured clockwise from the South

1. 117° 35' 24" 80.90 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the East side of Lower Honoapiilani Road;
2. Thence along same on a curve to the right having a radius of 146.19 feet, the chord azimuth and distance being:  
150° 53' 38.50" 160.54 feet;
3. 94° 11' 53" 40.00 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the North side of Lower Honoapiilani Road;
4. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along the West side of Lower Honoapiilani Road on a curve to the left having a radius of 186.19 feet, the chord azimuth and distance being:  
358° 13' 8.50" 38.79 feet;
5. 101° 26' 54" 8.45 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along TMK: 4-2-02:04;
6. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lots A-1 and A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 194.19 feet, the chord azimuth and distance being:  
190° 17' 30.50" 115.05 feet;
7. 207° 31' 24" 125.19 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lot A-2 of the Kapalua Development Subdivision;
8. Thence along same on a curve to the right having a radius of 236.44 feet, the chord azimuth and distance being:  
223° 34' 54" 130.81 feet;
9. 239° 38' 24" 173.40 feet along same;
10. Thence along same on a curve to the left having a radius of 294.16 feet, the chord azimuth and distance being:  
224° 01' 54" 158.29 feet;
11. 108° 25' 24" 91.41 feet along same;
12. 112° 55' 24" 141.26 feet along the remainders of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia and Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-2 of the Kapalua Development Subdivision;
13. 118° 56' 39" 219.92 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-2 of the Kapalua Development Subdivision;

EXHIBIT "A"

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14. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-2 and A-3-A of the Kapalua Development Subdivision on a curve to the left having a radius of 408.54 feet, the chord azimuth and distance being:
- 206° 57' 15" 165.05 feet;
15. 195° 18' 105.66 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-3-A and A-4-A of the Kapalua Development Subdivision;
16. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-4-A of the Kapalua Development Subdivision on a curve to the right having a radius of 846.51 feet, the chord azimuth and distance being:
- 198° 02' 80.74 feet;
17. 200° 46' 66.02 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-4-A and A-5-A-1 of the Kapalua Development Subdivision;
18. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-5-A-1 and A-5-A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 355.40 feet, the chord azimuth and distance being:
- 217° 05' 30" 199.80 feet;
19. 233° 25' 337.70 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-5-A-2 and A-6 of the Kapalua Development Subdivision;
20. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of the Kapalua Development Subdivision on a curve to the right having a radius of 282.65 feet, the chord azimuth and distance being:
- 262° 28' 30" 274.57 feet;
21. 291° 32' 163.23 feet along same;
22. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot A-6 of the Kapalua Development Subdivision, and the Kapalua Place Subdivision File Plan 1956 on a curve to the left having a radius of 735.94 feet, the chord azimuth and distance being:
- 286° 47' 30" 121.67 feet;
23. 282° 03' 87.16 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along the Kapalua Place Subdivision, File Plan 1956;
24. Thence along same on a curve to the left having a radius of 148.29 feet, the chord azimuth and distance being:
- 311° 00' 00" 41.15 feet;
25. 310° 00' 00" 41.15 feet along same;

26. Thence along same on a curve to the right having a radius of 1,861.47 feet, the chord azimuth and distance being:
- 248° 11' 138.59 feet;
27. 250° 19' 155.12 feet along same;
28. Thence along same on a curve to the left having a radius of 544.96 feet, the chord azimuth and distance being:
- 242° 12' 30" 153.73 feet;
29. 234° 06' 54.39 feet along same;
30. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also the Kapalua Place Subdivision, File Plan 1956 and Lot A-7-A of the Kapalua Development Subdivision on a curve to the right having a radius of 391.78 feet, the chord azimuth and distance being:
- 245° 02' 45" 148.78 feet;
31. 255° 59' 30" 576.56 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots A-7-A and A-7-C-5 of the Kapalua Development Subdivision;
32. 22° 00' 69.23 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-1-B-1 of the Kapalua Development Subdivision;
33. 75° 59' 30" 535.86 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-1-B-1 and 2-A-2 of the Kapalua Development Subdivision;
34. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-2 and 2-A-4 of the Kapalua Development Subdivision on a curve to the left having a radius of 335.78 feet, the chord azimuth and distance being:
- 65° 02' 45" 127.52 feet;
35. 54° 06' 54.39 feet along same;
36. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot 2-A-2 of the Kapalua Development Subdivision on a curve to the right having a radius of 600.96 feet, the chord azimuth and distance being:
- 62° 12' 30" 169.52 feet;
37. 170° 19' 155.12 feet along same;
38. Thence along same on a curve to the left having a radius of 1,805.47 feet, the chord azimuth and distance being:
- 133° 11' 174.42 feet;
39. 156° 11' 117.75 feet along same;

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40. Thence along same on a curve to the right having a radius of 204.29 feet, the chord azimuth and distance being:
- 84° 03' 126.26 feet;
41. 102° 03' 83.16 feet along the remainder of Royal Patent Number 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-3 of the Kapalua Development Subdivision;
42. Thence along same on a curve to the right having a radius of 791.94 feet, the chord azimuth and distance being:
- 106° 47' 30" 130.93 feet;
43. 111° 32' 163.23 feet along same;
44. Thence along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lots 2-A-3 and 2-A-1-B-1 of the Kapalua Development Subdivision on a curve to the left having a radius of 226.65 feet, the chord azimuth and distance being:
- 82° 28' 30" 220.17 feet;
45. 53° 25' 337.70 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis, being also along Lot 2-A-1-B-1 of the Kapalua Development Subdivision;
46. Thence along same on a curve to the left having a radius of 299.40 feet, the chord azimuth and distance being:
- 37° 05' 30" 168.31 feet;
47. 20° 46' 66.02 feet along same;
48. Thence along same on a curve to the left having a radius of 790.51 feet, the chord azimuth and distance being:
- 18° 02' 75.40 feet;
49. 15° 18' 105.66 feet along same;
50. Thence along same on a curve to the right having a radius of 464.54 feet, the chord azimuth and distance being:
- 26° 57' 15" 187.68 feet;
51. 38° 36' 30" 217.14 feet along same;
52. 32° 55' 14" 136.27 feet along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lot 2-A-1-B-1 of the Kapalua Development Subdivision;
53. 28° 25' 24" 89.21 feet along same;
54. Thence along same on a curve to the right having a radius of 350.16 feet, the chord azimuth and distance being:

- 44° 01' 54" 188.43 feet;
55. 59° 38' 24" 173.40 feet along same;
56. Thence along same on a curve to the left having a radius of 180.44 feet, the chord azimuth and distance being:
- 43° 34' 54" 99.82 feet;
57. 27° 31' 24" 125.19 feet along same;
58. Thence along same on a curve to the left having a radius of 138.19 feet, the chord azimuth and distance being:
- 342° 33' 24" 195.32 feet;
59. 297° 35' 24" 56.15 feet along same;
60. Thence along the remainder of Royal Patent 1663, Apana 1, Land Commission Award 5524, Apana 1 to L. Konia, being also along Lower Honoapiilani Road on a curve to the left having a radius of 198.00 feet, the chord azimuth and distance being:
- 315° 30' 52" 26.02 feet to the point of beginning and containing an area of 5.296 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. AS TO ITEM ONE (HOTEL PARCEL) ONLY:

- a. Title to all mineral and metallic mines reserved to the State of Hawaii.
- b. Shoreline setback lines as they may be established by the State Land Use Commission or by the various Counties pursuant to the Hawaii Revised Statutes.
- c. Designation of Easements "E-4" (20 feet wide) and "E-3-B" for Roadway purposes, shown on the survey plan (Certificate Map for "Kapalua Bay Hotel") prepared by George F. Newcomber, Registered Professional Land Surveyor, dated June 6, 1990.

(The portions of the foregoing easements that affect the land herein described are designated as Easements E-4-A, E-3-B-3 and E-3-B-4, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- d. A Grant of Easement dated May 7, 1976 for electrical and utility purposes, in favor of Maui Electric Company, Limited, and Hawaiian Telephone Company, now Hawaiian Telcom, Inc., recorded at said Bureau in Book 11443 at Page 479.

The foregoing was amended by instruments dated August 5, 1981, recorded at said Bureau in Book 16030 at Page 319, and dated August 21, 1985 recorded at said Bureau in Book 18998 at Page 100.

By instrument dated August 21, 1985, recorded at said Bureau in Book 18998 at Page 100, the easements affecting a portion of the land herein described have been designated as Easements "U-1" and "U-5")

2. Easement Grant and Cancellation dated July 20, 1978 for perpetual nonexclusive easements for Road access purposes over portions of the land described herein, said easements being designated as Easements "E-3-B", containing an area of 23,927 square feet, more or less, and easement "E-3-D", containing an area of 396 square feet, more or less, in favor of United States of America, recorded at said Bureau in Book 13033 at Page 766.

Subordination Agreement and Consent dated May 3, 1978, recorded at said Bureau in Book 13034 at Page 1, that certain easement granted by instrument recorded at said Bureau in Book 11443 at Page 479, was subordinated to said above easements "E-3-B" and "E-3-D".

(The portions of the foregoing easements that affect the land herein described are designated as Easements E-3-B-3, E-3-B-4 and Easement E-3-D, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

f. The terms and provisions contained in the Private Water System Agreement dated November 20, 1987 made by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation ("Owner"), The KBH Company, a California limited partnership, "Developer", and the County of Maui and its Department of Water Supply, "County", recorded at said Bureau in Book 21596 at Page 691.

g. Footpath over the Northeasterly corner of the subject parcel which is used by the general public to get to and from the public beach, as noted on the survey map prepared by Bruce R. Lee, Registered Professional Land Surveyor, with Newcomber - Lee Land Surveyors, Inc., dated May 6, 2004, revised June 22, 2004.

h. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178884 (excluding the reservation of an "exclusive easement in gross to use, maintain, repair, renovate and replace the existing structures within the shoreline setback on the Property commonly referred to as the "Cliff House", together with a right of vehicular and pedestrian access to and from the "Cliff House" in locations acceptable to Grantee, terminated by that certain Termination of Warranty Deed Reservations recorded May 2, 2006 as Regular System Document No. 2006-082347).

i. The following matters shown on the Topographic Survey Map prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, dated April 25, 2005, revised May 10, 2005, but which have not been granted:

- i. Existing Drainage Easement D-1.
- ii. Existing Drainage Easement D-2.
- iii. Existing Drainage Easement D-5.
- iv. Existing Roadway Easement R-2.

j. A Grant of Easement for Access Purposes for a perpetual non-exclusive easement for pedestrian and vehicular access to and from Honoapiilani Highway to the "Spa Parcel" (TMK (2) 4-2-004-027) or Easement A-4, in favor of Maui Land and Pineapple Company, Inc., a Hawaii corporation, recorded May 2, 2005 at said Bureau as Document No. 2006-082345.

k. A Grant of Easement for Pedestrian Access Purposes for a perpetual non-exclusive easement for pedestrian access to and from the "Spa Parcel" (TMK (2) 4-2-004-027) and the shoreline over



Easement A-5, in favor of Maui Land and Pineapple Company, Inc., a Hawaii corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082346.

2. AS TO ITEM TWO (PARKING PARCEL) ONLY:

- a. Title to all mineral and metallic mines reserved to the State of Hawaii.
- b. Easements as disclosed by Declaration of Horizontal Property Regime Bay Villas dated January 14, 1977 for ingress and egress purposes over and across Easement "E-4", containing an area of 9,951 square feet, more or less, and Easement "E-5", containing an area of 8 square feet, more or less, in favor of Lot A-6 (Bay Villas Condominium Project), recorded at said Bureau in Book 11975 at Page 242.

(The portion of the foregoing easements that affect the land herein described are designated as Easements E-4-B, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.)

- c. Restriction of vehicular access into and from Lower Honoapiilani Road, as shown on the Kapalua Development (Large-Lot) Subdivision Map, dated September 2, 1999, prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor, Certificate No. 6597.
- d. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Warranty Deed with Reservations and Covenants recorded August 31, 2004 at said Bureau as Document No. 2004-178885.

3. AS TO ITEMS ONE (HOTEL PARCEL) AND TWO (PARKING PARCEL):

- a. A mortgage to secure an original principal indebtedness of \$45,000,000.00, and any other amounts or obligations secured thereby.

Dated : August 30, 2004  
Mortgagor : Kapalua Bay, LLC, a Delaware limited liability company  
Mortgagee : Bank of Hawaii, a Hawaii corporation, as administrative agent  
Recorded August 31, 2004 at said Bureau as Document No. 2004-178887.

- b. Terms and Provisions of that certain unrecorded Management Agreement dated August 31, 2004, made by and between Kapalua Bay, LLC, a Delaware limited liability company, ("Owner") and KB Hotel Operator, Inc., a Hawaii corporation ("Manager"), of which a Memorandum of Management Agreement dated August 31, 2005, recorded August 31, 2005 at said Bureau as Document No. 2004-178889.

Assignment of Management Agreement, Subordination, Non-Disturbance and Attornment Agreement dated August 31, 2004 by and among Bank of Hawaii, a Hawaii corporation ("Mortgagee"), Kapalua Bay, LLC, a Delaware limited liability company ("Owner") and KB Hotel Operator Inc., a Hawaii corporation ("Manager"), recorded June 15, 2005 at said Bureau as Document No. 2005-117551.

Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of

income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants and Restrictions dated December 29, 1976 recorded at said Bureau in Book 11922 at Page 26.

The foregoing was amended and/or supplemented by instruments recorded at said Bureau in Book 19005 at Page 629, in Book 12291 at Page 406, in Book 13502 at Page 442 and in Book 13796 at Page 741.

Said Declaration was amended and Restated by instrument recorded at said Bureau in Book 21185 at Page 173.

The foregoing amended and restated Declaration was amended and or supplemented by instruments recorded at said Bureau in Book 24012 at Page 17, as Document No. 90-049427, as Document No. 90-164621, as Document No. 91-067724 and as Document No. 99-160407.

- d. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515-6 of the Hawaii Revised Statutes, as contained in the Declaration of Covenants, Conditions and Restrictions with Authorization of Time Share and Transient Vacation Rentals recorded August 31, 2004 at said Bureau as Document No. 2004-178883.
- e. A Grant of Easement for Shoreline Access and Recreational Use for a perpetual non-exclusive easement for pedestrian access over Easement A-1 and Easement A-2, in favor of Kapalua Resort Association, a Hawaii nonprofit corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082343.
- f. A Grant of Easement for Cliff House Access and Recreational Use for perpetual easements to use the Cliff House for Permitted Cliff House Uses, in favor of Maui Land & Pineapple Company, Inc., a Hawaii corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082344.
- g. A Grant of Easement for Waste Treatment Purposes for a sewage disposal system over Easement S-1 and Easement S-2, in favor of Kapalua Waste Treatment Company, Ltd., a Hawaii corporation, recorded May 2, 2006 at said Bureau as Document No. 2006-082389.
- h. A Grant of Easements for Water Utility Purposes for waterline system purposes over Easement W-1 and Easement W-2, in favor of Kapalua Water Company, Ltd., a Hawaii corporation, recorded at said Bureau as Document No. 2006-082390.
- i. Regular system Condominium Map No. 4222
- j. The terms and provisions contained in or incorporated by reference in the Declaration of Condominium Property Regime of Kapalua Bay Condominium, as may be amended. Said Declaration was recorded May 3, 2006 at said Bureau as Document No. 2006-083256.
- k. The terms and provisions contained in or incorporated by reference in the By-Laws of the Association of Apartment Owners of Kapalua Bay Condominium, as may be amended. Said By-Laws were recorded May 3, 2006 at said Bureau as Document No. 2006-083257.

discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by public records.

- m. Any and all leases, subleases and/or tenancy agreements, the rights thereunder and encumbrances thereto.

**END OF EXHIBIT "A"**

**EXHIBIT "A-1"**

**APARTMENTS**

<b>Apartment Number</b>	<b>Building Designation</b>	<b>Common Interests</b>
3101	Building 3	0.583822%
3102	Building 3	0.576006%
3201	Building 3	0.583822%
3202	Building 3	0.576006%
3203	Building 3	0.583822%
3204	Building 3	0.495246%
3205	Building 3	0.590856%
3301	Building 3	0.583822%
3302	Building 3	0.576006%
3303	Building 3	0.583822%
3304	Building 3	0.495246%
3305	Building 3	0.590856%
3401	Building 3	0.583822%
3402	Building 3	0.576006%
3403	Building 3	0.583822%
3404	Building 3	0.495246%
3405	Building 3	0.590856%
3406	Building 3	0.583822%
3501	Building 3	0.583822%
3502	Building 3	0.576006%
3503	Building 3	0.583822%
3504	Building 3	0.495246%
3505	Building 3	0.590856%
3506	Building 3	0.583822%
3602	Building 3	0.576006%
3603	Building 3	0.583822%
3604	Building 3	0.495246%
3605	Building 3	0.590856%
3606	Building 3	0.583822%
3704	Building 3	0.495246%
3705	Building 3	0.590856%
4101	Building 4	0.583822%
4102	Building 4	0.495246%
4201	Building 4	0.583822%
4202	Building 4	0.495246%
4203	Building 4	0.583822%
4204	Building 4	0.495246%
4205	Building 4	0.590856%
4301	Building 4	0.583822%
4302	Building 4	0.495246%
4303	Building 4	0.583822%
4304	Building 4	0.495246%
4305	Building 4	0.590856%
4306	Building 4	0.583822%
4401	Building 4	0.583822%
4402	Building 4	0.495246%
4403	Building 4	0.583822%
4404	Building 4	0.495246%
4405	Building 4	0.590856%
4406	Building 4	0.583822%

EXHIBIT "A-1"

(Page 1 of 2)

Apartment Number	Building Designation	Common Interests
4501	Building 4	0.583822%
4502	Building 4	0.495246%
4503	Building 4	0.583822%
4504	Building 4	0.495246%
4505	Building 4	0.590856%
4506	Building 4	0.583822%
4602	Building 4	0.495246%
4603	Building 4	0.583822%
4604	Building 4	0.495246%
4605	Building 4	0.590856%
4606	Building 4	0.583822%
4704	Building 4	0.495246%
4705	Building 4	0.590856%

EXHIBIT "B"  
ARTICLES OF INCORPORATION

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
Honolulu

08/14/200620017

In the Matter of Incorporation )  
 )  
 of )  
 )  
 KAPALUA BAY )  
 VACATION OWNERS ASSOCIATION )  
 \_\_\_\_\_ )

FILED 08/13/2006 09:45 AM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

ARTICLES OF INCORPORATION

08/14/200620017

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**ARTICLES OF INCORPORATION  
OF  
KAPALUA BAY VACATION OWNERS ASSOCIATION**

THESE ARTICLES OF INCORPORATION, made and entered into this 13<sup>th</sup> day of June, 2006, by Ryan Churchill, desiring to organize a nonprofit corporation in accordance with the provisions of Chapter 414D, Hawaii Revised Statutes, as amended ("HRS"), and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, does hereby organize a nonprofit corporation and make and enter into the following Articles of Incorporation (the "Articles"):

**ARTICLE I**

**NAME**

The name of the corporation shall be KAPALUA BAY VACATION OWNERS ASSOCIATION (the "Association").

**ARTICLE II**

**LOCATION OF OFFICE**

The initial office and mailing address of the Association shall be: 120 Kane Street, Kahului, Maui, Hawaii 96732. The Board of Directors (the "Board of Directors") of the Association may change the principal office of the Association to such other place as may from time to time be designated by the Board of Directors. The Association may have such other offices within the State of Hawaii as its business may from time to time require. The Association's registered agent for purposes of service of process is PHCS Hawaii, Inc., whose registered office is 1001 Bishop Street, Suite 1600, Honolulu, Hawaii 96813. (22846D1)

**ARTICLE III**

**DURATION**

The duration of the Association is perpetual.

**ARTICLE IV**

**PURPOSE**

The purposes for which the Association is organized are:

- (a) To administer and manage the vacation ownership program created and established as The Kapalua Bay Vacation Ownership Project (the "Club") at The Kapalua Bay Condominium located at Kapalua, Island and County of Maui, State of Hawaii and at such other

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projects as may be added to the Club from time to time; and in doing so, to exercise all rights and powers, and to perform all obligations and duties required, authorized, or permitted to be exercised or performed by the Association under the legal documents (the "Club Documents") creating and governing the Club, including without limitation, "The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions" recorded (or to be recorded) at the Bureau of Conveyances of the State of Hawaii, as the same may be lawfully amended from time to time (the "Club Declaration"). The Association shall have the power to do all things required to be done by it under the Club Declaration and other Club Documents;

(b) To join and participate in any travel club or other travel related activities, and any exchange of vacation ownership and time share interests, units and facilities with other corporations, associations, clubs, and any other persons;

(c) To educate, foster, encourage and promote the vacation ownership in, and time sharing of, real and personal property in the State of Hawaii; and

(d) To exercise any and all rights and powers which a non-profit corporation may exercise under Chapter 414D, HRS, as the same may be amended from time to time.

ARTICLE V

POWERS

In furtherance of the purposes enumerated within Article IV in accordance with the laws of the State of Hawaii applicable to nonprofit corporations, the Association shall have and may exercise any and all powers, rights, privileges and immunities, and shall be subject to all liabilities, which are now or may hereafter be conferred or imposed by law on nonprofit corporations organized under the laws of the State of Hawaii, and shall be subject to, and shall have all benefits of, all general laws with respect to corporations. Without limitation as to other powers stated or referred to herein, the Association shall have the following powers:

(a) It may exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Club Declaration.

(b) It may, by any lawful means, fix, levy, collect and enforce payment of all charges or assessments pursuant to the terms of the Club Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(c) It may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, grant easements, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

(d) It may borrow money, and mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(e) It may negotiate, enter into, execute and perform contracts.



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(f) Insofar as permitted by law, it may do any other thing that, in the opinion of the Board of Directors, will promote the benefit and enjoyment of its members.

The Association shall at all times perform and observe all obligations to be performed or observed by the Association under the Club Declaration.

**ARTICLE VI**

**NON-PROFIT STATUS**

The Association shall never be operated for the primary purpose of carrying on any trade or business for profit; and neither the whole nor any part or portion of the assets, income or earnings of the Association shall be used, nor shall the Association ever be organized or operated for objects or purposes which are not permitted under said Chapter 414D HRS or Section 528 of the Internal Revenue Code of 1986 or the Club Declaration.

No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Association property, and other than by a rebate of excess membership dues, fees or assessments) to the benefit of any individual, whether upon liquidation or dissolution of the Association or otherwise.

The Association is not organized for profit and shall not issue any stock, and no part of its assets, income or earnings shall be used for dividends, or otherwise be withdrawn or distributed to any of its members, directors or officers, except as provided within this Article VI.

**ARTICLE VII**

**MEMBERSHIP**

The membership of the Association shall consist of such members as are specified in the By-Laws of the Kapalua Bay Vacation Owners Association ("By-Laws") and the Club Declaration.

**ARTICLE VIII**

**DIRECTORS**

There shall initially be a Board of Directors of the Association to consist of five (5) directors, except that the members of the Association at any annual or special meeting of the Association, may decrease the Board to not less than three (3) members or increase the Board up to nine (9) directors. The members of the Board of Directors shall be elected or appointed at such times, in such manner and for such terms, subject to the qualification requirements and other provisions set forth in the Club Declaration, the By-Laws and this Article VIII, and as may be prescribed by the By-Laws and the Club Declaration. The Board of Directors shall have full power to control and direct the business and affairs of the Association and to manage its properties, subject, however, to any limitations which may be set forth in statutory provisions, in these Articles, in the By-Laws or in the Club Declaration. Each director shall be an Owner and a Member (as those capitalized terms are defined in the Club Declaration) of the Association, a

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manager, member or a designated representative of a member of Kapalua Bay, LLC, or manager, member or designated representative of a member of the members of Kapalua Bay, LLC. ("Developer").

The names and residence addresses of the persons who are to act as the initial directors of the Association and are to hold office until the later of (i) the first annual meeting of the members of the Association or (ii) their successors are duly elected or appointed, are as follows:

NAME	ADDRESS
Caroline Belsom	1 Bay Drive Lahaina, Maui, Hawaii 96761
Tom Juliano	1 Bay Drive Lahaina, Maui, Hawaii 96761
Ryan Churchill	1 Bay Drive Lahaina, Maui, Hawaii 96761
John Albert	1 Bay Drive Lahaina, Maui, Hawaii 96761
Bernard Peters	1 Bay Drive Lahaina, Maui, Hawaii 96761

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**ARTICLE IX**

**OFFICERS**

The officers of the Association shall consist of a President, a Vice President, a Secretary, a Treasurer, and such other officers and assistant officers as may be deemed necessary and as prescribed in these Articles. The officers shall be elected or appointed at such times, in such manner and for such terms, subject to the provisions of this Article IX, as may be prescribed by the By-Laws.

All officers of the Association shall have such authority and perform such duties in the management of the Association as may be provided in the By-Laws, or as may be determined by resolution of the Board of Directors not inconsistent with the By-Laws. Any person may hold two or more offices of the Association, provided the Association shall have at least two persons as officers.

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The names and residence addresses of the persons who are to act as the initial officers of the Association until their successors are duly elected pursuant to the By-Laws are as follows:

NAME	ADDRESS	OFFICE
John Albert	1 Bay Drive Lahaina, Maui, Hawaii 96761	President
Caroline Belson	1 Bay Drive Lahaina, Maui, Hawaii 96761	Vice President
Bernard Peters	1 Bay Drive Lahaina, Maui, Hawaii 96761	Secretary and Treasurer

**ARTICLE X**

**LIMITATION OF LIABILITY**

The property of the Association shall alone be liable in law for the payment of its debts and discharge of its obligations. Neither the members of the Association, nor the members of the Board of Directors, nor any of the officers, employees, contractors or agents of the Association, shall have any personal liability for the payment of such obligations, except that the members of the Association shall be subject to and responsible for the payment of assessments made by the Association pursuant to the Club Declaration.

**ARTICLE XI**

**LIABILITY TO ASSOCIATION AND INDEMNITY**

The personal liability of the directors, officers, employees and agents of the Association shall be limited to the fullest extent permitted by law, including without limitation, HRS Section 414D-149, as amended, and such directors, officers, employees and agents of the Association also shall be indemnified by the Association to the fullest extent permitted by law, including, but not limited to, the extent established in these Articles and the By-Laws of the Association and the rights and protections afforded by HRS Section 414D-165, as amended.

**ARTICLE XII**

**DISSOLUTION**

The Association may be dissolved as a nonprofit corporation upon the prior written unanimous vote of all members; provided that upon dissolution of the nonprofit corporation, the Association shall continue to function and operate as an unincorporated entity to the extent permitted by law in accordance with the Club Declaration and By-Laws if there is any common property which is the responsibility of the Association to maintain, repair, replace, restore and/or improve. The Association may dissolve and shall not be required to function and operate as an unincorporated entity upon the prior unanimous written vote of all members and the dedication

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of all common property to appropriate governmental agencies or private businesses, which shall continue to provide services to the Club.

**ARTICLE XIII**

**RELATED TRANSACTIONS**

No contract or other transaction between the Association and any other person, firm, corporation, partnership, association or other organization (the "Other Party"), and no act of the Association, shall in any way be affected or invalidated by the fact that any of the directors, officers, employees or agents of the Association are parties to such contract, transaction or act or are pecuniarily or otherwise interested in the same or are directors, officers, employees, agents or members of any such Other Party (all such directors, officers, employees and agents who are parties to such contract, transaction or act, or who are so interested in same, or who are directors, officers, employees, agents or members of such Other Party, are herein called the "Interested Persons"); provided that the interest of such Interested Person shall be disclosed or shall have been known to the Board of Directors authorizing or approving the same, or to a majority thereof, prior to such authorization or approval. Any director of the Association who is a party to such transaction, contract or act or who is pecuniarily or otherwise interested in the same or is a director, officer, employee, agent or member of such Other Party, may be counted in determining a quorum of any meeting of the Board of Directors which shall authorize or approve any such contract, transaction or act and may vote thereon with like force and effect as if he or she were in no way interested therein. No Interested Person possessing any interest in any such contract, transaction or act of the Association which shall be approved by the Board of Directors, nor any Other Party to such contract, transaction or act, shall be liable or accountable to the Association, or to any member thereof, for any loss incurred by the Association pursuant to or by reason of such contract, transaction or act, or for any gain received by any such Interested Person or Other Party pursuant thereto or by reason thereof.

**ARTICLE XIV**

**BY-LAWS**

The By-Laws shall be adopted by the Board of Directors of the Association.

**ARTICLE XV**

**CONFLICTS**

In the event of any conflict between the provisions of these Articles and the Club Declaration, or between the By-Laws and the Club Declaration, the provisions of the Club Declaration shall control in each instance; provided, however, that in the event of any conflict between the provisions of the Club Declaration and the provisions of Chapter 414D, HRS, as amended, the provisions of Chapter 414D, HRS, as amended, shall control.

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**ARTICLE XVI**

**AMENDMENT**

These Articles may be amended from time to time by (a) Developer, at any time prior to the first annual Association meeting, as described in the By-Laws, or (b) the affirmative vote of not less than sixty-seven percent (67%) of the votes attributed to the Club Interests entitled to vote, in person or by proxy, at a meeting duly called and held for the purpose of considering the amendment of these Articles; provided, however, that so long as the Developer under the Club Declaration owns any Club Interest under the Club Declaration, said Developer must give written consent to such amendment. Notwithstanding anything herein to the contrary, the percentage of the voting power necessary to amend a specific clause or provision of these Articles of Incorporation shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision.

**ARTICLE XVII**

**INCORPORATOR**

The name and address of the incorporator is as follows: Ryan Churchill, 1 Bay Drive, Lahaina, Maui, Hawaii 96761.

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**CERTIFICATION**

I certify under the penalties of Section 414D-12, HRS, that I have read the above statements and that the same are true and correct.

IN WITNESS WHEREOF, incorporator has executed this instrument this 13th day of June, 2006.

  
\_\_\_\_\_  
Ryan Churchill

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EXHIBIT "C"

BY-LAWS  
OF  
KAPALUA BAY VACATION OWNERS ASSOCIATION

KAPALUA BAY VACATION OWNERS ASSOCIATION is a domestic, nonprofit corporation organized under Chapter 414D, Hawaii Revised Statutes, pursuant to those certain Articles of Incorporation of Kapalua Bay Vacation Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii on June 13, 2006. The members of the Association are the owners of fractional timeshare interests ("Club Interests") in The Kapalua Bay Vacation Ownership Project ("Club"). The Association is managed by its Board of Directors.

The Association was formed to manage the Club created and governed by that certain The Kapalua Bay Vacation Ownership Club Declaration of Covenants, Conditions and Restrictions dated June 9, 2006, and recorded at the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_.

Apartments in the Club are located in the Kapalua Bay Condominium ("Condominium") situate at Kapalua, Island and County of Maui, State of Hawaii. The Condominium is managed by an association of apartment owners which has its own board and managing agent. Members of the Association are also members of the Condominium Association.

The following are the By-Laws of the Kapalua Bay Vacation Owners Association. The Club Declaration, as the same may be amended from time to time, is hereby incorporated in its entirety into these By-Laws.

ARTICLE I

DEFINITIONS

- 1.01 ASSOCIATION. The term "Association" shall mean the Kapalua Bay Vacation Owners Association.
- 1.02 BOARD. The term "Board" shall mean the Board of Directors of the Association.
- 1.03 BY-LAWS. The term "By-Laws" shall mean these By-Laws of the Kapalua Bay Vacation Owners Association, as the same may be amended.
- 1.04 CHARTER. The term "Charter" shall mean the Articles of Incorporation of the Kapalua Bay Vacation Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii, as the same may be amended.
- 1.05 CLUB. The term "Club" shall mean The Kapalua Bay Vacation Ownership Project.
- 1.06 CLUB DECLARATION. The term "Club Declaration" shall mean The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions dated June 9, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_ as the same may be amended.
- 1.07 CLUB INTEREST. The term "Club Interest" shall mean a vacation ownership interest owned by a person in the Club.
- 1.08 CLUB OPERATOR. The term "Club Operator" shall mean the person or entity appointed or selected to operate the Club pursuant to the Club Declaration.

1.09 CLUB RULES. The term "Club Rules" shall mean The Ritz-Carlton Club, Kapalua Bay, Reservation Procedures, as the same may be amended.

1.10 CONDOMINIUM. The term "Condominium" shall mean the Kapalua Bay Condominium located at Kapalua, Island and County of Maui, State of Hawaii.

1.11 CONDOMINIUM ASSOCIATION. The term "Condominium Association" shall mean the owners association of the Condominium, and any other condominium project made a part of the Club.

1.12 DECLARANT. The term "Declarant" shall mean Kapalua Bay, LLC, a Delaware limited liability company.

1.13 DEPARTMENT. The term "Department" shall mean the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.14 DEVELOPER. The term "Developer" shall mean Kapalua Bay, LLC.

1.15 MEMBER. The term "Member" and/or "Members" as used in these By-Laws shall mean and include "Owner" as the term "Owner" is defined in the Club Declaration. The phrase "majority (or any other percentage) of Members" shall mean a majority (or any other percentage) of votes attributed to the Club Interests involved, including those owned by the Developer, unless it is expressly stated that the Developer is excluded or not to be included.

1.16 NONPROFIT CORPORATIONS LAW. The term "Nonprofit Corporations Law" shall mean Hawaii Revised Statutes, Chapter 414D, as amended.

## ARTICLE II

### OWNERS ASSOCIATION

2.01 ORGANIZATION. The Association is a nonprofit, incorporated association charged with the duties and empowered with the rights set forth herein, and its affairs shall be governed by the Club Declaration, Charter, By-Laws and Club Rules.

## ARTICLE III

### ASSOCIATION MEMBERSHIP

3.01 MEMBERSHIP. In addition to the provisions governing membership qualifications, rights, duties and all other membership matters set forth in the Club Declaration, membership in the Association shall be subject to the provisions of this article and these By-Laws.

3.02 VOTING. At any meeting of the Members of the Association, or whenever the consent or vote of the Members is required or called for under these By-Laws, the Club Declaration, the Charter or otherwise, each Member shall be entitled to cast the number of votes assigned to and permitted to be cast by such Member in accordance with the provisions set forth in Section 4.7 of the Club Declaration.

(a) PROXY VOTING. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of the Association prior to the commencement of the meeting at which the proxy is to be exercised. Form of proxy distributed to each Member by the Association to afford him or her the opportunity to vote in absentia at a meeting of Members must (1) afford an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association at such meeting, (2) provide that the vote of the Member shall be cast in accordance with the choice specified, and (3) include the name or names of Members who expect to be in attendance in person at the meeting to



whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the Member executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked by a subsequent proxy executed by such Member, or by personal attendance and voting at a meeting by such Member, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of 11 months from the date of the proxy, unless otherwise provided in the proxy. In any election of Directors, any form of proxy that is marked by a Member "withhold," or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld, shall not be voted either for or against the election of a Director. Failure to comply with this paragraph shall not invalidate any election taken, but may be the basis for challenging the proxy at a meeting.

(b) **SUSPENSION OF VOTING RIGHTS.** The voting rights of any Member may, in accordance with the provisions of the Club Declaration, be suspended by action of the Board of Directors during the period when the Member shall be in default in the payment of any assessments levied by the Association or the Club Operator, or the observance of any provision of the Club Declaration.

### 3.03 OTHER VOTING RIGHTS.

(a) **PLEDGES.** A Member may confer upon or pledge to another person the authority to represent, act and vote for such Member through a provision in a mortgage, agreement of sale or any other lawful document relating to such Member's Club Interest, or may have this authority pledged to any other party through an order or judgment of a court of competent jurisdiction. If a certified copy of any pledge is filed with the Secretary as of the record date, only the person ("pledgee") named in the pledge may vote in person or by proxy on that matter. The Club Interest need not be transferred to pledgee's name and such pledgee retains the right to vote in person or by proxy until the pledge is released or terminated in a writing filed with the Secretary. If, however, the pledge is not duly filed with the Secretary as of the record date, the claim of a pledge shall be invalid, and the Member shall have the right to cast the vote.

(b) **PERSONAL REPRESENTATIVES, GUARDIANS AND TRUSTEE.** Personal representatives, guardians and trustees of a Member may vote, in person or by proxy, each Club Interest held by such party in this special capacity even if the Club Interest has not been transferred into such party's name in the Association's records. However, a certified copy of the document showing that such party is the personal representative, guardian or trustee of the Member must be filed with the Secretary before the record date.

(c) **MINORS.** A minor shall have a right to vote in person or by proxy and to exercise other rights of a Member for each Club Interest owned in such minor's name; provided, however, that in the event that a guardian of the minor's property has been appointed and such guardianship is documented in a writing filed with the Secretary, such guardian shall have the right to vote on behalf of such minor.

(d) **CORPORATIONS AND PARTNERSHIPS.** The vote of a corporate Member may be cast in person or by proxy in accordance with such corporation's documents. The vote of a Member which is a partnership may be cast in person or by proxy in accordance with such partnership's documents. Documents establishing such authority may, but need not, be filed prior to any meeting. Votes or proxies purportedly cast or given under any such authority presented at or before the meeting will be presumed to be validly voted or given.

3.04 **VOTING MORE THAN ONE OWNERSHIP SHARE.** Any person who is entitled to vote for more than one Ownership Share may cast all such votes together or separately. If, however, at the time such person votes, such person does not expressly specify that such person is casting one (1) vote differently than another, such person shall be conclusively deemed to have cast all of such person's votes in the same manner.

3.05 **PLACE OF ALL MEETINGS.** Unless the Board decides otherwise and unless otherwise permitted by law, all meetings of the Members shall be held at the Condominium or any other location in the State of Hawaii prescribed by the Board.

3.06 ORGANIZATIONAL MEETING. The first meeting of the Association, whether a regular or special meeting, shall be held within forty-five (45) days after the closing of the sale of the Club Interest which represents the 51st percentile interest authorized for sale under the initial Disclosure Statement for the Club, provided that such Disclosure Statement authorizes the sale of fifty (50) Club Interests or more in the Club. However, in no event shall the initial meeting be held after December 31, 2010.

At the first meeting, the Members shall elect a new Board of Directors (the members of which may include persons who have served on the Board previously), and Members may also transact other business that is properly put before them.

Notwithstanding anything contained herein to the contrary, prior to the transfer by the Developer of the first Club Interest, the Developer may act for the Association in all capacities, and it may also act without any formal meeting and without any formal call or notice.

3.07 ANNUAL MEETINGS. The Association shall hold an annual meeting of the Members during the month of November of each calendar year on such date and at such time and place as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as required under the Club Declaration or as may be properly brought before the meeting. Notwithstanding the foregoing, the annual meeting may be held on any date determined by the Board in its sole discretion, provided the required notice provisions as set forth herein are satisfied.

3.08 SPECIAL MEETINGS. The Association may hold special meetings at such time and place and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board or by a writing filed with the Secretary signed by the President or Club Operator, by Members representing at least twenty five percent (25%) of the voting interest of the entire Association membership, or by Members representing at least five-percent (5%) of the voting interest residing in Members other than the Developer.

3.09 RECORD DATE. The term "record date" shall mean the date used to determine which persons are entitled to notice of, and to vote at, any meeting or any action without a meeting. The record date also determines who may object to, waive lack of notice and exercise other rights for or as a Member.

(a) FIXED BY THE BOARD. The Board may fix the record dates; provided, however, that the date may not be more than sixty-one (61) nor less than thirty-one (31) days before the date set for the meeting, or if action is without a meeting, not more than thirty-one (31) days nor less than one (1) day before the request for written consent is sent.

(b) NOT FIXED BY THE BOARD. If a record date is not fixed by the Board, the following rules shall apply:

(1) For meetings, the record date will be the close of business the day before notice is sent;

(2) For objections to, and waivers of, notice, it will be the close of business on the day before the meeting; and

(3) For actions without a meeting, it will be the day before the first request for written consent or ballot is sent.

(c) RECORD DATE FOR ADJOURNED MEETINGS. The record date for any meeting reconvening after adjournment will be the same record date previously established for the adjourned meeting; provided, however, that if notice must be given before the meeting may be reconvened, a new record date must be established as if the continuation of the meeting were a new meeting.

(d) RIGHTS AS OF THE RECORD DATE. Only Members or persons entitled to act for Members as shown on the Association's records on the record date shall have the rights described in this Section

3.09. Any person who becomes a Member of record or whose right to act for a Member is made a matter of record after an established record date shall not have these rights.

3.10 NOTICE. Except where and to the extent otherwise required by law, the Charter or the Club Declaration, notice of each meeting of the Members of the Association, specifying the day and time and place of the meeting and the purposes for which the meeting is called, and specifying whether it is an organizational, annual or special meeting, shall be given by or under direction of the Secretary to each Member of the Association at least thirty (30), but not more than ninety (90) days, before the date fixed for such meeting, by advising such Members of such meeting in any of the following ways: (a) by leaving written notice of such meeting with such Member personally or at such Member's record address or usual place of business; (b) by mailing such notice by first class mail, postage prepaid, to such Member's record address or usual place of business; or (c) by informing such Member of such meeting by telephone, telecopy, telegraph, electronic mail or in person. In case of the death, absence, incapacity or refusal of the Secretary, such notice may be given by a person designated by the Secretary, President, Club Operator or Board of Directors. If notice is given pursuant to the provisions of these By-Laws, nonreceipt of actual notice of any meeting by any Member of the Association shall in no way invalidate the meeting or any business accomplished or action taken at the meeting. Any Member of the Association may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to such Member. The presence of any Member of the Association at a meeting shall be the equivalent of a waiver by such Member of notice of the meeting.

3.11 QUORUM. At any meeting of the Members of the Association, the presence in person or by proxy of non-Developer Members having more than twenty percent (20%) of the total votes of all non-Developer Members of the Association shall constitute a quorum, unless for any specific type of action a higher percentage is required by law, the Charter, the Club Declaration or any other provision of these By-Laws. In the absence of a quorum, no business shall be conducted and the presiding officer shall adjourn the meeting sine die. Except when a higher percentage vote is required by law, the Charter, the Club Declaration or any other provision of these By-Laws, when a quorum is present at any meeting, the concurring vote of more than fifty percent (50%) of the Members present at the meeting including the Developer, shall be valid and binding upon the Association.

In the event that a quorum is present at the commencement of a meeting, but, as a result of the departure of some Members, less than a quorum remains, the remaining Members present may still transact business if their number is equal to at least a majority of the quorum which existed at the commencement of the meeting. Except as stated in this section, the acts and decisions of at least the number of remaining Members equal to a majority of the quorum that existed when the meeting commenced shall constitute the acts and decisions of the Association. This rule shall be applicable to all meetings, even to those that are adjourned.

3.12 POWERS AND DUTIES OF THE ASSOCIATION AND ITS MEMBERS. The Association and the Board shall all be empowered with all authority vested by, and subject to all duties imposed by, the Nonprofit Corporations Law (except to the extent that the application of the Nonprofit Corporations Law is lawfully modified or limited by the Club Documents), the Club Declaration and the other documents which govern the Club (collectively, the "Club Documents"). The Club Documents are listed in the Club Declaration and include the Charter and these By-Laws. The Nonprofit Corporations Law (except to the extent that the application of the Nonprofit Corporations Law is lawfully modified or limited by the Club Documents) and the Club Documents also create and govern the rights and duties of each Member of the Association.

3.13 FISCAL YEAR. The Association's fiscal year shall end at midnight closest to December 31 of each year, or at any other time the Board may elect.

#### ARTICLE IV

#### BOARD OF DIRECTORS

4.01 NUMBER. The initial Board of Directors consisting of five (5) directors shall be appointed by Declaration and they shall hold office until the first annual meeting of the Association. Thereafter, the Association shall be managed and controlled by a Board of Directors of not less than three (3) nor more than nine (9) members, and until the Association shall otherwise determine, the Board of Directors shall consist of five (5) members. The

number of directors shall be fixed each year by the Association at its annual meeting, provided that the number of directors may be decreased or increased subject to the foregoing limitations and, if increased, the additional directors may be elected by the Association at any special meeting called for such purpose. Each director shall be a Member, a partner of a partnership Member, an officer or director of a corporate Member or any officer, director or employee of Declarant or member entity of Declarant.

4.02 TERM. At the first annual meeting of the Association, unless a greater or lesser number of directors than five (5) is authorized by the Association, the term of office of three (3) directors shall be fixed at three (3) years and the term of office of two (2) director shall be fixed at two (2) years. At the expiration of the term of office of each Director, his successor shall be elected to serve a term of three (3) years. In no event shall a Director hold office for more than six (6) consecutive years.

4.03 ELECTION. Prior to any meeting called for the purpose of electing directors, any Member of the Association may nominate candidates for such election; provided, however, that all nominations not made by the Board or Declarant must be in writing, must identify the name and address of the nominee and contain a summary of such nominee's business background and other qualifications, all of which must be received by the Secretary at least sixty (60) days prior to the date of the meeting for the election of directors. Directors shall be elected by plurality vote, without cumulative voting, for all elections of the Association.

4.04 VOTING MORE THAN ONE OWNERSHIP SHARE. Any person who is entitled to more than one vote may cast all such votes together or separately. If, however, at the time such person votes, such person does not expressly specify that such person is casting one (1) vote differently than another, such person shall be conclusively deemed to have cast all of such person's votes in the same manner.

4.05 SPECIAL RULES FOR ELECTING DIRECTORS. Notwithstanding anything contained herein to the contrary, at the first election of directors, one (1) director shall be elected solely by Members, excluding the Developer. At each subsequent election of directors if there is then no director who was elected solely by Members other than the Developer, one (1) director shall also be elected solely by Members excluding the Developer.

4.06 NOMINEES FOR ELECTION TO THE BOARD. The Board shall appoint a committee to nominate members for election to the Board annually. This committee shall make their selections at least sixty (60) days before the date of each election. The list of nominees may also include any qualified person nominated in any petition signed by at least five percent (5%) of the Members and received by the Board not less than sixty (60) days before the election. This list of nominees shall be sent to each person entitled to vote as of the record date. If the list is prepared before the notice is sent, it must be sent with the notice. Although all persons nominated must be placed on the ballot, any Member present at any meeting, or if the election is to be by mail, any Member by a written request submitted not less than sixty (60) days before the election, may nominate any other qualified person for election as director, and the person so nominated shall be added to the ballot.

#### 4.07 REMOVAL OF DIRECTORS.

(a) BY THE MEMBERS. Directors may be removed with or without cause by the Members at any annual meeting, or at any special meeting called for such purpose. Any director whose removal has been proposed shall be afforded the opportunity to be heard at such meeting. Such director will be removed if a majority of the Members present vote to do so, except that: (1) no director may be removed without cause if at least twenty-five percent (25%) of all Members vote against such director's removal; and (2) the director elected by Members, excluding the Developer, as required by Section 4.05(a), may be removed only by a majority of Members present, excluding the Developer. At any meeting in which a director is removed, the Members shall elect a person to fill the position made vacant. The person so elected will hold office for the remainder of the term of the person removed.

(b) BY THE BOARD. The other Members of the Board may (but are not required to) remove any director who is absent from three (3) or more consecutive regular meetings of the Board; provided, however, that if before any such director is removed, such director is present at any subsequent meeting, such director must be absent from at least three (3) more consecutive meetings before such director may be removed.

4.08 VACANCIES. Vacancies on the Board may be filled by a majority of the remaining directors even though less than a quorum is present, and each director so elected shall hold office until the next annual or special meeting of the Members of the Association and thereafter until a successor shall be duly elected. Any director elected by the Members of the Association in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred. A vacancy on the Board exists when any authorized position of director is not filled. A vacancy can occur as a result of the following:

(a) The resignation, death or incapacity of a director. Unless required by its terms, a resignation need not be accepted by the Board, but will be effective as of the date and time stated, or if no date and time is stated, upon receipt by the Board;

(b) A director ceases to be an Owner or co-Owner (or in the case of an Owner or co-Owner that is a partnership or a corporation, the director ceases to be a general partner or corporate officer or, in the case of the Developer, an employee);

(c) The Members remove a director pursuant to the authority set forth in Section 4.07(a), but do not concurrently elect a replacement;

(d) A director is removed by the Board pursuant to the authority set forth in Section 4.07(b);

(e) The Members fail to elect a director to succeed a director whose term of office expires at an annual meeting;

(f) The Members increase the authorized number of directors, but do not concurrently elect a director to fill the new position or positions created; or

(g) An authorized position is not filled for any other reason by a duly elected director.

4.09 MEETINGS. An annual meeting of the Board of Directors may be held each year immediately after the annual meeting of the Members of the Association and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board of Directors, other than annual meetings, shall be held on such day and at such time and at the principal office of the Association or such other place as shall be determined from time to time by the Board of Directors, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board of Directors may be called by the President or by any two (2) directors, and any such meeting shall be held on such day, at the principal office of the Association or such other place, as shall be specified by the person or persons calling the meeting.

4.10 ADJOURNMENT OF MEETINGS. A majority of directors present, whether or not a quorum, may adjourn any meeting of the Board to another time and place. No notice except an announcement at the time of the adjournment is required; provided, however, that notice must be given to all absent directors if no quorum existed prior to adjournment or if the meeting is not scheduled to reconvene within twenty-four (24) hours.

4.11 MEETINGS BY TELEPHONE. One (1) or more directors may participate in any meeting by a telephone conference call or similar arrangement as long as all of the directors present in person or by phone can hear each other. Except as stated in Section 4.12, this rule applies unless a majority of all directors vote against meeting by phone.

4.12 OPEN MEETINGS. All Board meetings will be open to all Members. Members who are not on the Board may not, however, participate in the meeting, unless permitted by the vote of a majority of the directors present. If any meeting is being conducted by telephone conference as stated in Section 4.11, each Member, upon request, must be connected to such meeting by telephone. If the number of Members requesting this connection renders such a meeting by telephone conference impractical or impossible, the Board may not meet by telephone conference. The Board may, upon the vote of a majority of directors present, adjourn any meeting and reconvene in a closed executive session to discuss and vote upon: (a) personnel matters; (b) lawsuits in which the Association is or may become involved, and (c) other business of a similar nature. Before adjourning to executive session,

however, the Board must announce the general nature of all business that will be considered in executive session. The Board need not give general notice of its meetings to the Members, but notice must be given to any Member, as if such Member were a director, if such Member requests notice in writing, but if and only if, there is sufficient time after such Member's request is received to do so.

4.13 NOTICE. The Secretary shall give notice of each meeting of the Board of Directors in writing by mailing the same not less than thirty (30) days before the meeting. The failure by the Secretary to give any notice required by the foregoing or by any director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of directors is present. Notice need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice, and the presence of any director at a meeting shall be the equivalent of a waiver by said director of notice of the meeting. Except as otherwise provided by law, the Charter or these By-Laws, a notice or waiver of notice need not state the purposes of such meeting.

The notice of any special meeting of the Board shall be communicated in writing to directors not less than fifteen (15) days prior to the meeting provided that notice of the meeting need not be given to any Board member who signed a waiver of notice or a written consent to the holding of such special meeting.

4.14 QUORUM. A majority of the directors comprising the Board of Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the Association. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

4.15 LOSS OF QUORUM. In the event that a quorum is present at the commencement of a meeting, but as a result of the departure of some directors, less than a quorum remains, the remaining directors may nonetheless transact Board business if the number of remaining directors is equal to at least a majority of the quorum that existed at the commencement of the meeting, and except as stated in Section 4.16, the acts and decisions of at least that number of Directors shall constitute acts and decisions of the Board. This rule applies to all meetings, including meetings that are adjourned.

4.16 ACTION BY BOARD WITHOUT MEETING. Notwithstanding anything to the contrary contained in the foregoing, the Board of Directors may take actions without a meeting if all of its directors consent in writing to the action to be taken. The Board may take action on any matter without a meeting provided that (1) all directors in office consent to such action in writing; and (2) (i) such directors constitute a quorum, or (ii) if the approval of a higher number of directors is required by law, the Charter, the Club Declaration or any other provision of these By-Laws, such directors equal the required number.

4.17 COMPENSATION OF DIRECTORS. For each meeting at which they are present, the directors shall be reimbursed for transportation and lodging expenses and, at the discretion of the Board, a reasonable per diem as set by the Board. The directors shall not receive any other payment or compensation.

4.18 ACTS OF THE BOARD. Unless otherwise expressly required or permitted by law, the Charter, the Club Declaration or any other part of these By-Laws, the acts and decisions of a majority of directors present at any meeting at which a quorum exists will prevail, and shall be deemed to constitute the acts and decisions of the Board.

(a) A director is deemed to be "present" only if such director attends a meeting in person or by telephone as stated in Section 4.11.

(b) Each director present at a meeting is presumed to have approved all actions taken at the meeting unless such director's dissent is entered in the minutes of the meeting; or such director files with the Secretary a written dissent within five (5) days after the meeting.

#### 4.19 POWERS AND AUTHORITY OF THE BOARD.

The property, business and affairs of the Association shall be managed and controlled by the Board of

Directors, which shall have and may exercise all of the powers of the Association, including, without limitation, all of the powers of the Association as set forth in the Club Declaration, the Charter and these By-Laws, except such as are expressly reserved to or may from time to time be conferred upon the Members by law, the Charter, the Club Declaration or these By-Laws.

(a) **PURCHASES.** The Board shall have the power to purchase any materials, supplies, furniture, labor and services, making repairs and structural alterations, and pay all insurance premiums, taxes and assessments and other expenses which the Board of Directors is required to secure, make or pay pursuant to these By-Laws or by law or which in its opinion shall be necessary or proper for the operation of the Association, or the enforcement of these By-Laws, provided that if any such materials, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required as a result of the particular actions or negligence of particular Members, the cost thereof shall be specially assessed to said Members.

(b) **LEVYING ASSESSMENTS.** In addition to the assessments levied by the Club Operator in accordance with the Club Declaration, the Board shall have the power to levy and collect regular or special assessments and other charges payable by the Members.

Not less than thirty (30) days prior to the commencement of each year, the Board shall prepare or cause to be prepared an estimate of the costs and expenses to be incurred by the Association; send written notice of each assessment to every Member subject thereto at least thirty (30) days in advance of that date upon which each assessment shall be due and payable; and, at its option, foreclose the lien against any Club Interest for which assessments are not paid when due or to bring an action at law against the Owner or Owners personally obligated to pay the same. Further, the Board shall give to all persons having any interest in any Club Interest according to the Association's record of ownership or book of mortgages on Club Interests, notice of delinquency exceeding sixty (60) days in the payment of any assessment against such Club Interest.

(c) **PENALTIES AND FINES.** The Board shall have the power to establish such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Club Declaration, these By-Laws and the Club Rules, including penalties and fines for failure or refusal to pay to the Association or the Club Operator on demand all costs and expenses required to be paid thereunder; provided such penalties and fines are not inconsistent with law or the provisions herein. The unpaid amount of such penalties and fines against any Owner shall constitute a lien against the Club Interest of such Owner which may be foreclosed in the same manner as provided in the Declaration; provided, however, that the said lien for such penalties and fines shall be subordinate to liens for taxes and assessments lawfully imposed by governmental authority against the Club Interest.

(d) **BANK ACCOUNTS.** The Board shall have the power to open bank accounts on behalf of the Association and designate the signatories required therefor.

(e) **CUSTODY AND CONTROL OF FUNDS.** The Board shall have custody and control of all funds of the Association, shall maintain full and accurate books of account and records of such funds, and shall prepare regular financial reports thereof.

(f) **RECORDS.** The Board shall cause to be kept a complete record of all of its acts and corporate affairs and when such statement is requested in writing by twenty-five percent (25%) of the Members present a statement thereof to the Members at the annual meeting of the Members or at any special meeting;

(g) **OTHER.** The Board shall have the power and duty to do all other things necessary or appropriate to manage, operate or maintain the Association, including the power to delegate as it sees fit any of its duties to the Club Operator.

#### 4.20 EXECUTIVE AND OTHER COMMITTEES.

(a) **POWER TO APPOINT.** The Board may establish one (1) or more committees to serve at its pleasure. The Board may appoint any two (2) or more directors to serve on the executive committee. It may appoint any one (1) or more directors and other members to serve on other committees. The Board may also

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designate one (1) or more directors to serve as alternate members on any committee, to replace any member who is absent at a meeting of that committee. The appointment to any executive committee shall require the vote of a majority of all Directors, and the purpose and term of each committee, its members and its authorities and duties must be stated in the minutes of the meeting of the Board creating such committee.

(b) **AUTHORITY OF COMMITTEES.** Each committee appointed as stated in subsection (a) may (but is not obligated to) be granted all powers and authorities of the Board, except the power or authority to:

- (1) Adopt, amend or repeal the Charter or these By-Laws;
- (2) Fill vacancies on the Board or any committee;
- (3) Amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (4) Appoint any other committees of the Board or the members of these committees;
- (5) Approve any transaction: (i) between the Association and one or more of its directors; or (ii) between the Association and any entity in which one or more of its directors own or control material financial interest in excess of ten percent (10%);
- (6) Prescribe the compensation of officers and directors;
- (7) Incur any debt or other obligation in excess of \$10,000; or
- (8) Take any other action which by the express terms of the Charter, the Club Declaration, or any other provision of these By-Laws may be taken only upon the vote or approval of the members, or the Board itself, or which is prohibited by Section 414D-148 of the Nonprofit Corporations Law.

(c) **CONDUCT OF COMMITTEES.** Each committee shall govern itself in the same manner as the Board is governed by the provisions of these By-Laws. Minutes of all committee meetings shall be taken and kept as required by these By-Laws.

4.21 **LIABILITY OF DIRECTORS.** Each director shall perform such director's duties in good faith and in a manner such director believes to be in the best interests of the Association. Each director shall exercise the care, including reasonable inquiry, that an ordinarily prudent person in a like position would exercise in similar circumstances. No director shall be liable for any act or omission unless such director is guilty of gross negligence or misconduct.

4.22 **INDEMNITY OF DIRECTORS.** The Association shall indemnify and hold each of its agents, including its officers and directors, harmless from and against and shall pay for any and all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by each such agent in any proceeding to which such person was or is a party or is threatened to be made a party by reason of such person's capacity as an agent of the Association. Section 414D-160 of the Nonprofit Corporation Law shall govern the manner and the extent to which, and the conditions under which the Association shall indemnify under this Section, but it must indemnify to the fullest extent permitted by this Section.

## ARTICLE V

### OFFICERS AND AGENTS

5.01 **NUMBER.** The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer who shall be appointed by the Board of Directors and who shall hold office until their successors are appointed and qualified. Each officer shall be a Member of the Association and, except for the Treasurer, a member of the Board. The Association may have such other officers, agents and factors as may be



deemed necessary, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors. The title, term of office, and authorities and duties of these officers must, however, be stated in the minutes of the meeting of the Board before their appointment will become effective, and their terms of office must terminate no later than the next annual meeting of the Board.

5.02 ELECTION AND TERM. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board, except that the initial officers of the Association shall be as designated in the Charter.

5.03 MULTIPLE OFFICERS. Any two (2) of the offices of President, Vice President, Secretary or Treasurer may be held by the same person, provided that, at any one time, there shall be at least two (2) persons serving as officers.

5.04 DUTIES. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as are commonly incident to his or her office and such duties and powers as the Board of Directors shall from time to time designate. In all cases where the duties of any office, agent or employee are not specifically prescribed by these By-Laws or by the Board of Directors, such officer, agent or employee shall obey the orders and instructions of the President.

5.05 PRESIDENT. Subject to the Club Documents and the control of the Board of Directors, the President shall be the chief executive officer of the Association and shall exercise general supervision and direction over the management and conduct of the affairs and business of the Association. Unless the Board of Directors otherwise directs, the President shall preside at all meetings of the Members and of the Board of Directors at which such President is present, and shall be an "ex-officio" member of all committees.

5.06 VICE PRESIDENT. The Vice President, or if more than one shall have been appointed, the Vice Presidents in order of priority of appointment, shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. Each Vice President shall have such other powers and duties as may be given to him or her by law or in these By-Laws and as may be assigned to him or her from time to time by the Board of Directors or by the President.

5.07 SECRETARY. As required by law and the Club Documents, the Secretary shall have charge of the membership ledger, all documents pertaining to the title to all real property owned or held by the Association, and all rules, regulations and other documents required to be filed with the Association by the Club Declaration, the Charter or these By-Laws, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination by every Member at the principal office or place of business of the Association. The Secretary shall record all proceedings of the meetings of the Members and Board of Directors and all committees (and for this purpose, shall be a member of all committees) in a book which shall be the property of the Association to be kept for that purpose at the office of the Association, and shall have such other duties as shall be assigned to the Secretary. In the absence of the Secretary from any such meeting, a temporary Secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book.

5.08 TREASURER. As required by law and the Club Documents, and subject to the direction and under the supervision of the Board of Directors, the Treasurer shall be the chief financial officer of the Association and shall have the care and custody of the funds and valuable papers of the Association, shall have the power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Association or its order, and shall keep or cause to be kept accurate financial books and accounts of the Association and shall render statements of the same in such form and as often as required by the Board of Directors.

5.09 SUBORDINATE OFFICERS. The Board of Directors may from time to time appoint such subordinate officers, employees or agents as the affairs of Association may require, fix their tenure of office and allow them suitable compensation for services actually rendered.

5.10 REMOVALS, RESIGNATIONS AND VACANCIES. The Board of Directors may at any meeting called for the purpose, by vote of a majority of their entire number remove from office any officer of the Association, for

or without cause. The Board of Directors may at any meeting, by vote of a majority of the directors present at such meeting, accept the resignation of any officer, agent or factor or any member of any committee appointed by the Board of Directors or by any committee appointed by the Board of Directors, or by any officer, agent or factor of the Association. Unless required by its terms, the Board need not accept a resignation in order for it to be effective and such resignation will be effective at the time stated, or if no time is stated, as soon as it is given to the Board. A required office may become vacant due to death, resignation, removal, change in the status of such officer so that such officer is no longer qualified, or for any other reason. Any vacancy occurring in the office of the President, Vice President, Secretary, Treasurer or any other office shall be filled by the Board of Directors, and the officers so chosen shall hold office of the unexpired term in respect of which the vacancy occurred and until their successors shall be duly elected and qualified.

5.11 COMPENSATION. The officers of the Association shall not receive any compensation for their services; provided, however, that the Association, by resolution of the Board, may reimburse the officers for reasonable expenses incurred by the officers in connection with the performance of their authorized duties as officers. Notwithstanding the foregoing, the Board of Directors shall have power in its discretion to contract for and pay to officers rendering unusual or exceptional services to the Association special compensation appropriate to the value of such services.

#### ARTICLE VI

##### EXECUTION OF INSTRUMENTS

6.01 PERSONS AUTHORIZED. Except in the case of a contract for compensation of the President, a Vice-President, the Treasurer, or the Secretary, in which case the Board of Directors may authorize one or more of its directors or one or more officers or subordinate officers to execute the same, all checks, notes, bonds, deeds, leases, contracts or other documents or instruments shall be executed by any two of the following officers: the President, a Vice President, the Treasurer and the Secretary. The Members or the Board of Directors, by general or special resolution, may designate any other officer or employee to join with one of the foregoing officers in the place of the second officer in the execution of any such documents or instruments.

#### ARTICLE VII

##### INVESTMENTS

7.01 INVESTMENTS. The Association shall have the right to retain all or any part of the securities or property acquired by it in whatsoever manner and to invest and reinvest any funds held by it according to the judgment of the Board of Directors, without being restricted to the class of investments which a director shall or may hereafter be permitted by law to make; provided, however, that the Association shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and provided, further, that the Association shall not make or retain any investment which may jeopardize the carrying out of any of its exempt purposes under Section 528 of the Code, or subject the Association to the tax imposed by Section 4944 or any other applicable section of the Code or Hawaii law.

#### ARTICLE VIII

##### INCOME AND EXPENDITURES

8.01 INCOME AND EXPENDITURES. The Association's gross income shall consist of at least sixty percent (60%) of exempt function income, and the Association shall expend at least ninety percent (90%) of the Association's annual expenditures for each taxable year on qualifying expenditures, all as defined in Section 528 of the Code, provided, further, if Section 528 of the Code or any replacement thereof is revised, the Association shall comply with the revised provisions of the Code notwithstanding that these By-Laws are not amended.

ARTICLE IX  
DISSOLUTION OF ASSOCIATION

9.01 **PROCEDURE.** The Association may be dissolved as a nonprofit corporation in the manner set forth in Part XIII of Chapter 414D of the Nonprofit Corporation Law, as it may be amended, or any successor law thereof, provided that upon dissolution of the nonprofit corporation, the Association shall continue to function and operate as an unincorporated entity to the extent permitted by law in accordance with the Club Declaration and By-Laws if there is any common property which is the responsibility of the Association to maintain, repair, replace, restore and improve. The Association may dissolve and shall not be required to function and operate as an unincorporated entity upon the prior written unanimous vote of all Owners and the dedication of all common property to appropriate governmental agencies or private businesses which shall continue to provide services to the Club.

ARTICLE X  
MISCELLANEOUS

10.01 **CAPTIONS.** The captions are for convenience of reference only, and shall not affect the meaning or construction to be given any of the provisions hereof. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties may require.

10.02 **SEVERABILITY.** If any part, term, or provision of these By-Laws are held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations hereunder shall be construed and enforced as if these By-Laws did not contain the particular part, term, or provision held to be invalid unless elimination of said part, term or provision substantially and materially changes the essence and purpose of these By-Laws.

10.03 **APPLICABILITY OF CLUB DECLARATION.** Since the Association was formed to manage the Club, many provisions that are usually contained in the by-laws of a non-profit corporation similar to the Association are instead contained in the Club Declaration. The fact that the documents are arranged in this manner will not affect their validity or enforceability. Accordingly, the provisions of the Club Declaration shall be considered to be incorporated into these By-Laws, as if restated herein.

10.04 **SEAL.** The Association may adopt and use a corporate seal and it shall be in such form and devise as shall from time to time be determined by the Board of Directors of the Association.

10.05 **VOTE REQUIRED.** These By-Laws may not be amended without the vote or written consent of at least twenty five percent (25%) of the total vote of the Members of the Association, exclusive of the Developer.

10.06 **CONTROLLING DOCUMENT.** In the case of any conflict between the Charter and these By-Laws, the Charter shall control; in the case of any conflict between the Club Declaration and these By-Laws, the Club Declaration shall control, and in the case of any conflict between the Club Declaration and the Charter, the Club Declaration shall control.

10.07 **ROBERTS RULES OF ORDER.** All Association and Board of Directors' meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

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CERTIFICATION

\_\_\_\_\_ of the Kapulua Bay Vacation Owners Association, a Hawaii nonprofit corporation, hereby certifies that the foregoing is a true copy of the By-Laws of said Association, and that said Bylaws were adopted by the Board on the \_\_\_\_\_ of \_\_\_\_\_, 2006, and are in force and effect as of the day and year indicated below.

Witness the hand of the undersigned this \_\_\_\_\_ of \_\_\_\_\_, 2006.

THE KAPALUA BAY VACATION OWNERS ASSOCIATION,  
a Hawaii non-profit corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT "D"**

**SCHEDULE OF CLUB INTEREST IDENTIFICATION NUMBERS**

Each Club Interest will be separately identified by a specific identification code prescribed according to the following formula:

1. A number corresponding to an Apartment in the Club followed by a hyphen;
2. A sequential assigned number, 1 through 12, representing a Club Interest in a Club Unit

For example, the first Club Interest transferred to an Owner in Apartment 3101 will be identified by Identification Code No. 3101-1.

**EXHIBIT "E"**

**UNIT TYPES**

A. The Club Units in the Kapalua Bay Vacation Ownership Project are currently divided into two (2) basic types, as follows:

**UNIT TYPE C2.** Two (2) bedroom, with sleeping accommodations for six (6) persons.

**UNIT TYPE C3.** Three (3) bedroom, with sleeping accommodations for ten (10) persons.

Owners should consult the condominium documentation available at the offices of the Developer for more particular descriptions of the Club Units.

B. **TOTAL NUMBER OF APARTMENTS IN THE CLUB BY UNIT TYPE.** The total number of fee simple units of each type in the Club, and their apartment numbers, are as follows:

<b>Unit Type C2</b>	<b>Unit Type C3</b>
<u>Total - 18</u>	<u>Total - 44</u>
3204, 3304, 3404, 3504, 3604, 3704, 4102, 4202, 4204, 4302, 4304, 4402, 4404, 4502, 4504, 4602, 4604, 4704	3101, 3102, 3201, 3202, 3203, 3205, 3301, 3302, 3303, 3305, 3401, 3402, 3403, 3405, 3406, 3501, 3502, 3503, 3505, 3506, 3602, 3603, 3605, 3606, 3705, 4101, 4201, 4203, 4205, 4301, 4303, 4305, 4401, 4403, 4405, 4406, 4501, 4503, 4505, 4506, 4603, 4605, 4606, 4705

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STATE OF HAWAII

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LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK-UP ( )

Imanaka Kudo & Fujimoto  
745 Fort Street, 17th Floor  
Honolulu, Hawaii 96813  
(808) 521-9500 (RTA)

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 3

**FIRST AMENDMENT TO THE KAPALUA BAY VACATION  
OWNERSHIP PROJECT DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT is made by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 120 Kane Street, Kahului, Maui, 96732 ("Developer").

**WITNESSETH:**

WHEREAS, by way of that certain The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions ("Declaration") dated June 9, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-112198, Developer established The Kapalua Bay Vacation Ownership Project ("Program"); and

WHEREAS, pursuant to Section 13.5 A.1. of the Declaration, the Declaration may be amended by the Developer at any time and for all purposes, without the consent of any other person, before it transfers any Club Interests in the Program; and

WHEREAS, no Club Interests in the Program have been transferred to third parties; and

WHEREAS, the Developer desires to make certain clarifying amendments to the Declaration;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer does hereby amend the Declaration as follows:

1. Section 1.2.B.4 of the Declaration shall be amended in its entirety to read as follows:

"4. RULES AND REGULATIONS. The rules and regulations ("Rules and Regulations") for the Program adopted or which may be adopted for the Association by the Developer or the Program Operator in accordance with Paragraph 4.12 hereof."

2. Section 8.14 of the Declaration shall be amended in its entirety to read as follows:

"8.14 LATE CHARGES. Interest at the rate of twelve percent (12%) per annum (or such other rate as may be established in the Rules and Regulations or the Bylaws of the Condominium Association), or the maximum rate allowable by law, whichever is lower, shall be assessed on each Charge not paid when due. A late charge as set forth in the Rules and Regulations of the Condominium Association Bylaws will also be assessed against the defaulting Owner for the extra handling costs. All costs, including attorneys' fees and court costs, to collect Charges and to enforce any other duties under the Club Documents or the Program Documents shall also be assessed against the defaulting Owner if incurred by the Association, the Management Company or the Program Manager."

3. Section 13.5.A.2. of the Declaration shall be amended in its entirety to read as follows:

"2. Subject to the provisions of Paragraph 13.5.C. below, at any time within twenty (20) years from the recordation date hereof for the following purposes only: (a) to bring the Club Documents into compliance with the laws and rules of any state or country in which the Developer intends to sell Club Interests including, without limitation, to add as an exhibit to this Club Declaration, the subsidy agreement referred to in Paragraph 8.9 above; (b) to satisfy requests for changes made to the Developer by any institutional lender of the Developer, 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; (c) to correct any scrivener error, provided such amendment does not have a material adverse effect on any Owner; and (d) as otherwise provided in this Chapter 13.

To the extent required by law, except with respect to items specified in Paragraph 13.5.C.1. below, all Owners and other persons hereby appoint the Developer and its successors and assigns as their attorney-in-fact with the right of substitution, to act on their behalf to execute, deliver and record all documents necessary to effect any of the amendments referred to in this Paragraph 13.5.A., subject, however, to the proviso set forth in said Paragraph 13.5.A. Such special power of attorney with the power of substitution, shall be coupled with an interest and is irrevocable for the term of the Developer's reserved right to amend, and shall not be affected by the death, disability or incapacity of any party or parties."

4. Appendix I, Section A.3. shall be amended in its entirety to read as follows:

"3. "ALLOCATION" shall mean the total number of evenings each year, as established in the Club Documents, for which a Member or Local Member is entitled to use a Club Unit without incurring a per diem charge. Two (2) Club Calendars are available at the Home Club. In accordance with and subject to the Club Calendar applicable to an Allocation, a Member or Local Member has the right to use, occupy and possess a Club Unit for twenty-one (21) evenings in each Club Calendar Year. All Allocation is Reserved Allocation. No Allocation can be used outside of the (Home Club's) Club Calendar Year in which it was originally allocated. Each day of the Club Calendar Year belongs to a specific Season. During each Club Calendar Year, the Season in which a Member's or Local Member's Reserved Allocation, Same Season Exchange or Alternate Season Exchange falls shall be governed by the Season in which the first day of occupancy of such Reserved Allocation, Same Season Exchange or Alternate Season Exchange begins on the Club Calendar, regardless of whether the last day of occupancy of such Reserved Allocation, Same Season Exchange or Alternate Season Exchange occurs on a day which falls in another Season on the Club Calendar."

In all other respects, said Declaration shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the undersigned has executed these presents as of this 13th day of November, 2007.

KAPALUA BAY, LLC,  
a Delaware limited liability company

By *Ryan Churchill*  
RYAN CHURCHILL  
Its PRESIDENT

"Developer"

STATE OF HAWAII  
COUNTY OF MAUI

SS:

On this 13<sup>th</sup> day of November, 2007 before me personally appeared Ryan Churchill 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.

*Sheila Nabagawa*  
Name: Sheila Nabagawa  
Notary Public, State of Hawaii

My commission expires: 10/3/2011 *NS*

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS  
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2008-106853  
JUL 01, 2008 10:00 AM

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK-UP ( )

Imanaka Kudo & Fujimoto  
745 Fort Street, 17th Floor  
Honolulu, Hawaii 96813  
(808) 521-9500 (RTA)

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 4

**SECOND AMENDMENT TO THE KAPALUA BAY VACATION  
OWNERSHIP PROJECT DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS AMENDMENT is made by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post office address is 120 Kane Street, Kahului, Maui, 96732 ("Developer").

**WITNESSETH:**

WHEREAS, by way of that certain The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions ("Declaration") dated June 9, 2006, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2006-112198, as amended by that certain First Amendment to the Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions dated November 13, 2007, recorded at the Bureau of Conveyances of the State of Hawaii as Document No. 2007-216496, Developer established The Kapalua Bay Vacation Ownership Project ("Program"); and

WHEREAS, pursuant to Section 13.5 A.1. of the Declaration, the Declaration may be amended by the Developer at any time and for all purposes, without the consent of any other person, before it transfers any Club Interests in the Program; and

WHEREAS, no Club Interests in the Program have been transferred to third parties; and

WHEREAS, the Developer desires to make certain clarifying amendments to the Declaration;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer does hereby amend the Declaration as follows:

1. Section 3.6.A. of the Declaration shall be amended in its entirety to read as follows:

**"3.6 RESERVATION AND USE RIGHTS.**

A. **USE RIGHTS.** Club Interests shall have associated with them use rights which exist under one (1) of three (3) different Club Calendar use options. Subject to all the terms and conditions contained elsewhere in this Declaration and in the other Club Documents and the Program Documents, the ownership of each Club Interest shall entitle its owner to (i) the exclusive right during specified Use Periods during each Club Calendar Year (pursuant to the relevant Club Calendar) to use and occupy a Club Unit and the Common Furnishings therein, and (ii) the non-exclusive right to use and enjoy the Common Elements other than the Limited Common Element areas not appurtenant to such Club Unit, during the Owner's Use Periods, provided such Owner shall have confirmed such use and occupancy in accordance with the requirements and procedures set forth in the then-current Reservation Procedures. For Club Calendar Options 1 and 2, the Reserved Allocation for a Winter Interest shall consist of three (3) weeks of Allocation in the Season periods identified as "Winter," two (2) of which shall be consecutive. The Reserved Allocation for a Summer Interest shall consist of three (3) weeks of Allocation in the Season periods identified as "Summer," two (2) of which shall be consecutive. In Club Calendar Option 1, the two (2) consecutive weeks of Reserved Allocation are fixed. In Club Calendar Option 2, only the two (2) consecutive weeks of Reserved Allocation in the December "holiday" period are fixed; the remaining consecutive weeks of Reserved Allocation rotate each Club Calendar Year. In Club Calendar Option 3, all three (3) Weeks of Reserved Allocation are consecutive, and further, there are two alternate calendars under Club Calendar Option 3 being Fixed Use Calendar A and Fixed Use Calendar B. Fixed Use Calendar A is comprised of interests 25 through 39 and Fixed Use Calendar B is comprised of interests 40 through 54. Although there are 15 interests being offered under each of Fixed Use Calendars A and B, respectively, only 12 interests may be sold as Reserved Allocation in any particular Club Unit. Further, once the first interest under either Fixed Use Calendar A or B has been sold in a Club Unit, all remaining interests in such Club Unit shall be sold under the same Fixed Use Calendar A or B, as applicable. The exact Use Periods of such Reserved Allocation shall be noted in the relevant Club Calendar but must be confirmed for usage by the Club Interest Owner within the confirmation period identified in the Reservation Procedures (or may, in the alternative, be subject to automatic confirmation by the Program Manager). The Program Manager has reserved the right to modify the number of Club Calendar use options that may exist in the Membership Program.

Other use rights may be contained in the Reservation Procedures. No use or occupancy by any Owner will be permitted if such Owner is delinquent in the payment of any amounts owed to the Association.

2. Appendix 1, Item 17 of the Declaration entitled "Club Calendar" shall be amended in its entirety to read as follows:

"17. **"CLUB CALENDAR"** shall mean the annual calendar(s) promulgated by the Program Manager and made available to all Members and Local Members which identifies Seasons, Shoulder Periods (if applicable), Reserved Allocation, and other pertinent information for the Local Home Club in a given year. Additionally, Clubs other than the Local Home Club shall have Club Calendars specifically related to such Clubs. At the Local Home Club, three (3) Club Calendars are available, however only one Club Calendar will be applicable to each Allocation. The "Club Calendar Options" include:

A. Club Calendar Option 1 are identified as interests 1 through 12 and includes two (2) consecutive fixed weeks in a Season, as identified on the applicable Club Calendar, with the remaining one (1) week of the Member's or Local Member's Reserved Allocation rotating through non-contiguous periods of the same Season, as identified on the applicable Club Calendar. A limited number of Local Members or Members may purchase two (2) consecutive fixed weeks which will include both the nights of December 24 and December 31 of each year, with the remaining one (1) week of such Member's or Local Member's Reserved Allocation rotating through a non-contiguous period in the Winter Season, as identified on the applicable Club Calendar. No other Members or Local Members will be guaranteed usage of a holiday period.

B. Club Calendar Option 2 are identified as interests 13 through 24 and includes two (2) consecutive weeks which rotate each Club Calendar Year within a Season, with the remaining one (1) week of the Member's or Local Member's Reserved Allocation rotating through non-contiguous periods of the same

Season, as identified on the applicable Club Calendar. A limited number of Local Members or Members may purchase two (2) consecutive fixed weeks which will include both the nights December 24 and December 31 of each year, with the remaining one (1) week of such Member's or Local Member's Reserved Allocation rotating through a non-contiguous period in the Winter Season, as identified on the applicable Club Calendar. No other Members or Local Members will be guaranteed usage of a holiday period.

C. Club Calendar Option 3, Fixed Use Calendar A and Fixed Use Calendar B are identified as interests 25 through 39 (for Fixed Use Calendar A) and interests 40 through 54 (for Fixed Use Calendar B), respectively, which includes three (3) consecutive fixed Weeks of Reserved Allocation. A limited number of Local Members or Members may purchase three (3) consecutive fixed Weeks which will include both the nights December 24 and December 31 of each year, or the Thanksgiving holiday. No other Members or Local Members will be guaranteed usage of a holiday period. In addition, Members or Local Members having Reserved Allocation under Club Calendar Option 3 will not have Same Season Exchange rights and so if such Member or Local Member wants to exchange any Reserved Allocation for a Use Week at their Home Club, such exchange will be treated as Alternate Season Exchange (as further described in the definition of "Reserved Allocation" below).

The Program Manager shall determine in its sole discretion which of the three (3) Club Calendars apply to the particular Club Units."

3. Appendix I, Section A.3. shall be amended in its entirety to read as follows:

"3. "ALLOCATION" shall mean the total number of evenings each year, as established in the Club Documents, for which a Member or Local Member is entitled to use a Club Unit without incurring a per diem charge. Three (3) Club Calendars are available at the Home Club. In accordance with and subject to the Club Calendar applicable to an Allocation, a Member or Local Member has the right to use, occupy and possess a Club Unit for twenty-one (21) evenings in each Club Calendar Year. All Allocation is Reserved Allocation. No Allocation can be used outside of the (Home Club's) Club Calendar Year in which it was originally allocated. For Club Calendar Options 1 and 2, each day of the Club Calendar Year belongs to a specific Season. During each Club Calendar Year, the Season in which a Member's or Local Member's Reserved Allocation, Same Season Exchange or Alternate Season Exchange falls shall be governed by the Season in which the first day of occupancy of such Reserved Allocation, Same Season Exchange or Alternate Season Exchange begins on the Club Calendar, regardless of whether the last day of occupancy of such Reserved Allocation, Same Season Exchange or Alternate Season Exchange occurs on a day which falls in another Season on the Club Calendar. For Club Calendar Option 3, there are no seasons."

In all other respects, said Declaration shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the undersigned has executed these presents as of this 19TH day of JUNE, 2008.

KAPALUA BAY, LLC,  
a Delaware limited liability company

By *Ryan Churchill*  
Ryan Churchill  
Its PRESIDENT

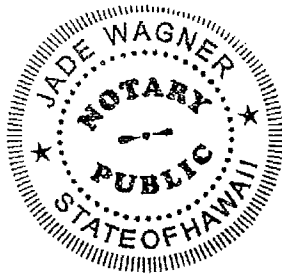
"Developer"

STATE OF HAWAII

SS:

COUNTY OF MAUI

On this 20th day of June, 2008 before me personally appeared RYAN CHURCHILL, 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.



*Jade Wagner*

Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
**JADE WAGNER**  
My commission expires: Expiration Date: June 1, 2011



R-291 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 MAY 06, 2009 08:01 AM  
 Doc No(s) 2009-068618



/s/ NICKI ANN THOMPSON  
 REGISTRAR

20 2/2 Z12

2

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK-UP (X)

Imanaka Kudo & Fujimoto  
 745 Fort Street, 17th Floor  
 Honolulu, Hawaii 96813  
 (808) 521-9500 (RTA)

THIS INSTRUMENT FILED FOR RECORD BY  
 FIRST AMERICAN TITLE COMPANY, INC. AS  
 AN ACCOMMODATION ONLY IT HAS NOT  
 BEEN EXAMINED AS TO ITS EXECUTION OR  
 AS TO ITS EFFECT UPON THE TITLE.

*22222*

Tax Map Key No. (2) 4-2-04:028 and 029

Total Pages: 5

**THIRD AMENDMENT TO THE KAPALUA BAY VACATION  
 OWNERSHIP PROJECT DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS**

THIS THIRD AMENDMENT ("Amendment") is made this 30th day of April,  
 2009 by KAPALUA BAY, LLC, a Delaware limited liability company, whose principal place of business and post  
 office address is 120 Kane Street, Kahului, Maui, 96732 ("Developer").

**WITNESSETH:**

WHEREAS, by way of that certain The Kapalua Bay Vacation Ownership Project Declaration of Covenants,  
 Conditions and Restrictions ("Declaration") dated June 9, 2006, recorded at the Bureau of Conveyances of the State of  
 Hawaii as Document No. 2006-112198, as amended by that certain First Amendment to the Kapalua Bay Vacation  
 Ownership Project Declaration of Covenants, Conditions and Restrictions dated November 13, 2007, recorded at said  
 Bureau as Document No. 2007-216496, and by that certain Second Amendment to the Kapalua Bay Vacation  
 Ownership Project Declaration of Covenants, Conditions and Restrictions dated June 19, 2008, recorded at said Bureau  
 as Document No. 2008-106853, Developer established The Kapalua Bay Vacation Ownership Project ("Program"); and

WHEREAS, pursuant to Section 13.5 A.1. of the Declaration, the Declaration may be amended by the  
 Developer at any time and for all purposes, without the consent of any other person, before it transfers any Club  
 Interests in the Program; and

WHEREAS, no Club Interests in the Program have been transferred to third parties; and

WHEREAS, the Developer desires to make certain clarifying amendments to the Declaration;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt  
 and sufficiency of which is hereby acknowledged, Developer does hereby amend the Declaration as follows:

510420.3

1

**EXHIBIT** M-3

1. Exhibit A-1 of the Declaration shall be amended to more accurately reflect the common interest information for each Apartment in the Program and shall be replaced by the form of Exhibit "A-1" attached hereto and incorporated herein by this reference.

2. Chapter III, Section 3.6. D, of the Declaration shall be amended to read as follows in order to clarify that Developer and The Ritz-Carlton Development Company, Inc., and The Ritz-Carlton Development Company, Inc.'s affiliates may lease or rent Use Periods, or a portion thereof:

D. RENTAL. No Owner other than the Developer may rent any portion of a Use Period, including Reserved Allocation, except that use by an Owner of additional days in an Apartment made available to Owner through Developer, The Ritz-Carlton Development Company, Inc., or any of The Ritz-Carlton Development Company, Inc.'s affiliates, and which days are immediately prior to or following such Owner's use of allocated time under the Program shall not be deemed a rental and is therefore, permitted; provided however, that such Owner's total occupancy shall not be for less than six (6) consecutive days.

3. Chapter VI, Section 6.2, of the Declaration shall be amended to read as follows in order to clarify that Developer and The Ritz-Carlton Development Company, Inc., and The Ritz-Carlton Development Company, Inc.'s affiliates may (i) lease or rent Use Periods, or a portion thereof, and (ii) operate a vacation ownership, timeshare, fractional ownership or similar type of program in Club Units:

**6.2 OCCUPANCY AND USE RESTRICTIONS, TIMESHARING, PURSUANT TO CHAPTER 514E OF THE HAWAII REVISED STATUTES, AS AMENDED, AND THE ADMINISTRATIVE RULES PROMULGATED THEREUNDER, AND TRANSIENT VACATION RENTAL USE, ARE EXPRESSLY PERMITTED WITHIN CLUB UNITS.** Notwithstanding the foregoing, in accordance with Section 3.6.D. above and subject to the qualification stated therein for Apartments made available to Owners through Developer or The Ritz-Carlton Development Company, Inc., or any of its affiliates, no Owner other than the Developer may rent any portion of a Use Period, including Reserved Allocation. Further, no Club Unit may be used to conduct any other trade or business, including any type of non-equity membership program, except for the apartments which are not part of the Club and are used by the Condominium Developer or The Ritz-Carlton Development Company, Inc., or any of The Ritz-Carlton Development Company, Inc.'s affiliates, for commercial purposes. No pets shall be allowed in any Club Unit, except that visually impaired persons, hearing impaired persons and physically impaired persons shall be allowed to keep certified seeing-eye dogs, certified signal dogs and certified service dogs, respectively, in their assigned Units. Further, nothing herein shall hinder full access to the Club Units and/or other portions of the Condominium by persons with disabilities. The number of Occupants in each Club Unit shall be limited to the maximum number allowed by law and the Program Documents. No vacation ownership, time share, fractional ownership, or similar type of program shall be operated by a party other than the Program Manager or The Ritz-Carlton Development Company, Inc., or any of The Ritz-Carlton Development Company, Inc.'s affiliates, while the Program remains in effect. Any vacation ownership, time share, fractional ownership, or similar type of program developed or operated by The Ritz-Carlton Development Company, Inc., or any of The Ritz-Carlton Development Company, Inc.'s affiliates, is hereby approved.

4. In all other respects, said Declaration shall remain unchanged and in full force and effect.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the undersigned has executed this Amendment on the day and year first above written.

KAPALUA BAY, LLC,  
a Delaware limited liability company

By *Ryan Churchill*  
Ryan Churchill  
Its PRESIDENT

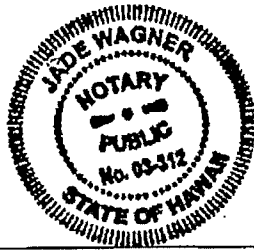
"Developer"

STATE OF HAWAII

COUNTY OF Maui

SS:

On this 30<sup>th</sup> day of April, 2009 before me personally appeared RYAN CHURCHILL, 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.



Jade Wagner

Name: \_\_\_\_\_  
Notary Public, State of Hawaii **JADE WAGNER**  
My commission expires: **Expiration Date: June 1, 2011**

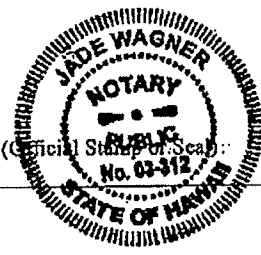
NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Third Amendment to the Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions Document Date: undated at time of notarization

No. of Pages: -5- Jurisdiction: second Circuit  
(in which notarial act is performed)

Signature of Notary: Jade Wagner Date of Certificate: 4/30/2009  
**JADE WAGNER**  
Expiration Date: **June 1, 2011**

Printed Name of Notary: \_\_\_\_\_



510420.3

3



EXHIBIT "A-1"

APARTMENTS

Apartment Number	Building Description	Common Interests
3101	Building 3	0.528821%
3102	Building 3	0.517041%
3201	Building 3	0.528821%
3202	Building 3	0.517041%
3203	Building 3	0.528821%
3204	Building 3	0.454300%
3205	Building 3	0.534455%
3301	Building 3	0.528821%
3302	Building 3	0.517041%
3303	Building 3	0.528821%
3304	Building 3	0.454300%
3305	Building 3	0.534455%
3401	Building 3	0.528821%
3402	Building 3	0.517041%
3403	Building 3	0.528821%
3404	Building 3	0.454300%
3405	Building 3	0.534455%
3406	Building 3	0.528821%
3501	Building 3	0.528821%
3502	Building 3	0.517041%
3503	Building 3	0.528821%
3504	Building 3	0.454300%
3505	Building 3	0.534455%
3506	Building 3	0.528821%
3602	Building 3	0.517041%
3603	Building 3	0.528821%
3604	Building 3	0.454300%
3605	Building 3	0.534455%
3606	Building 3	0.528821%
3704	Building 3	0.454300%
3705	Building 3	0.534455%
4101	Building 4	0.528821%
4102	Building 4	0.454300%
4201	Building 4	0.528821%
4202	Building 4	0.454300%
4203	Building 4	0.528821%
4204	Building 4	0.454300%
4205	Building 4	0.534455%
4301	Building 4	0.528821%
4302	Building 4	0.454300%
4303	Building 4	0.528821%
4304	Building 4	0.454300%
4305	Building 4	0.534455%
4401	Building 4	0.528821%
4402	Building 4	0.454300%
4403	Building 4	0.528821%
4404	Building 4	0.454300%
4405	Building 4	0.534455%

510420.3

EXHIBIT "A-1"  
(Page 1 of 2)

4406	Building 4	0.528821%
4501	Building 4	0.528821%
4502	Building 4	0.454300%
4503	Building 4	0.528821%
4504	Building 4	0.454300%
4505	Building 4	0.534455%
4506	Building 4	0.528821%
4602	Building 4	0.454300%
4603	Building 4	0.528821%
4604	Building 4	0.454300%
4605	Building 4	0.534455%
4606	Building 4	0.528821%
4704	Building 4	0.454300%
4705	Building 4	0.534455%

**GEORGE W. VAN BUREN, ESQ.**

Van Buren Campbell & Shimizu  
1950 Fort Street Tower  
745 Fort Street  
Honolulu, Hawaii 96813  
(808) 599-3800  
gvb@vcshawaii.com

**EDUCATION**

J.D., UCLA School of Law, 1983

**PROFESSIONAL ASSOCIATIONS**

Member of Hawaii Bar Association since 1983  
Inactive Hawaii Real Estate Licensee

**EXPERIENCE**

Partner, Van Buren Campbell & Shimizu

Licensed to Practice before:

- All courts in Hawaii
- Ninth Circuit Court of Appeals
- U.S. Supreme Court

Served many years as Court Appointed Commissioner, Court Appointed Personal Representative and Special Administrator in First, Second, Third and Fifth Circuits

Court-appointed receiver and commissioner in the foreclosure of the Ilikai Hotel, Civil No. 08-1-168-08;

Court-appointed receiver and commissioner in the foreclosure of the Kauai Beach Resort, Civil No. 08-1-0136.

Court-appointed receiver in Mukai v Kvam et al, Civil No.09-01-07-014

Court-appointed receiver and commissioner in the foreclosure of the Waikiki Trade Center, Civil No. 08-1-2020;

Court-appointed receiver and commissioner in the foreclosure of the Palms of Kilani, Civil No. 10-1-2066

Court-appointed receiver and commissioner in the foreclosure of the Airport Center, Civil No. 1-1-0817-04

Court-appointed receiver and commissioner in the foreclosure of the Laniakea Shopping Plaza, Civil No. 10-1-2007-09

Court-appointed receiver for USA Hawaii Self Storage, Civil No. 12-1-000998

Served as counsel to Bankruptcy Trustee

Served as Court-appointed Master

30 years of experience representing diverse group of clients in property and civil litigation matters

Represented Borrowers, Lenders, Developers, Associations and Landowners

Experience includes insurance litigation, employment related counseling and complex real estate disputes

Represented substantial land owners, developers, financial institutions and major multinational corporations in the acquisition, development, financing and disposition of all types of real property located in Hawaii. Services included the acquisition of residential subdivisions, condominium projects, hotel resort projects, commercial office buildings, industrial and warehouse facilities and shopping centers. Experienced in the representation of numerous national, regional and local insurance carriers in the defense of their insureds.

Listed in Best Lawyers in Hawaii 2009, 2010, 2011

Listed in Corporate Counsel Top Lawyers 2007, 2009, 2010, 2011