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## THE WESTIN KA'ANAPALI OCEAN RESORT VILLAS OWNER'S HANDBOOK

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(July 2010 Version)

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DISCLOSURE STATEMENT  
ON

*Ocean Resort Villas*

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*Name of Time Share Plan or Building*

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Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761

*Location*

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READ THIS  
DISCLOSURE  
STATEMENT  
BEFORE SIGNING  
ANYTHING

The disclosure statement is prepared and issued by the developer of the time share plan. It is NOT prepared or issued by the State of Hawaii.

THE STATE OF HAWAII HAS NOT PASSED ON THE MERITS OF THE TIME SHARE PLAN DESCRIBED HEREIN.

# Ocean Resort Villas

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## INTRODUCTION

In this Disclosure Statement, the Developer is sometimes referred to as “we”, and Buyers are sometimes referred to as “you”. Capitalized terms not otherwise defined in this Disclosure Statement have the meanings given to them in the Vacation Plan Documents. The Vacation Plan Documents are listed in Exhibit “A”.

### 1. DEVELOPER

SVO PACIFIC, INC., a Florida corporation. Its address is 9002 San Marco Court, Orlando, Florida 32819, Telephone (407) 903-4000.

### 2. PLAN MANAGER

SVO HAWAII MANAGEMENT, INC., a Hawaii corporation. Its address is 10 Hoohui Street, Suite 307, Lahaina, Maui, Hawaii 96761, Telephone (808) 665-0586. Its Responsible Managing Employee is Gregg Lundberg. His address and telephone number is the same as for the Plan Manager. The Plan Manager’s responsibilities, duties and authority are described later in Section 15.

### 3. TIME SHARE PLAN

Welcome to Westin Ka’anapali Ocean Resort Villas Vacation Ownership Plan. We have worked hard to create a vacation plan that will provide you with enjoyable vacation experiences for many years to come. Here is how it works:

#### 3.1. INTRODUCTION.

The name of the plan is Ocean Resort Villas Vacation Ownership Plan. For convenience we will call it the “*Vacation Ownership Plan*” or just the “*Plan*” in this document.

The basic idea of the Plan is that the Owners will share the ownership and use of certain condominium apartments and will also share the cost of operating the Plan and maintaining those apartments and their furnishings, and the condominium project.

The property included in the Plan consists of certain apartments located in a brand new beachfront condominium project on Maui named Ocean Resort Villas (the “*Condominium*”). The Condominium is currently being built and is located at Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761. The apartments

included in the Plan are called “*Vacation Units*” and they are listed in Exhibit “B”.

Each Buyer will receive a deed of an interest in a Vacation Unit. The deed will be recorded in the real estate records of the State of Hawaii. Each Buyer will also receive a policy of title insurance. It insures his or her real estate ownership. Because the Buyer will receive a real estate deed, under Hawaii law the Plan is an “ownership” plan.

The nature of the Plan and the rights and duties of the Developer, the Buyers, and anyone else who participates in the Plan or who has an interest in it, are governed by the Vacation Plan Documents.

Under the Vacation Plan Documents, you and every other Owner will have the right to reserve the use of a Vacation Unit included in the Plan. The Vacation Unit you may reserve, and the times you may use it, are established in the Vacation Plan Documents. The Vacation Plan Documents also explain your other rights and duties as an Owner including your duty to pay your “Fair Share” of the costs of owning the Vacation Units and operating the Plan. For your convenience, we will discuss or summarize some of the key points in these documents later on, but you should make time to read them yourself so that you fully understand your rights and duties.

To widen your vacation opportunities, the Developer has arranged for the Plan to join the Starwood Pacific Vacation Club (the “*Club*”). The Club is an exchange program designed to link vacation plans together through a central reservation system. This gives the members of each of the linked vacation plans the opportunity to request a reservation in the other participating resorts.

The Club has been designed so that many different resorts can be included in the Club. Each vacation plan included in the Club is called a “*Club Vacation Plan*” and each resort is called a “*Club Resort*”. The Plan is the first vacation plan to join the Club. The Ocean Resort Villas North Vacation Ownership Plan has now joined the Club; however, it is a completely separate plan consisting of units in a neighboring condominium project. The Ocean Resort Villas North Vacation Ownership Plan is the second vacation plan in the Club. There are presently no other Club Resorts and neither Developer nor anyone else can make promises about any future Club Resorts.

However, the Club provides access to the Starwood Vacation Network (referred to as “*SVN*” in this document; sometimes referred to in other documents as the “*Network*”). SVN is another exchange program. It links the Club with other vacation clubs and provides exchange services to owners in

other vacation plans. This allows you to exchange your use rights for the right to use property in other SVN Resorts.

SVN currently includes various Westin and Sheraton vacation ownership resorts located in the Bahamas, Florida, Colorado, California, Arizona, South Carolina, and other locations. Other vacation plans or vacation clubs may also join but neither the Developer nor anyone else can make any promises about that. Each resort included in SVN is called an "*SVN Resort*".

Finally, SVN provides access to the Interval International, Inc. ("*Interval International*") exchange program. It provides you the opportunity to reserve a unit at nearly two thousand different vacation ownership resorts around the world.

So as an Owner in the Westin Ka'anapali Ocean Resort Villas Vacation Ownership Plan, you will have the opportunity to reserve:

- ❖ A Unit in the Plan;
- ❖ A unit in other Club Resorts, if any, or in other SVN Resorts; or
- ❖ A unit in the nearly two thousand resorts available through Interval International, Inc.

So far, we have only given you an overview of the Plan, the Club and SVN. Now let's get down to the details of what you are buying and how the Plan works.

### 3.2. WHAT AM I BUYING?

You are buying a "*Vacation Ownership Interest*". It includes:

- ❖ An undivided 1/52<sup>nd</sup> or a 1/104<sup>th</sup> interest in a Vacation Unit.
- ❖ A membership in the Ocean Resort Villas Vacation Owners Association (the "*Association*").
- ❖ The right to reserve the use of a Vacation Unit for one "*Use Week*".
- ❖ The right to use a Vacation Unit and its furnishings during the Use Week that you reserve (your "*Vacation Period*").

Your Vacation Ownership Interest comes with a membership in the Club. As a Club Member, you will have the right to request a reservation for units included in other Club Vacation Plans, if any.

Since the Club is part of SVN, you will also have access to SVN. As a member of SVN ("*SVN Member*"), you will have the right to request a reservation for units in other SVN Resorts. You will also have the opportunity to take advantage of any of the other benefits offered by the owner of SVN (the "*SVN Operator*") from time to time. This includes, for example, use of the Interval International exchange program.

Your rights in the Club and in SVN are described in greater detail in the Starwood Vacation Exchange Company Disclosure Guide. The Interval International exchange program is described in its own exchange program disclosure statement. The Developer will give you a copy of both of these documents.

As a co-owner of an apartment in the Condominium, you will also be a member of the Association of Apartment Owners of the Ocean Resort Villas condominium (the "*Condominium Association*"). See Section 6.1 for details.

In addition, all resort apartment owners, including you, are members of the Ocean Resort Master Association (the "*Master Association*") and will have the right to use certain amenities owned or controlled by the Master Association. See Section 4.5 for details.

### 3.3. WHAT ARE MY BASIC RIGHTS AND DUTIES?

First and foremost, you will be a member of the Plan. Members of the Plan are given an advantage in reserving a Vacation Unit in the Ocean Resort Villas Condominium. The period during which you have this advantage is the best time to make reservations because during this time period, you compete for reservations on a first-come, first-served basis only with the other Owners of Vacation Ownership Interests in this Plan.

Here is how you and the other Owners share the use of the Vacation Units:

**A. TIME PERIODS.** For reservation and use purposes, time is divided into "*Use Years*" with 52 "*Use Weeks*" per Use Year (except that in certain years with 53 weeks, there are 53 Use Weeks). Each Use Year begins on one of the first seven days of the calendar year and ends on one of the first seven days of the next calendar year.

**B. WHAT IS A USE WEEK?** A "*Use Week*" is a one-week period starting at "*check-in time*" in the afternoon and ending at "*check-out time*" in the morning one week later. Each year, the Plan Operator will prepare a "*Vacation Calendar*". The Vacation Calendar will divide the Use Year into Use Weeks and it will also show the Check-In/Check-Out Day for each Vacation Unit. Unless the Reservation Rules say otherwise, the Check-In/Check-Out Day will be a Friday, Saturday, or Sunday. The Check-In/Check-Out Day may be different for different Vacation Units and may be changed from time to time. The exact time of day for Check-In and Check-Out will be stated in the Association Rules, which now state that check-out time is 10:00 a.m., and check-in time is 4:00 p.m.

The Use Weeks are numbered from 1 to 52 (or 53). Some Use Weeks, called "*Event Weeks*", also have a name. The Event Weeks are: (i) "*New Years*", which means the last Use Week of the Use Year; "*Christmas*", which means the next to last Use Week of the Use Year; "*Golden Week*", which means the Use

Week during which occurs the most number of those days (April 29, and May 3 – 5) in the Japanese national holiday called "Golden Week"; and "Obon Week", which means the Use Week that includes August 15, a religious holiday in Japan. When August 15 falls on a Check-In/Check-Out Day, the Vacation Calendar will state which Use Week will be Obon Week.

The time between Check-Out Time and Check-In Time later that day is called a "Minor Service Period." The Association will provide housekeeping and other services during this time.

In addition, each year, the Association may choose up to three Use Nights per Vacation Unit to be the "Major Service Period" for that Vacation Unit. If needed to maintain or upgrade the Vacation Units and if the Plans vacancy rate is high enough to permit it, the Association may set aside additional time for Major Service Periods. Although all Use Weeks of the Use Year may be sold, Hawaii law permits the Association to rely on normal vacancy factors to provide time for Major Service Periods.

**C. HOW OFTEN CAN I RESERVE A USE WEEK?** You can purchase the right to reserve and use a Use Week every year or every other year.

If you choose every year, then you will own an "Every-Year Vacation Ownership Interest". It gives you the right to reserve the use of a Vacation Unit for one Use Week in every Use Year. In that case, you will own an undivided 1/52<sup>nd</sup> interest in Your Vacation Unit.

If you prefer every other year use rights then you will own an "Every-Other-Year Vacation Ownership Interest." In that case, you will own an undivided 1/104<sup>th</sup> interest in Your Vacation Unit. There are two kinds of Every-Other-Year Vacation Ownership Interests:

If you choose an "Even-Year Vacation Ownership Interest", then you will have the right to reserve the use of a Vacation Unit for one Use Week in each Use Year that ends in an even number (for example, 2008, 2010, and so on.)

If you choose an "Odd-Year Vacation Ownership Interest", then you will have the right to reserve the use of a Vacation Unit for one Use Week in each year that ends in an odd number (for example, 2007, 2009, and so on.)

**D. WHAT USE WEEK CAN I USE?** The Use Week you use depends on the reservation rights you choose for your Vacation Ownership Interest. You can choose from a *Fixed Vacation Period*, a *Floating Vacation Period*, an *Event Vacation Period*, or an *Ultra Premium Vacation Period*. Here are the key features of each:

**1) Floating Vacation Period.** If you choose a Floating Vacation Period, then you may reserve any Use Week that is not already reserved and that no other persons have the exclusive right to reserve. The Use Week that you may reserve is called "Your Use Week." To reserve a Use Week, you must

follow the procedures in the current Reservation Rules. You cannot, of course, reserve a time period set aside for use by the Association for maintenance, repairs, and so on.

**2) Fixed Vacation Period.** If you choose a Fixed Vacation Period, then you will have the exclusive right (meaning the first chance) to reserve a specific Use Week. The Use Week that you may reserve is called "Your Use Week" or "Your Fixed Vacation Period". You must reserve it by the deadline stated in the Reservation Rules (currently about 10 months before Your Use Week starts). If you do not, then you will have the right to reserve a different Use Week (subject to availability) just as if you had a Floating Vacation Period.

**3) Ultra Premium Vacation Period.** If you choose an Ultra Premium Vacation Period, then a specific Use Week automatically will be reserved for use by you. The Use Week reserved for you is called "Your Use Week" or "Your Ultra Premium Vacation Period."

**4) Event Vacation Period.** If you choose an Event Vacation Period, then a specific Event Week automatically will be reserved for use by you. The Event Week reserved for you is called "Your Use Week" or "Your Event Vacation Period."

**5) Temporary Floating Use.** The Reservation Rules may permit the Owner of a Fixed, Event or Ultra Premium Vacation Period to give up his or her special reservation rights for that Use Year and instead be treated as if the Owner had a Floating Vacation Period for that Use Year. In that case, the Owner will have the same reservation and use rights as an Owner of a Floating Vacation Period for that particular Use Year. The Reservation Rules may impose conditions or limitations on the ability of an Owner to do this. The current Reservation Rules permit Owners having Event or Ultra Premium Vacation Periods to do this subject to certain conditions.

**6) Split Week Use.** "Split Week" means a period of less than seven consecutive Use Nights. A "Use Night" is a period beginning at Check-In Time on one day and ending at Check-Out Time the next day. Instead of reserving an entire Use Week, an Owner can reserve up to a total of seven Use Nights as Split Week Use Periods. An Owner may do this only if and to the extent that the Reservation Rules permit it. The current Reservation Rules permit this subject to certain conditions.

**7) Check-In/Check-Out Day.** The Check-In and Check-Out Days for the Use Weeks may change from time to time. This is true whether you have a Floating, Fixed, Event or Ultra Premium Vacation Period.

**E. WHAT UNIT MAY I USE?** The Unit you use depends on whether your Vacation Ownership Interest has a "Floating Unit Use Right" or a "Fixed Unit Use Right".

1) **Unit Types.** The Vacation Plan Documents divide the Vacation Units into different groups or "*Unit Types*." Right now there are eight Unit Types: One Bedroom Island View, One Bedroom Ocean View, Two Bedroom Island View, Two Bedroom Ocean View, Two Bedroom Ocean Front, Two Bedroom Deluxe Island View, Two Bedroom Deluxe Ocean View, and Two Bedroom Deluxe Ocean Front. Your Unit will be one of these eight Unit Types. This is called "*Your Unit Type*". The list of Vacation Units attached as Exhibit "B" states the Unit Type for each Vacation Unit currently included in the Plan.

2) **Floating Unit Use Right.** If you choose a Floating Unit Use Right, then you have the right to reserve any Vacation Unit that is the same Unit Type as your own Vacation Unit. You cannot, however, reserve a Vacation Unit that is already reserved by someone else or that any other persons have the exclusive right to reserve, and you will not have the right to reserve any specific Vacation Unit even though you own an interest in a specific Vacation Unit.

3) **Fixed Unit Use Right.** If your Vacation Ownership Interest has a Fixed, Event or Ultra Premium Vacation Period, then it may have a Floating Unit Use Right or a Fixed Unit Use Right. If it has a Fixed Unit Use Right then you will have the right to use your own Vacation Unit during Your Use Week. You automatically give up your Fixed Unit Use Right if:

- ❖ You have a Fixed Vacation Period but you do not reserve Your Use Week by the deadline stated in the Reservation Rules.
- ❖ You choose to convert your special reservation rights as the Owner of a Fixed, Event or Ultra Premium Vacation Period for the right to be treated as if you had a Floating Vacation Period for that Use Year as discussed in Section 3.3.D.5), above.

4) **Lock-Off Use.** Some of the Vacation Units (called "*Lock-Off Units*") have been designed so that they can be used either as a whole unit or on a "lock-off" basis. For example, a Two-Bedroom Ocean View Unit can be used as a two-bedroom apartment. But it may also be used as two separate units: a one-bedroom unit and a studio unit, each having its own separate front door that can be locked.

When a Vacation Unit is used as a whole unit, it is called a "*Full Unit*". When it is used as two separate units on a lock-off basis, then the larger unit is called the "*Deluxe Side*" and the other unit is called the "*Guest Side*." The Reservation Rules may permit an Owner who has the right to use a Lock-Off Unit for one Use Week to choose either (a) to use a Full Unit for one Use Week, or (b) to use a Deluxe Side for one Use Week and a Guest Side for another Use Week.

The Reservation Rules may also permit an Owner to use the Deluxe Side of a Lock-Off Unit during his or her Fixed, Event, or Ultra Premium Vacation Period and to give up the right to

use the Guest Side during that time period for that Use Year. In that case, the Owner would have the right to reserve the Guest Side of a Lock-Off Unit (that is the same Unit Type as the Owner's Unit) in that same Use Year just as if he or she had a Floating Vacation Period during that Use Year. The Reservation Rules may also do the reverse (i.e., permit an Owner to use the Guest Side of a Lock-Off Unit during the Fixed, Event or Ultra Premium Vacation Period, and to reserve the Deluxe Side of a Lock-Off Unit that is the same Unit Type on a floating basis).

The Reservation Rules may place restrictions on Lock-Off use, including how far in advance an Owner may reserve just one side of a Lock-Off Unit.

5) **Assigned Unit.** If you have a Floating Unit Use Right, the Plan Manager will assign a Vacation Unit for your use. That Unit is called your "*Assigned Unit*". If you have a Fixed Unit Use Right, your own Vacation Unit is called your "*Assigned Unit*". If you choose to reserve part of a Vacation Unit on a Lock-Off basis, then the Deluxe Side or the Guest Side that you use will be your "*Assigned Unit*".

### 3.4. HOW DO I MAKE A RESERVATION?

A. **RESERVATION RULES.** The Plan is currently part of the Starwood Pacific Vacation Club. The Club is owned and operated by SVO Hawaii Management, Inc., a Hawaii corporation (the "*Club Operator*"). The Club Operator provides a reservation system for Owners who wish to reserve a Vacation Unit in the Plan.

To use a Unit, you must reserve a Use Period in the manner provided by the Reservation Rules adopted by the Plan Operator. "*Plan Operator*" means the Club Operator at any time when the Plan is part of the Club. If the Plan is no longer part of the Club, then "*Plan Operator*" means the Association.

This means that while the Plan is part of the Club, the Club Operator will manage the reservation and use of the Use Periods through the Club. During such time, you must make your reservations through the Club Operator's reservation system. You must also make all exchange requests through the Club Operator.

If the Plan is no longer part of the Club, then the Association becomes the Plan Operator. It must create a reservation system and adopt its own Reservation Rules.

The current Reservation Rules are attached to the Starwood Vacation Exchange Company Disclosure Guide. They are called the "Starwood Vacation Network Rules and Regulations for the Starwood Pacific Vacation Club." The Club Operator has adopted them as the Reservation Rules.

Note: At any time when the Plan is part of the Club, the Club Operator may delegate or assign some or all of its rights and duties as Plan Operator to someone else. It may also contract with someone else to perform its duties as the Plan Operator.

**B. POINTS SYSTEM.** The Club is part of the SVN program. SVN is owned and operated by Starwood Vacation Exchange Company, a Delaware corporation (the "*SVN Operator*"). SVN is an Exchange Program. It allows you and other Owners to use units in other SVN Resorts in exchange for your use rights in the Plan.

SVN Resorts are located in different places. For instance, SVN includes resorts in Florida, the Bahamas, South Carolina, Colorado, Arizona, California, and elsewhere. SVN Resorts tend to have different features from one resort to the next, and the units may also differ. The demand for SVN Resorts may differ based on their location, the time of year, and other factors. For example, the demand for an SVN Unit in Colorado may be very high during the ski season.

To reflect these differences, the SVN Operator has adopted a "points" system to allocate reservation and use rights among the SVN Members. The Club Operator has also adopted a points system to allocate reservation and use rights among members of the Club. The Vacation Plan Documents expressly authorize the Club Operator to do this but it is not required.

The Club Operator's points system is used not only to reserve Vacation Units in this Plan but also to exchange use rights in this Plan for the right to use units in other Club Resorts. The SVN Operator's points system provides a way to exchange use rights in this Plan for the right to use units in other SVN Resorts.

The points system is described in greater detail in the Starwood Vacation Exchange Company Disclosure Guide and the Reservation Rules. For your convenience, however, some of the key points are summarized here.

**C. WHAT ARE POINTS AND HOW DO THEY WORK?** "*Points*", also called "*StarOptions*", represent each Owner's reservation and use rights. Each year, the Plan Operator assigns a certain number of Points to you and every other Club Member. You may "spend" your Points to reserve a Vacation Unit in the Plan or in another Club Resort. Every night in every Club Unit is given a "*Point Value*" - the price of staying in that unit or kind of unit for that night. Subject to the priorities, limitations and restrictions in the Reservation Rules, you may reserve any Vacation Unit or any other Club Unit for any Use Period so long as the Unit and Use Period is available and so long as you have enough Points to pay the Point Value.

In some ways, Points are like miles in a frequent flyer program. In a frequent flyer program, you use your miles to get tickets for airline flights. In the Club, you use your Points to reserve a Unit in the Plan or in another Club Resort.

SVN works in essentially the same way. Your Club Points are converted to SVN Points and you may then use them to reserve a unit in an SVN Resort.

**D. WHERE DO POINTS COME FROM?** Each year, the Plan Operator assigns a Point Value to each Use Period in each Club Unit (including the units in this Plan) and

the SVN Operator does the same for each Use Period in each unit at an SVN Resort that is available for reservation by SVN Members through the SVN program ("*SVN Unit*"). In setting Point Values, they may consider all factors that they consider relevant. For example, they may consider (i) the location, size, capacity, furnishings and other features of a unit or Unit Type, (ii) the location, views, recreational and other features of the resort in which a unit is located, (iii) demand and availability for purchaser use, (iv) the cost to buy, build, operate, or maintain a particular unit or resort, and (v) anything else that may be relevant in their opinion.

In setting the Point Values, the Plan Operator does not have to compare each Unit separately. Instead, it can divide the Units into different groups or types of units. The groups may be limited to a single resort or may be used throughout the system. The Plan Operator may then assign Points based on a comparison of the different unit types. Note that the Plan Operator can change the unit groupings from time to time based on any factors that are relevant in the Plan Operator's opinion.

Likewise, the Plan Operator does not have to compare each Use Night against every other Use Night. Instead, it may divide the calendar year into different periods, called "*Seasons*" and divide the Use Nights among the Seasons. It may then set Point Values by making comparisons between Seasons. The Seasons do not have to be the same for each resort and the Plan Operator may change the Seasons for a resort based on any factors that are relevant in the Plan Operator's opinion.

The Plan Operator may draw other distinctions when assigning Points. It may do so in order to recognize new classes of memberships or reservation and use rights created from time to time, or to enhance the administration and operation of the system, or for any other purpose that is relevant in the Plan Operator's opinion.

The Plan Operator can change the Point Value of a Use Period from time to time in its sole discretion. It may also change them as required by law or by any governmental agency. At least yearly, the Plan Operator will prepare a "Points Chart" or "Starpoints Chart" listing the Point Value for each Use Night available for reservation. It may update the Points Chart during the Use Year. For example, it might do so to reflect things like the addition or deletion of units or resorts, the creation of new unit types, and so on.

To protect your reservation rights, the Vacation Plan Documents provide that the total number of Points assigned to all persons receiving Points must not exceed the total of all the Point Values for all Use Periods to which Points are assigned.

If a Unit can be used as a Lock-Off Unit, then the Points Chart will list its Unit Type as a Full Unit and also the Unit Type of each Lock-Off Unit. Separate Point Values may be created for each. The sum of the Point Values for the Deluxe Side and the Guest Side may be higher than the Point Value for the Full Unit. This is because breaking up a unit into two Lock-Off

Units may mean that one of the Lock-Off Units may go unused. As a result, the Plan Operator may choose to reflect this fact in setting the Point Values for use of Lock-Off Units.

Likewise, the sum of the Point Values for each Use Night in a Use Week may be higher than the Point Value for the full Use Week. This is because breaking up a Use Week into smaller Use Periods may mean that some of the Use Nights may go unused. As a result, the Plan Operator may choose to reflect this fact in setting the Point Values for use of the individual Use Nights making up a Use Week.

The decisions of the Plan Operator and the SVN Operator on Point assignments are final. However, to protect your reservation and use rights, the Declaration provides that the total number of Points assigned to all of the persons to whom Points are assigned must not exceed the total of all the Point Values for all Use Periods to which Points are assigned.

**E. HOW MANY POINTS DO I GET?** Each year, the Plan Operator will assign to each Vacation Ownership Interest the number of Points equal to the Point Value of the Owner's Vacation Ownership Interest as shown on the Points Chart for that Use Year.

The Plan Operator will assign Points to Odd-Year Vacation Ownership Interests only for use during Use Years ending in an odd number. Likewise, the Plan Operator will assign Points to Even-Year Vacation Ownership Interests only for use during Use Years ending in an even number.

The number of Points assigned to you will not be based on the use of Lock-Off Units but rather on use of a Full Unit (unless an Owner's use rights are limited to one side of a Lock-Off Unit). The number of Points assigned to you will not be based on individual Use Nights but on full Use Weeks.

A copy of the StarOptions and Starpoints Charts are given to Owners at the time of purchase.

**F. HOW DO I MAKE A RESERVATION?** To make a reservation, you must first check the Points Chart to find the Point Value of the Use Period and kind of Unit that you want to reserve. Then check to be sure that you have enough Points to reserve it. You must then follow the rules for making reservations contained in the Reservation Rules. If you are unsure about any of these things, just call Reservation Services. "Reservation Services" is a place you can call for help in making reservations. Its phone number is (888) 986-9637.

**G. WHEN CAN I MAKE A RESERVATION?** The Reservation Rules create a "Reservation Window" for each Use Period. This is a time when an Owner, a Club Member, an SVN Member, the Developer, the Club Operator, or someone else may request a reservation. Currently, the Reservation Rules provide that the Reservation Window for a Use Period begins one year before the Check-In Day for that Use Period. This means that the Plan Operator would begin taking reservations for a Use Week that starts on July 1, 2004 on the

first day of July, 2003. You cannot reserve a Use Period before the start of the Reservation Window for that Use Period.

The Reservation Rules further divide the Reservation Window for a Use Period into different "Reservation Periods". A "Reservation Period" is a part of a Reservation Window. The dates when Reservation Periods start or end may be different for different Club Resorts or Club Vacation Plans, or at other SVN Resorts.

1) There must be at least one Home Resort Reservation Period and there may be more. A "Home Resort Reservation Period" is a Reservation Period when only Owners in this Plan may reserve a Use Period in a Vacation Unit included in this Plan. The Reservation Rules may give different names to the Home Resort Reservation Periods. For now, there are two Home Resort Reservation Periods (although this may change):

- ❖ The "Home Resort Priority Period" begins one (1) year before the Check-In Day of a given Use Period and lasts two (2) months. During the Home Resort Priority Period:
  - An Owner having a Fixed Vacation Period has the exclusive right to reserve his or her Fixed Vacation Period without competition from other Club Members or SVN Members, subject to any limitations in the Vacation Plan Documents and SVN Rules, and
  - Owners having Floating Vacation Periods in the Plan may reserve Use Periods in the Plan, subject to any limitations in the Vacation Plan Documents and SVN Rules. Other Club Members and SVN Members cannot reserve a Use Period in the Plan during this time.
- ❖ The "Home Resort Float Period" begins immediately after the Home Resort Priority Period and ends eight (8) months before the Check-in Day of the Use Period. During the Home Resort Float Period, all Owners in this Plan have the exclusive right to compete to reserve the use of unreserved Use Periods in this Plan, subject to any limitations in the Vacation Plan Documents and the Reservation Rules.

SVN Members at other SVN Resorts are likely to have similar rights with respect to their own Home Resort.

2) An "SVN Reservation Period" is a Reservation Period when SVN Members (including Owners in this Plan) may use SVN to reserve a Use Period in an SVN Unit, including but not limited to a Vacation Unit in this Plan. For now, there are three SVN Reservation Periods (although this may change):

- ❖ The "SVN Float Period." It begins immediately after the Home Resort Float Period for a given Use Period and ends ninety (90) days before the Check-in Day. During the SVN Float Period, all SVN Members compete for a reservation on a space available, first-come, first-served basis to reserve

the use of a Use Period for which the SVN Member holds enough Points, subject to the SVN Rules.

- ❖ The “*SVN Options Period*.” It begins immediately after the SVN Float Period and ends the day before the Check-In Day of a given Use Period. During the SVN Options Period, all SVN Members compete for a reservation on a space available, first-come, first-served basis to reserve the use of a Use Period for which the SVN Member holds enough Points, and have limited rights to Borrow Points and reserve Split Vacation Periods, subject to the SVN Rules. The SVN Options Period overlaps with the SVN Priority Period.
- ❖ The “*SVN Priority Period*.” It is the sixty (60)-day period immediately preceding the Check-in Day of a given Use Period. During the SVN Priority Period, SVN Members have limited rights to reserve the Use Periods, subject to the SVN Rules. In addition, during the SVN Priority Period the Developer and, to the extent permitted by law, the Club Operator have the right to reserve Use Periods for their own use such as for rental to the public or for other purposes.

3) There may be other Reservation Periods in addition to these. For example, the Club may set up one or more “*Club Reservation Periods*” when only Club Members can make reservations. New Reservation Periods may also appear when, for example, the Developer, the Club Operator, or the SVN Operator creates new kinds of memberships or new unit types. For example, suppose the Developer decides to add a group of units and to create a new kind of Vacation Ownership Interest that gives certain Owners the first chance to reserve those units at certain times such as Aloha Week. If so, the Developer might create a new Reservation Period when only those Owners can reserve one of those units for Aloha Week. This Reservation Period might be one of the Home Resort Reservation Periods. It might begin and end before the start of any other Home Resort Reservation Periods, but it would not have to do so. This is called a “*Special Reservation Period*” because it is a time when only Owners having certain special reservation rights may make a reservation.

By the way, it is possible that different SVN Resorts may choose different SVN Reservation Periods. For example, our SVN Float Period may start eight months in advance of check-in while the SVN Float Period for, say, one of the Florida vacation clubs may start 15 months in advance of check-in. In that case, the SVN Operator will not allow members of that Florida vacation club to make reservations of Vacation Units in this Plan until this Plan’s SVN Float Period starts. Likewise, members of this Plan would not be able to make reservations in the Florida vacation club until this Plan’s SVN Float Period starts. This is just an example; the SVN Float Period is currently the same for all SVN Resorts.

### **3.5. WHAT SHOULD I KNOW ABOUT THE RESERVATION RULES?**

Everything! You should read them and take time to understand them. Here are some of the things we thought you might want to know about:

**A. RESERVATIONS.** So long as the Plan is part of the Club, all requests for reservations to use the Vacation Units in this Plan must be made through the Club Operator in its role as the Plan Operator. If the Club Operator delegates its duties as Plan Operator to the SVN Operator, then all reservation requests must be made through the SVN Operator.

**B. EXCHANGE.** So long as the Plan is part of the Club, all Owners must make their exchange requests through the Club Operator in its role as the Plan Operator. If the Club Operator delegates its duties as Plan Operator to the SVN Operator, then all exchange requests must be made through the SVN Operator.

**C. DELINQUENT OWNERS.** An Owner is not allowed to reserve, use or exchange a Vacation Unit if (i) the Owner has not paid any Regular Assessment, Special Assessment, Personal Charge, or Club Fees due or past due, or (ii) the Plan Operator learns that the Owner has not paid any amounts due under any note or mortgage made by the Owner in favor of the Developer. The Plan Operator may cancel a reservation held by an Owner if that Owner does not pay any Regular Assessment, Special Assessment Personal Charge, or Club Fees due or past due.

**D. OTHER RESERVATION RULES.** The Reservation Rules may contain other rules. For example, they may (1) designate some or all units as no-smoking units, (2) limit the number of Split Weeks that an Owner may reserve or the times when an Owner may reserve them, (3) limit how far in advance an Owner may reserve a Split Week or a Lock-Off Unit, (4) limit or prohibit an Owner from reserving only the Deluxe Side or the Guest Side of a Lock-Off Unit for less than a full Use Week, (5) require that reservations be for a minimum or maximum number of Use Nights, (6) limit the time period within which an Owner may cancel a reservation without losing some or all of his or her Points or reservation or use rights, (7) limit an Owner’s reservation rights if the Owner had a confirmed reservation in that Use Year but changed it, or (8) permit the Plan Operator to cancel a reservation if an Owner’s reservation or use rights have been suspended or have ended. Currently the Reservation Rules permit reservations for Split Week use only during the SVN Options Period.

**E. RESERVATION PRIORITIES.** The Reservation Rules may create other reservation priorities. For example, they may give priority to the reservation requests of: (1) an Owner requesting two or more Use Weeks in a row over an Owner requesting a single Use Week; (2) an Owner requesting a reservation of two Units for the same Use Week over an Owner requesting only a single Unit for that Use Week (or *vice versa*); (3) an Owner owning more Vacation Ownership Interests over an Owner owning fewer Vacation Ownership Interests; (4) an Owner owning an Every-Year Vacation Ownership Interest over an Owner owning an Every-

Other-Year Vacation Ownership Interest; (5) an Owner requesting a Full Unit over an Owner requesting either the Deluxe Side or the Guest Side; (6) an Owner requesting a full Use Week over an Owner requesting a Split Week. The Reservation Rules may also provide for rotating the use of Use Periods in great demand, such as holiday Use Periods, and for waiting lists. Currently the Reservation Rules do some, but not all, of these things.

**F. BORROWING.** The Reservation Rules currently permit Owners to borrow Points from the next Use Year for use in the current Use Year, subject to certain limitations.

**G. TRANSACTION FEES.** The Reservation Rules may require that the Owners pay Transaction Fees. "Transaction Fees" are reasonable fees charged to an Owner by the Plan Operator and that relate to the manner in which an Owner uses his or her Points or use rights. For example, the Plan Operator may charge Transaction Fees (i) for making multiple reservations, (ii) for banking or borrowing Points or use rights, (iii) for canceling or changing reservations, (iv) for bonus week reservations and other special reservation or use requests, or (v) to cover the added housekeeping and reservation costs of permitting an Owner to use a Split Week or a Lock-Off unit. The rules may require that these fees be paid in money or may be paid using Points. The current Transaction Fees are shown in the SVN Fees Chart, although they may change from time to time.

**H. OTHER RESERVATION SYSTEM FEATURES.** The Club Operator has the option, from time to time, to enter into one or more special exchange relationships with any entity other than an exchange company pursuant to which Club Members will have access to selected non-Club resorts and non-Club owners will have access to Club Units after one or more of the Home Resort Reservation Periods have expired. The Club Operator is not obligated to make any of these exchange programs available to Owners, and the Plan and the Owners are not obligated to participate in any of these programs unless the Association's board of directors consents. The Club Operator may delegate its authority to enter into special exchange relationships to the SVN Operator. In addition, the Reservation Rules may, but currently do not, permit SVN Members to save their unused use rights or Points from one Use Year to the next (called "banking"), to let another SVN Member use some of their Points temporarily (called "sharing"), to reserve Use Periods that nobody else has reserved as of a certain period (which may not be more than 60 days) before the Check-In Day (called "bonus use"), or to rent Points from the SVN Operator.

**I. CHANGES IN THE RESERVATION RULES.** The Plan Operator may change the Reservation Rules from time to time in the manner and under the circumstances provided in them. The Plan Operator must give notice of any change to the Owners. See the SVN Reservation Rules attached to the Starwood Vacation Exchange Company Disclosure Guide for details.

### 3.6. WHAT ARE MY USE RIGHTS?

During your Vacation Period, you have the exclusive right to use your Assigned Unit and the furnishings in it (the "Common Furnishings"). You also have the right to use (i) the common elements of the Condominium, (ii) the Master Association Amenities to the extent permitted under the Master Association Documents, and (iii) any Ka'anapali North Beach Amenities to the extent permitted under the Ka'anapali North Beach Documents. The Master Association Documents and Ka'anapali North Beach Documents are described in Exhibit "A".

You must take care of your Assigned Unit and the Common Furnishings. You must leave them in good condition except for ordinary wear and tear. You must pay for any damage and any items that are lost or missing after your Vacation Period. You must also remove all personal effects at the end of your Vacation Period or you risk losing them.

You may reserve a Vacation Unit so that your children, parents, relatives, a friend, or just about anyone else (except a competitor of the Developer) can use it. You may also rent your Vacation Period. However, you cannot join a "rental pool" or similar arrangement where your Vacation Period is placed together in a pool with other Owners' Vacation Periods and rented, or where rental income and/or expenses are shared in some other way.

You will be responsible for your Guests and Renters. You must pay any charges they owe to the Association if they do not pay them. For example, if they do not pay their long distance telephone charges, you must pay them. You will also be responsible for their misconduct and for any loss or damage that they cause.

Except for your Assigned Unit during your Vacation Period, you may not use or occupy a Vacation Unit or its furnishings. Likewise, except during your Vacation Period you may not use any of the common elements of the Condominium, the Master Association Amenities, or any Ka'anapali North Beach Amenities unless they are open to the general public or unless the Board decides to permit Day Use. "Day Use" means that Owners may come onto the Condominium at times other than their Vacation Period. Day Use is still subject to any limitations imposed by the Governing Documents. The Plan Operator must limit Day Use so that it does not unreasonably burden or interfere with the use of the Condominium, the Master Association Amenities, or any Ka'anapali North Beach Amenities.

You may only use the Vacation Units as vacation lodgings. You may not use them for any commercial purpose.

Persons with handicaps or disabilities may keep specially trained animals in their Assigned Unit or elsewhere on the Condominium as permitted by the Governing Documents or by law. No other pets or animals of any kind may be allowed or kept in any Vacation Unit or elsewhere on the Condominium except as explicitly provided in the Association Rules.

Anyone who fails to check out on time or who damages a unit or its furnishings so that it cannot be used will be subject to sanctions, including eviction and payment of all damages resulting from the misconduct. Such a person must also pay an amount equal to twice the daily rental value of the unit for each day or part of a day that it is unavailable.

### **3.7. WHAT SHOULD I KNOW ABOUT THE CLUB AND THE NETWORK?**

The Club and SVN are described in more detail in the Starwood Vacation Exchange Company Disclosure Guide. You should make time to read it. Here are a few key points.

#### **A. RESERVATIONS BY SVN MEMBERS.**

During the SVN Reservation Periods, SVN Members (not just Owners in this Plan) will be able to reserve a Vacation Unit in this Plan on a space available, first-come, first-served basis subject to the priority rights established in favor of each Owner and the reservation and exchange rules and regulations stated in any documents that govern SVN and any changes and additions made to any of them from time to time ("*SVN Documents*") and the Club Documents. Likewise, an Owner in this Plan will be able to reserve the use of SVN Units at other SVN Resorts subject to similar restrictions and limitations.

**B. SVN POINTS.** If you request a reservation of an SVN Unit other than a Vacation Unit in this Plan, the SVN Operator will convert your Club Points to SVN Points pursuant to the SVN Documents. For now, there is no difference between Club Points and SVN Points. This could change so that your Club Points may be worth more or fewer SVN Points at some future date. This would not affect your rights to make a reservation during the Home Resort Reservation Periods.

**C. OTHER CLUB OR SVN RESORTS.** New units or resorts may be included in the Club or the SVN program from time to time. Specific units and even whole resorts may be removed from the Club or SVN from time to time. Also, a member resort (including the Plan) may withdraw from the Club or SVN if its affiliation agreement expires or otherwise ends.

**D. AFFILIATION AGREEMENT.** The Association has entered into an agreement (the "*Club Affiliation Agreement*") with the Club Operator. The Club Affiliation Agreement provides that the Plan and each Owner will be part of the Club.

The Club Affiliation Agreement has a term of 5 years from the date when the first deed of a Vacation Ownership Interest is recorded. The Association may terminate the Club Affiliation Agreement whenever the Club Operator violates a material part of it and fails to cure its violation within the time permitted by the Club Affiliation Agreement or any longer time permitted by the Board. After the first term and each later term ends, the Club Affiliation Agreement automatically will be renewed for additional five year terms unless a written notice canceling it is sent by either party at least 30 days before the renewal date.

The Association may give that notice only if a majority of the Owners who cast votes or ballots on the matter vote to give the notice, and this may be difficult to do. They may do so by written ballot or at a meeting of the Association. In either case, the ballot or meeting must be held not more than one hundred and twenty (120) nor less than thirty (30) days before the renewal date. The decision not to renew will be effective only if (i) at least thirty percent (30%) of the Owners (not counting the Developer's Vacation Ownership Interests and votes) are present at the meeting, in person or by proxy or participate in the voting by ballot, and (ii) the Owners voting or casting ballots in favor of not renewing the Club Affiliation Agreement hold at least twenty-five percent (25%) of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes). A decision not to renew the Club Affiliation Agreement cannot be made by the Board alone. The Developer must abstain from the vote, and the Developer's votes will not be considered when determining whether a Majority of the Owners Voting have voted or cast ballots in favor of giving the notice.

The Club Operator and the SVN Operator have entered into a separate agreement (the "*SVN Affiliation Agreement*"). The Club Operator may assign its rights and duties under the Club Affiliation Agreement, and it has assigned some or all of them to the SVN Operator in the SVN Affiliation Agreement. The SVN Operator may assign its rights and duties under the SVN Affiliation Agreement. You should not purchase in reliance that the Club Operator or the SVN Operator will continue to operate the Club or SVN.

### **3.8. EXTERNAL EXCHANGE PROGRAM.**

The SVN Operator has entered into a contract (an "*Exchange Contract*") with Interval International, Inc. of Miami Florida ("Interval International") to make its exchange program available to SVN Members. See the discussion of this in your Purchase Agreement.

### **3.9. SPECIAL RIGHTS OF THE DEVELOPER, THE CLUB OPERATOR, AND THE SVN OPERATOR.**

The Developer is the Owner of all unsold Vacation Ownership Interests. The Developer's unsold Vacation Ownership Interests will be treated as though they had Floating Unit Use Rights and a Floating Vacation Period. The Developer generally has the same rights and duties as other Owners to reserve and use Use Periods for the Vacation Ownership Interests that it owns. Additionally, the Developer will have special use and other rights, called "*Developer's Reserved Rights*," that other Owners do not. The Club Operator and the SVN Operator also have special rights. The special or reserved rights of the Developer, the Club Operator, and the SVN Operator are described in Exhibit "C". You should understand, and by signing your Purchase Agreement, Buyer's Acknowledgment, and First Deed, you accept and agree that the Developer, the Club Operator, and the SVN Operator have and may exercise and assign these special rights.

**3.10. ENFORCEMENT OF OWNERS' RESPONSIBILITIES.**

As members of, and acting through the Association, the Owners have the right to enforce the Vacation Plan Documents. The Association may take any action permitted by the Vacation Plan Documents or by law. For example, it may try to stop any improper activity, suspend your rights as an Owner (such as your voting rights and your rights to make a reservation or an exchange), refuse to let you check in, charge a fine, or foreclose on and sell your Vacation Ownership Interest and use the money from the sale to pay your debts. The Association may also use your reservation rights to reserve a Unit, rent it, and then use the rent money to pay your debts to the Association. The Association may also take legal action. For example, it may file a lawsuit to collect money or seek a court order.

**4. DESCRIPTION OF TIME SHARE UNITS, BUILDING, LOCATION, ETC.**

**4.1. LOCATION OF THE CONDOMINIUM.**

The Units now in the Plan, as well as those that may be added to the Plan later, are part of the Ocean Resort Villas condominium. The Condominium is located on a wide sandy beach fronting on the Pacific Ocean. It is a fee simple condominium situated on 13.998 acres of land in Ka'anapali North Beach, on the Island of Maui ("Lot 98"). The address of the Condominium is Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761.

**4.2. CONSTRUCTION AND PHASED DEVELOPMENT PLANS.**

The Developer plans to develop the Project in stages. Each stage is called a "phase" or an "increment". Each phase may include apartments and other improvements. The phases are described as follows:

**PHASE 1.** The first phase consists of the Halekipa Building, the Kahakai Building, the Snack Bar Building, the Courtyard, the Tennis Courts and Tennis Pavilion, and related Improvements. The Courtyard contains the pool, waterslide, slide mountain, and various other amenities that are part of the Master Association Amenities.

- ◆ The Kahakai Building is a six-story building with a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. It contains 103 resort apartments, one whole commercial apartment (the "Master Association Apartment"), and part of another one (Apartment 101).
- ◆ The Halekipa Building is a one-story building with a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. It contains part of one commercial apartment (Apartment 101).
- ◆ The Snack Bar Building is a one-story building that has no basement. It is constructed principally of concrete, steel,

concrete masonry unit blocks, wood, and gypsum board. It contains part of a commercial apartment (Apartment 101).

**PHASE 2.** The second phase consists of the Makani Kai Building and related Improvements. The Makani Kai Building is a six-story building with a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. It contains 107 resort apartments and part of a commercial apartment (Apartment 101).

**PHASE 3.** The third phase consists of the Ahelani Building and related Improvements. The Ahelani Building is a six-story building with a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. It contains 70 resort apartments.

**PHASE 4.** The fourth phase, if it is constructed, is presently planned to consist of a Gazebo. The Gazebo is likely to consist of a concrete slab floor, wood roof framing, and concrete masonry unit block columns. It contains one Commercial Apartment (the Gazebo Apartment). The Developer is not currently planning to construct the Gazebo Apartment, although this may change. If the Gazebo is constructed, it will be used for commercial purposes.

Note: Webcams may be in use in the common/amenity areas of the Condominium. Webcams provide a panoramic view of certain amenities (i.e. the pool area). These images may be viewed on a real time basis via the worldwide web/internet.

**ORDER OF DEVELOPMENT.** The Developer has completed construction of phases 1, 2 and 3. No date has been set for construction of the Gazebo Apartment (phase 4). The Developer may change its plan of development without the consent or approval of anyone else. For example, the Developer may choose to speed the construction of one building or slow construction of another.

**STATUS OF CONSTRUCTION.** The 103 resort apartments in the Kahakai Building (phase 1) were constructed, furnished and available for occupancy starting in the fall of 2003. The 177 resort apartments in the Makani Kai Building (phase 2) and the Ahelani Building (phase 3) were constructed, furnished and available for occupancy starting in the summer of 2005.

**4.3. APARTMENTS.** Although the Condominium Documents may divide the apartments differently, for purposes of the Vacation Ownership Plan, the apartments included in the Plan at the outset fall into one of eight Unit Types: One Bedroom Island View, One Bedroom Ocean View, Two Bedroom Island View, Two Bedroom Ocean View, Two Bedroom Ocean Front, Two Bedroom Deluxe Island View, Two Bedroom Deluxe Ocean View, and Two Bedroom Deluxe Ocean Front. They are described as follows:

A. "One Bedroom Ocean View" and "One Bedroom Island View" apartments have one bedroom, one bathroom, a

combination living room and dining room, a kitchen, a foyer, and a lanai. These apartments have an interior area of about 904-909 square feet plus a lanai of about 87-101 square feet.

B. "Two Bedroom Ocean View" and "Two Bedroom Island View" apartments have one master bedroom, one combination bedroom and living area, two bathrooms, a combination living room and dining room, a kitchen, a foyer, and two lanais. These apartments have an interior area of about 1370-1383 square feet plus lanais totaling about 96-233 square feet.

C. "Two Bedroom Ocean Front" apartments have one master bedroom, one combination bedroom and living area, two bathrooms, a combination living room and dining room, a kitchen, a foyer, and two lanais. These apartments have an interior area of about 1371 square feet and lanais totaling about 330 - 334 square feet.

D. "Two Bedroom Deluxe Ocean Front", "Two Bedroom Deluxe Ocean View", and "Two Bedroom Deluxe Island View" apartments have one master bedroom, one combination bedroom and living area, two bathrooms, a combination living room and dining room, a kitchen, a foyer, and two lanais. These apartments have an interior area of about 1547-1550 square feet plus lanais totaling about 256-271 square feet.

**Note:** The floor areas for the Resort Apartments are all approximate. The Developer makes no representations or warranties as to the actual area of any particular Apartment. The areas of particular Apartments are likely to vary.

4.4. **UNITS IN THE PLAN.** The Developer may also remove apartments from the Plan so long as the Developer owns all of the Vacation Ownership Interests in them. The Developer may also add apartments back into the Plan, or add any other apartments, at any time and without the consent of any Owner or anyone else. The Developer is not promising to add more apartments to the Plan.

When the Developer adds apartments to the Plan, it may create new Unit Types or new kinds of Vacation Ownership Interests. If the Developer creates a new Unit Type or new kinds of Vacation Ownership Interest, or if the Developer owns all of the Vacation Units of a particular Unit Type, then the Developer may change the Vacation Plan Documents with respect to that Unit Type. For example, the Developer could create new kinds of Vacation Ownership Interests that give the Owners of them the first chance or the exclusive right to reserve certain Vacation Units.

These rights of the Developer are subject to certain limits. For example, the Developer cannot change the rights of existing Owners to reserve and use the Vacation Units already included in the Plan (except for Units owned entirely by the Developer). And the Developer cannot give more than one vote to any new kind of Every-Other-Year Vacation Ownership Interest, nor

more than two votes to any new kind of Every-Year Vacation Ownership Interest.

4.5. **MASTER ASSOCIATION.** The Developer decided to provide a way for the owners and occupants of the Condominium and some or all of the other projects in Ka'anapali North Beach to share the use of certain amenities located on the grounds of this Condominium, the Ocean Resort Villas North condominium, and perhaps some other projects in the area (the "Master Association Amenities"). The Developer also wants to be sure that the amenities and landscaping of the Condominium, the Ocean Resort Villas North condominium, and perhaps some other projects provide similar or complementary vacation ambience consistent with a first class destination resort, and that they can be updated and enhanced over the years to keep up with modern trends for first class destination resorts.

This Condominium has a pool, waterslide, slide mountain, tennis courts, ponds, and other amenities which may be available for your use. These amenities are part of the Master Association Amenities. The Developer has also constructed the Ocean Resort Villas North condominium on the land next door to this Condominium. The Ocean Resort Villas North condominium also has things that are part of the Master Association Amenities, such as pools and landscaping. The Developer may also develop other hotels or condominium, vacation ownership, time share, or fractional ownership projects elsewhere in Ka'anapali North Beach which will have things that are part of the Master Association Amenities.

In addition, the Developer wants to be able to use the Master Association Amenities for its own purposes. For example, it wants to be able to do these things:

- It wants to be able to show the amenities and the grounds to persons who might buy an apartment or Vacation Ownership Interest in the Condominium or an apartment, time share interest, or fractional ownership interest in other Ka'anapali North Beach projects.
- It wants to be able to offer activities to these prospective purchasers.
- It wants to be able to establish booths or concessions for the sale of food, beverages, tourist activities or other incentives intended to encourage prospective purchasers to attend a sales presentation.
- It wants to be able to conduct receptions for purchasers and prospective purchasers for the purpose of promoting the sales of apartments or Vacation Ownership Interests in the Project or apartments or time share interests or fractional ownership interests in other Ka'anapali North Beach projects.

To accomplish these things, the Developer created the Ocean Resort Master Association, a non-profit corporation, and

special apartments in the Condominium and the Ocean Resort Villas North condominium called the "*Master Association Apartment*." The Developer has deeded to the Master Association the Master Association Apartment in this Condominium and intends to deed the Master Association Apartment in the Ocean Resort Villas North condominium to the Master Association. The amenities and most landscaping of the Condominium and the Ocean Resort Villas North condominium are limited common elements of these apartments. These include, for example, the various waterfalls, water slide, slide mountain, swimming pools, koi ponds, spa, pool decks, pool bathrooms, beach and pool showers, fitness center, late departure guest lounge, and tennis courts and a tennis pavilion, among other things. They also include most of the landscaping and grounds of the Condominium and the Ocean Resort Villas North condominium.

This means that the Master Association will control most or all of the amenities and landscaping of the Project. It also means that persons who are not Owners or occupants of the Condominium may have the right to use these amenities. Each Owner will also be a member of the Master Association and may use the amenities as permitted by the documents that established and that govern the Master Association. These documents, called the "*Master Association Documents*", are listed in Exhibit "A".

The Master Association Documents require that each Owner pay a share of the costs to operate, maintain, repair, replace, change, and upgrade the Master Association Amenities and other Master Association property, and the costs to operate and maintain the Master Association. All other Master Association Members must also pay a share of these costs as provided in the Master Association Declaration. Each owner of a resort apartment (including Owners of Vacation Ownership Interests) must pay the fees, charges, and expenses charged by the Master Association in accordance with the Master Association Documents. Because the owners of the Condominium's commercial apartments will not be participating in the Master Association, they do not generally have the right to use the Master Association Amenities and they will not share in the costs of owning, operating, and maintaining the property owned by the Master Association. The Developer, however, has certain easements to use the Master Association's property.

The Developer has the right to add to the Master Association Amenities any amenities located on any other project participating in the Master Association, but the Developer does not promise to do so. The Master Association has the rights stated in the Master Association Declaration to add, continue, change or remove any of the Master Association Amenities. This includes the right to change any Master Association Amenities located on the Condominium. For example, it may install, change and remove landscaping, waterfalls, ponds, streams, foot bridges, benches, tiki torches, walkways, water slides, and pools. It may add new amenities, remove or change old ones, and so on.

4.6. **KA'ANAPALI NORTH BEACH.** The Condominium is part of a larger community known as Ka'anapali North Beach. The former owner of the land of the Project recorded the Declaration of Covenants, Conditions, Easements and Restrictions for Ka'anapali North Beach (the "*Ka'anapali North Beach Declaration*") against all of the lands in Ka'anapali North Beach to ensure that such lands would be used and developed in accordance with the standards and restrictions described in the Ka'anapali North Beach Declaration. The Ka'anapali North Beach Declaration applies to the Project and to all owners of apartments or time share interests in the Project.

The Ka'anapali North Beach Declaration provides for the use, administration, repair and maintenance of the "Common Area." This includes two parks, a roadway, an area set aside for public open space, and so on. It also provides for the implementation of a monitoring program for Hawksbill turtles in the Shoreline Setback Area. These functions will be performed by the Ka'anapali North Beach Master Association, Inc., a non-profit Hawaii corporation (the "*Ka'anapali North Beach Association*") whose members consist of the owners of the lands in the Ka'anapali North Beach Area.

Each owner of an apartment or Vacation Ownership Interest in the Project will be a member of the Ka'anapali North Beach Association. Members may use the Common Areas of Ka'anapali North Beach subject to the conditions and restrictions imposed by the Ka'anapali North Beach Declaration, rules and regulations adopted by the Ka'anapali North Beach Association, and other documents and laws. The Condominium Association, not the individual apartment owners, has the right to vote in the Ka'anapali North Beach Association. The Condominium Association must pay the amounts charged to it by the Ka'anapali North Beach Association. Those amounts will be a common expense of the Condominium and each Owner will pay a share of it.

4.7. **NO WARRANTIES.** The Seller is the developer of the Condominium but it is not related to the general contractors who built the buildings.

The Condominium consists of fully built and existing buildings. Certificates of occupancy were issued for the Kahakai and Halekupa buildings in 2003, and for the Ahelani and Makani Kai buildings in 2005, and all warranties have now expired.

*Except for the warranty of title, the Developer makes no warranties, express or implied, about your Vacation Ownership Interest(s), the Apartment, the Condominium, or anything installed or contained in them. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. THE PROPERTY IS TRANSFERRED TO YOU "AS IS" AND WITH ALL DEFECTS, WHETHER VISIBLE OR HIDDEN, AND WHETHER KNOWN OR NOT.* This means, among other things, that the Developer does not have to

correct or fix any defect no matter what causes it or when it is discovered.

*You also give up (or, in legal terms, "waive and release") all rights and claims against the Developer and its officers, directors, agents and employees for (i) any defects in the Apartment or the Condominium or anything installed or contained in them, and (ii) for injury to persons or property arising from any such defects.* This means that the Developer will not have to pay for any injury or damage to people or things as a result of any defect.

Finally, without limiting the other parts of this Section 4.7, the Condominium Map is not intended to be and does not create any representation or warranty by the Developer.

#### 4.8. **HAZARD AND LIABILITY INSURANCE.**

You should read Chapter 15 of the Vacation Plan Declaration and Section 13 of the Condominium Declaration for a discussion of insurance coverages that the Association and the Condominium Association are supposed to have. Although the Association will attempt to obtain these coverages, it may obtain less insurance if certain coverage is not reasonably available or if the Board decides that it is too expensive. The following is a brief summary of the coverages required by the Condominium Documents and/or the Vacation Plan Documents:

**A. PROPERTY INSURANCE.** The Association or the Condominium Association must buy a policy of property insurance that covers fire, lightning, windstorm and hail, smoke, explosion, riot, civil commotion, aircraft and vehicle damage, and so on. If it is available at a reasonable cost, the insurance must cover 100% of the cost of replacing the property (except for things like the foundation) without deductions for depreciation.

**B. LIABILITY INSURANCE.** The Association or the Condominium Association must buy a commercial general liability insurance policy and, if necessary, commercial umbrella insurance. The policy must cover all Owners, the Board, the Association, the Developer, the Managing Agent, the Plan Manager, and their officers, directors, agents, and employees against claims for personal injury, bodily injury, death, and property damage. The policy limits must not be less than \$3,000,000 for personal injury, bodily injury and death, and \$1,000,000 for property damage.

The Association must also buy a commercial automobile liability policy of insurance if the Association owns or leases any motor vehicles. The policy limits may not be less than \$1,000,000 for bodily injury or death or property damage arising out of a single accident or occurrence.

You should note that the insurance policies are subject to various deductibles and that the Association and the Condominium Association may decide not to create reserves to pay the amount of the deductibles. If there is a loss, the Association or the Condominium Association may have to pay the amount of the deductibles from other funds.

You should review (or have a qualified insurance agent review) the insurance requirements stated in the Governing Documents, as well as the policies obtained by the various associations, to decide whether or not to buy more insurance for yourself. You are free to do so. You and the various associations are also free to buy insurance from any company licensed to do business in the State of Hawaii. Since insurance is the responsibility of these associations and the individual Owners, the Developer makes no guarantee that insurance will be available, or available at a reasonable cost, or adequate.

#### 4.9. **ADDITIONAL INFORMATION.**

**A.** The property is subject to that certain Special Management Area (SMA) Permit 88/SM1-023 and Shoreline Setback Variance (SSV) 88/SSV-002 dated July 19, 1988, issued by the County of Maui, as confirmed by letter of July 22, 1988, issued by Christopher L. Hart, Planning Director. The property is also subject to Special Management Area Permit SM1 970006 issued by the County of Maui, having an effective date of December 14, 1998.

Copies of these permits are available for inspection by purchasers and prospective purchasers. The Condominium is subject to these permits. Owners and/or the owners associations must comply with these permits on an ongoing basis. The permits require, among other things, that the Condominium Association buy and maintain comprehensive liability insurance of at least one million dollars naming the County of Maui as an additional insured. The policy must cover all claims or demands for property damage, personal injury and/or death arising out of the permits. The cost of the policy will be a common expense.

**B.** The property is located in a tsunami inundation area. It is also located in a flood zone and flood control measures may be required. Certain areas in the Shoreline Setback Area (as that term is defined in the Condominium Documents) have been designated and must be preserved as wetlands.

**C.** The County of Maui has not made a determination as to whether any portions of the Project may contain historical sites. The Project is subject to certain public access requirements providing access to the beach in front of the Project. The Project is also subject to a 150 foot setback from the ocean. Please note that any further development may require additional Special Management Area approval by the County of Maui.

**D.** Preliminary entitlements, such as a special management area permit, have been granted for the development of the Ocean Resort Villas North condominium on the lot adjacent to this Condominium and a proposed 700 unit condominium, hotel and townhouse project on a nearby parcel. The construction of the Ocean Resort Villas North condominium and the 700 unit project may create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards. The Developer is

developing the Ocean Resort Villas North condominium but is not responsible in any way for the development of the 700 unit condominium, hotel and townhouse project.

## 5. (MULTIPLE LOCATION TIME SHARE PLAN)

Not applicable. The Plan includes only Units in the Condominium.

## 6. TIME SHARE PLAN IN A CONDOMINIUM

### 6.1. CONDOMINIUM LEGAL STRUCTURE.

The Vacation Plan is located in the Ocean Resort Villas Condominium. The Condominium was created when the Condominium Documents were recorded (officially filed) in the real estate records of the State of Hawaii. The Condominium Documents are listed in Exhibit "A".

The Condominium Property Act (Chapter 514A, HRS) and the Condominium Documents control the rights and obligations of the apartment owners with respect to the Condominium and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

The Condominium Documents divide the Condominium into apartments and common elements. "*Common elements*" means all parts of the Condominium except for the apartments. For example, the land of the Condominium is a common element. So are the driveways. Some common elements are set aside for the use of particular apartments. These are called "*limited common elements*." The limited common elements are described in section 5.4 on page 18 of the Amended and Restated Condominium Declaration. Apartment 101 and the Master Association Apartments have particularly extensive limited common elements.

Each apartment comes with an ownership share, called a "*common interest*" in the common elements. This means that the owners can own their own apartments separately but that all of the apartment owners own the common elements together. The common interests for the Vacation Units are shown in Exhibit "B".

The Association of Apartment Owners of Ocean Resort Villas is an unincorporated association of the owners of apartments in the Condominium. It is responsible for the management of the common elements and the overall operations of the Condominium. Each owner of an apartment in the Condominium (including Owners of Vacation Ownership Interests in the Plan) is a member of the Condominium Association.

The apartment owners elect a board of directors to manage the Condominium. The board of directors is the governing body of

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

The board of directors hires a Managing Agent to provide essentially all management services needed by the Condominium Association. The Developer has appointed the initial Managing Agent of the Condominium and it is the same company that serves as Plan Manager of the Plan.

Common expenses of the Condominium are divided among the apartments according to their common interests as are voting rights. The term "*common expenses*" means the expenses of operating the Condominium and all other amounts designated as common expenses under the Condominium Documents or under the Hawaii Condominium Property Act. Note that under the Hawaii Condominium Law, charges for common expenses to an apartment do not begin until the County issues a certificate of occupancy for that apartment.

Each apartment owner (including each Owner of a Vacation Ownership Interest) is responsible to pay the common expenses for his or her apartment. The Condominium Association has a lien on each apartment to secure payment of that apartment's share of the common expenses. If the common expenses are not paid, an apartment can be taken from its owners and sold by foreclosure. The Condominium Association can also sue the apartment owners for the amounts due.

The Condominium Association and its Managing Agent may enter any apartment as needed to operate the Condominium or to make emergency repairs.

The Developer has various special rights, called the "*Developer's Reserved Rights*", under the Condominium Documents. These are described in Exhibit "D".

6.2. **EASEMENTS.** "*Easement*" is a legal term. In general, it refers to the right of one person to use property in the possession of someone else. The Condominium Documents create various easements. Some of them can be summarized as follows:

A. The Shoreline Setback Area is subject to an existing easement. This easement requires that the Shoreline Setback Area remain open and available to the public as open space, for recreational access and passive recreational uses, and for Native Hawaiian use for traditional and customary uses of the shoreline and near-shore ocean waters. The Native Hawaiian uses include fishing, diving, ho'okupu ceremonies (ritual prayers on the shoreline) and gathering.

B. The Project is located adjacent to a parcel of land currently owned by a private landowner but open to the public for beach access and park use. A road crossing the Project is used for access to that park. The Developer's current plans call for relocation of that road, and the construction of parking stalls in its place; however the Developer cannot promise that this will happen.

C. Employees, customers, and so on, of a commercial apartment, can come onto the Condominium, park in unassigned parking stalls, make deliveries, make casual use (such as after dinner strolls) of the walkways, and do other things reasonably necessary in connection with the ordinary conduct of business operations.

D. Persons authorized by the Master Association may come onto the Condominium as necessary or convenient to use, operate, maintain, add to, install, or replace the Master Association's properties. They may also park in unassigned parking stalls, make deliveries, and use the Shoreline Setback Area and any other recreation areas and facilities adjacent to the beach (e.g., showers).

E. The Developer and persons authorized by it may use the limited common elements of the Master Association Apartment to conduct educational, cultural, entertainment or sporting events, and other activities of general community interest.

F. The Developer and persons authorized by it have the exclusive right and an easement to conduct extensive marketing and sales activities on the common elements (including but not limited to the limited common elements of the resort apartments and the limited common elements of the Master Association Apartment) and from any apartment owned by it. This right includes but it is not limited to the right to permit purchasers and prospective purchasers to come onto the project and to park in unassigned parking stalls, the right to show the project to those persons, the right to use apartments owned by the Developer as model apartments, sales, management, and/or administrative offices, the right to establish and operate tour or activity desks or other businesses intended to promote sales, and the right to use banners, signs or other extensive sales displays and activities at the Condominium.

This easement applies to activities conducted in connection with the initial sale and/or any resale of (i) one or more apartments and/or Vacation Ownership Interests in the Condominium, and (ii) one or more apartments, time share interests and/or fractional ownership interests in any adjacent projects.

G. The Developer and persons authorized by it have an easement as may be reasonably necessary or convenient to complete any improvements and to correct any defects and other punchlist items in the common elements or any apartment or to use any of the other Developer's Reserved Rights.

H. The Owner of Apartment 101 has the exclusive right (but no duty) to provide (i) bellhop service, (ii) room service, (iii) valet parking service, and (iv) food and beverage services in the Courtyard of the Condominium.

I. The Developer and the Master Association have the right (but no duty) to operate one or more children's programs. They may make these programs available to children of Owners, occupants, other Master Association Members and occupants of their property, potential Master Association Members, and guests of any of these persons. The programs may involve use of the amenities of the Master Association or the Condominium, the Shoreline Setback Area (subject to the requirements of the SMA Permits), and the beach.

J. The Developer and persons authorized by it have an easement to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the use of its other easement rights, (b) the development of any Adjacent Parcel, or (c) the use of the Developer's Reserved Rights or any other rights of the Developer described in the Condominium Declaration.

K. The Developer has the right to establish, operate and maintain in the Shoreline Setback Area no more than three beach or beach side (meaning on the parts of the Condominium near the beach) concession stands. (The Developer also has the right to additional concession stands in the Courtyard and the other limited common elements of the Master Association Apartment.)

L. The Master Association has an easement appurtenant to the lot on which this Condominium is located as well as the adjacent lot on which the Ocean Resort Villas North condominium will be located (i) for off-site storm water runoff retention and storage purposes consistent with certain drainage requirements, and (ii) for the maintenance, inspection, observation and/or repair by the Master Association of certain retention basins.

Each person who has any interest in the Condominium (i) understands, acknowledges and accepts that some or all of these easements activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against the Developer and various other persons. Each Owner and every other interested party assumes the risk of any property damage, personal injury or loss in property value arising from the exercise of these easements.

## 7. RESTRAINTS ON TRANSFER OF BUYER'S INTEREST

### 7.1. UNDER THE VACATION PLAN DECLARATION.

A. **GENERAL RULE.** One of the many benefits of owning a Vacation Ownership Interest is that you can transfer it to your children, a friend, or just about anyone else. Because it is a real estate interest, you can also mortgage your Vacation Ownership Interest. If you own more than one Vacation Ownership Interest, you may transfer or mortgage each of them separately. However you cannot transfer or mortgage less than an entire Vacation Ownership Interest. There are two exceptions (i) you can pledge or transfer your voting rights to a lender having a mortgage on your Vacation Ownership Interest (or for whom someone else holds a mortgage on your Vacation Ownership Interest); and (ii) the seller under an agreement of sale may retain legal title and the right to vote on certain matters. The Buyer may transfer his or her entire interest under the agreement of sale, but nothing less. The Association has a lien on each Vacation Ownership Interest for all amounts charged to it or to its Owner. This is discussed in Section 12.

B. **NOTICE OF TRANSFER.** The Vacation Plan Declaration requires that notice of any transfer must be given to the Association. If notice is not given, neither the Association nor the Plan Operator have to recognize the transfer, and the person making the transfer will remain liable to the Association for charges for the Vacation Ownership Interest. The Association and the Plan Operator may charge a reasonable service charge to register the change in ownership on their records.

### 7.2. WHEN THE DEVELOPER'S CONSENT IS REQUIRED.

A. The Developer's consent is required if you want to transfer your Purchase Contract before Closing, or to transfer a Vacation Ownership Interest that is mortgaged to the Developer. If the Developer assigns the mortgage to someone else, that person's consent will also be necessary.

B. Without the Developer's written consent, you cannot transfer, lease, rent, or otherwise contribute your Vacation Ownership Interest or its use rights, Points or Vacation Period to (i) another vacation ownership or time share plan or program, (ii) a fractional ownership plan, or (iii) a Competitor of the Developer (but this does not prevent an Owner from participating in a "Traditional Exchange Program", as that term is defined in the Vacation Plan Documents, or any Exchange Program available through the Club Operator or the SVN Operator). Any attempt to do so will not be effective; it will be void. The Developer may withhold its consent in its sole discretion. Also, Competitors of the Developer are not allowed to own any interest in the Property. If a Competitor acquires any interest in a Vacation Ownership Interest without the Developer's consent, or if anyone who has any interest in a Vacation Ownership Interest

becomes a Competitor without the Developer's written consent, that interest will return to the Developer automatically. The Developer may withhold its consent in its sole discretion.

A "Competitor" is anyone who is: the developer of another time share plan or fractional ownership plan; any marketer or sales agent of another time share plan or fractional ownership plan (including but not limited to any OPC); the manager of another time share plan or fractional ownership plan; an exchange company other than the Club or SVN; any other competitor of the developer; any officer, director, agent, employee, independent contractor, partner, co-venturer, attorney, or affiliate of (i) a developer, marketer, sales agent, or manager of another time share plan or fractional ownership plan, or (ii) an exchange company other than the Club or SVN, or (iii) any officer, director, agent, employee, independent contractor, partner, co-venturer, attorney, or affiliate of anyone listed above, or (iv) anyone collaborating with anyone listed in items (i) to (iii). The Developer may cancel your Purchase Contract if you are a Competitor.

C. **RIGHT OF FIRST REFUSAL TO PURCHASE.** If you receive an offer to buy (the "Offer to Buy") your Vacation Ownership Interest and if you want to accept it, you must first notify the Developer before accepting the offer and must provide a complete copy of the Offer to Buy. The Developer will then have the right and an option to buy your Vacation Ownership Interest at the same price and on the same terms contained in the Offer to Buy. If the Developer decides to buy it, then the Developer will send you written notice of that decision within ten (10) business days after the Developer receives your notice of the Offer to Buy. The Developer's notice will create a binding contract between you and the Developer to buy your Vacation Ownership Interest on the terms stated in the Offer to Buy (subject, however, to a reasonable extension of the closing date). If the Developer does not send notice of its decision to buy the Vacation Ownership Interest within the ten (10) business day period, then you may sell your Vacation Ownership Interest to the person who submitted the Offer to Buy. If the Offer to Buy is changed in any way (for example, a reduction in the price, a change in the Buyer or an assignment of the Buyer's rights to someone else), or if the sale does not close within ninety days, then the Offer to Buy will be considered a new Offer to Buy and you must re-submit it to the Developer and the requirements of this section will apply again. If the Developer chooses not to buy the Vacation Ownership Interest, this will not constitute consent by the Developer of a sale or other transfer of the Vacation Ownership Interest to a Competitor.

## 8. MUTUAL RECISSION PROVISION

You and the Developer both have the right to cancel your Purchase Contract without penalty by giving the other party written notice within seven calendar days after: (1) signing the contract; or (2) you receive this disclosure statement, whichever is later. The seven-day period is called the "Seven-

*Day Cancellation Period*". You will receive a form of Notice of Cancellation [Form TS-10 of the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA")] with all pertinent information filled in at the time that you sign your Purchase Contract. If you cancel, then, within 15 business days all of your payments must be returned to you.

## 9. TITLE DEFECTS OR ENCUMBRANCES

"*Encumbrances*" are interests in or claims on property held by someone other than the owner of that property. They also include duties imposed by certain documents that affect the property and its owner. For example, a document giving the telephone company a right to install telephone lines across the land of a resort is an encumbrance.

Your Vacation Ownership Interests will be deeded to you subject to the encumbrances listed in Exhibit "A" and to (i) any mortgage signed by you, and (ii) any other encumbrances that do not make your title unmarketable. These are called the "*Permitted Encumbrances*."

The Condominium Documents, the Master Association Documents, and the Vacation Plan Documents are Permitted Encumbrances. The Developer has certain special and reserved rights, called the "*Developer's Reserved Rights*", under these documents. Some of those rights are described in Exhibits "C" and "D". When you sign your Vacation Ownership Deed, you consent to, accept, approve, and make the agreements about the Developer's Reserved Rights as discussed in those exhibits. You also give to the Developer the right of first refusal described in Section 7.2.C, above. These consents, acceptances, approvals, agreements, and the right of first refusal will also be encumbrances on your Vacation Ownership Interest. You should read your Vacation Ownership Deed and your Purchase Contract with care.

## 10. PENDING OR ANTICIPATED SUITS

Not applicable. There are now no suits pending or anticipated that are material to the Vacation Ownership Interests or the Plan of which the Developer has or should have knowledge.

## 11. FINANCIAL OBLIGATION OF PURCHASERS

11.1. **PURCHASE OBLIGATION.** You must pay the Purchase Price stated in your Purchase Contract. You may pay it at once in cash or over time on credit from the Developer. If you buy on credit then you must make monthly loan payments both before and after Closing. See your Truth-In-Lending Disclosure Statement for the annual percentage rate and other information. The Developer is not arranging, and has no duty to arrange, outside financing for any Buyer. If you buy on credit, you must pay all costs of

the collection agent to whom your payments are made. You must also pay closing costs in the amount listed on your Purchase Contract for "Settlement Charges". The Developer will pay all closing costs beyond that except that you must pay any title insurance premiums in excess of \$100. See Exhibit "E" for information about sales prices, installment purchase terms and closing costs. All amounts are in United States dollars. Be sure to ask about special purchase prices and terms that may be offered from time to time. The Developer has the right to change Exhibit "E" from time to time.

11.2. **ASSOCIATION CHARGES.** As an Owner, you must pay all amounts charged to you by the Association, the Condominium Association, and the Master Association. See Section 12.

11.3. **ENFORCEMENT.** You should be aware that if you do not pay or keep the promises you make in your Purchase Contract (or in any note and mortgage that you sign), the Developer may take any action permitted by the Purchase Contract (or note and mortgage) and allowed by law. Among other things, the Purchase Contract allows the Developer to keep any payments made by a Buyer who defaults, and the mortgage permits the Developer to foreclose. You should read these documents carefully.

## 12. ESTIMATE OF DUES, MAINTENANCE FEES, REAL PROPERTY TAXES, ETC.

12.1. **ASSESSMENTS.** After Closing, you must pay your Assessments and Personal Charges. The current amount of assessments is shown in Exhibit "F". Assessments are set in this way:

A. **PLAN EXPENSES.** The Association pays all costs of operating the Plan and maintaining, repairing and replacing the Vacation Property. These expenses are called "*Plan Expenses*". You and every other Owner must pay a share of the Plan Expenses. Among other things, these are Plan Expenses:

- ❖ The cost of utility services such as water, electricity, garbage disposal, telephone and cable television.
- ❖ The cost of repairing, rebuilding, replacing, remodeling, or making improvements to the Vacation Property.
- ❖ The cost of buying insurance required or permitted by the Vacation Plan Documents.
- ❖ All amounts charged to the Vacation Units by the Master Association, the Condominium Association or the Ka'anapali North Beach Association (except amounts separately charged to individual Owners). This includes, for example, the expenses of operating and maintaining the Condominium or the Master Association Amenities.

- ❖ Any real property taxes and other government taxes and charges on the Units (except amounts separately charged to individual Owners).
- ❖ Amounts needed for the Reserve Accounts. These are savings accounts of the Association. The money is used to pay for Capital Improvements. "Capital Improvements" are things like replacing the carpeting or appliances, other major repairs and remodeling, or replacing the Vacation Units or Common Furnishings.
- ❖ Any amounts due from the Association under the Club Affiliation Agreement, including but not limited to the Annual Club Dues for each Owner (unless separately charged to the individual Owners).
- ❖ Housekeeping and cleaning fees, and other expenses necessary to maintain, repair, manage and operate the Vacation Property.

**B. YOUR SHARE OF PLAN EXPENSES.** Each Owner must pay a share of the Plan Expenses (called a "Fair Share"). Your Fair Share of Plan Expenses depends on the Unit Type of Your Unit. It works like this:

1) **Relative Valuation.** The Developer sets a Relative Valuation for each Unit Type. *Relative Valuation* refers to the idea that each Vacation Unit's share of the Plan Expenses should be based on a comparison of that Vacation Unit to other Vacation Units included in the Plan. While some time share plans compare the size of apartments to determine their share of the plan's expenses, this does not necessarily result in a fair division of maintenance fees among the apartments. For example, the cost of sending a newsletter or notice of an Association meeting to an Owner is the same whether the Owner's unit is a one-bedroom unit or a larger two-bedroom unit.

As a result, the Developer has adopted a plan for dividing Plan Expenses among the Vacation Units based on their "Relative Valuation". The Developer determines a Relative Valuation for each Unit Type based on the size of the Vacation Unit, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. The Relative Valuation for Vacation Units currently included in the Plan is listed in Exhibit "B".

Note that Relative Valuation is not intended to reflect the fair market value of (i) Vacation Units that are a particular Unit Type, or (ii) Vacation Ownership Interests in Vacation Units of a particular Unit Type. The Relative Valuation for a Unit Type will not change based on changes in market conditions.

2) **Fair Share.** "Fair Share" means a share based on a comparison of the Relative Valuation of one Vacation Unit to the total of the Relative Valuations for all of the Vacation Units, as follows:

- ❖ The Fair Share for each Every-Year Vacation Ownership Interest in a Vacation Unit is 1/52nd of the following fraction:

The Relative Valuation of that Vacation Unit

The Sum of the Relative Valuations  
For All Vacation Units for Which  
Assessments Have Begun

- ❖ The Fair Share for each Every-Other-Year Vacation Ownership Interest in a Vacation Unit is 1/104th of the same fraction. In other words, the Fair Share for an Every-Other-Year Vacation Ownership Interest is one half of the Fair Share of an Every-Year Vacation Ownership in the same Unit Type.

3) **When Assessments Begin.** For any Vacation Unit, Assessments begin on the later of (i) first day of the month after a deed transferring a Vacation Ownership Interest in that Vacation Unit is recorded, or (ii) the date when the County of Maui issues a temporary or permanent certificate of occupancy for that Vacation Unit. From then on, the Owner of each Vacation Ownership Interest in that Vacation Unit, whether it is the Developer or someone else, must pay a Fair Share of the Plan Expenses.

**C. REGULAR ASSESSMENTS.** Every year, the Association adopts a budget showing the Plan Expenses for the coming year. The budget reflects Plan Expenses based on the property that is expected to be included in the Plan by the start of the coming year. Of course, the actual expenses may vary, especially as additional property is included in the Plan. A copy of the current budget of Plan Expenses is attached as Exhibit "G" to this Disclosure Statement. You must pay your Fair Share of the Plan Expenses. This is called your "Regular Assessment".

**D. SPECIAL ASSESSMENTS.** If there is a shortfall in the budget or if the Vacation Property is damaged or destroyed, the Board may adopt a special budget to deal with the problem. You must pay your Fair Share of that budget. This is called a "Special Assessment".

**E. LIMITS ON INCREASING ASSESSMENTS.** Unless a majority of the Owners casting votes (not counting the Developer's votes) approve the increase, the Board may not increase the Regular Assessment on any Vacation Ownership Interest by more than 20% in any fiscal year, or charge a Special Assessment of more than 5% of the Regular Assessment (10% for repairing damaged or destroyed property) in any fiscal year. There are some limited exceptions to these rules for things like increases in taxes or utility expenses, emergencies, and so on.

**F. PROGRAM EXPENSES.** The Regular Assessment will be \$1,515.41 per year for an Every-Year Vacation Ownership Interest in a One-Bedroom Unit, \$1,775.07 per year for an Every-Year Vacation Ownership Interest in a Two-Bedroom Unit, and \$2,403.02 per year for an

Every-Year Vacation Ownership Interest in a Two-Bedroom Deluxe Unit. The Developer must pay Assessments on unsold Vacation Ownership Interests in Vacation Units for which Assessments have begun.

**G. PERSONAL CHARGES.** A "*Personal Charge*" is an expense not covered by Assessments. This includes expenses that result from the act, failure to act, or other conduct of an Owner, Occupant or an Occupant's Guest. It also includes charges for extra services requested or used by Owners, Occupants or their Guests. Personal charges include, for example:

- ❖ Food and beverage charges; telephone charges; extra housekeeping services.
- ❖ Charges for use or rental of sports supplies or other recreational equipment, or any amenities (for example, a spa) of the Condominium, the Master Association or Ka'anapali North Beach.
- ❖ The cost to repair any damage (except for ordinary wear and tear and unavoidable accidents) to Vacation Units or their furnishings, or to replace any missing items.
- ❖ Expenses to any other Owner or the Association due to a Person's intentional or negligent Act or failure to Act.
- ❖ Expenses resulting from any intentional or negligent violation of the Ka'anapali North Beach documents, the Master Association Documents, the Condominium Documents, or the Vacation Plan Documents.
- ❖ Costs of and charges, including fines, for enforcing the Vacation Plan Documents; and late charges and interest on, and all costs of collecting Assessments and Personal Charges, including court costs and legal fees.
- ❖ Any late charges and interest on overdue payments.
- ❖ So long as the Plan is part of the Club, any Club Fees charged to the Association or to any Owner by the Club Operator (except for Club Fees that are Plan Expenses).

An Owner is fully responsible for the Personal Charges of his or her Guests. An Owner is not responsible, however, for the Personal Charges of anyone who uses his or her use rights through an exchange program, including the Club and SVN.

**H. OTHER FEES AND ASSESSMENTS.** So long as the Plan is part of the Club, you must also pay any Club Fees charged to you by the Club Operator. So long as the Plan is part of the Club and the Club is part of SVN, you must pay any SVN Fees charged to you by the SVN Operator. These fees are Personal Charges. See the SVN Fees Chart for details on Club Fees and SVN Fees.

In addition to your Fair Share of the Plan Expenses, you must also pay a share of the regular and special assessments charged to Your Unit by the Condominium Association and the Master

Association. The current amount of these assessments is shown in Exhibits "H" and "P".

**I. ENFORCEMENT OF FINANCIAL DUTIES.** To collect all money you owe, the Association may charge late fees and interest. It also has a lien on your Vacation Ownership Interest. It may foreclose on that lien and sell your Vacation Ownership Interest to someone else. If the money from the foreclosure sale is not enough to pay all amounts due plus legal fees and costs, you must pay the shortfall. You may not avoid paying by not using your Vacation Ownership Interest, by abandoning it or by giving it to someone else.

If you are in default, the Association may also refuse to allow you to make a reservation or to check in. It may also suspend services to your Vacation Unit or even file a lawsuit.

If you do not pay your Club Fees or SVN Fees, then the Club Operator and/or the SVN Operator may charge late fees and interest. Also, they will not process or confirm your reservation or exchange requests until you pay all amounts due.

**J. TAXES.** The State of Hawaii taxes the occupancy of time share units. The amount of the tax is 7.25% of the fair market rental value. The "fair market rental value" is set to one-half of the gross daily maintenance fees paid by the owner and attributable to the time share unit unless the taxpayer proves or the tax director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods. Based on maintenance fees, the tax should be about \$68 to \$112 for a one-week stay depending upon the Vacation Unit that you use. The State of Hawaii also charges a 4% gross excise tax on amounts collected by the Master Association for the Association, including Regular and Special Assessments, and Personal Charges. The Vacation Units are subject to real property taxes levied by the County of Maui. Beginning with the 2009/2010 County fiscal year, the County began assessing each Vacation Unit separately. As a result, the real property taxes for the total number of Vacation Units at the property have increased substantially. The Association has reflected these increases in its current budget and maintenance fees. The Developer, Plan Manager and Association are currently challenging the increase in the assessed value and resulting increased real property taxes for the Vacation Units. The amount of real property taxes in dispute are paid under protest and placed into a claims litigation account which may not be used by the Developer, Association, Plan Manager or Maui County until the protest is resolved.

## 13. ESCROW ACCOUNT

The Hawaii "*Time Share Law*" is contained in Chapter 514E, Hawaii Revised Statutes, and Chapter 16-106, Hawaii Administrative Rules. It requires that: (a) Buyer's Funds, Notes, and Loan Documents be put in escrow before closing and that the Buyer's Funds be refunded if the Buyer cancels as

explained in Section 8 above; (b) Buyer's Funds must be refunded in the other circumstances explained in Section 14; and (c) Closing cannot occur until the Buyer is protected from Blanket Liens.

"Funds" means money. "Notes" means any "negotiable instrument" as defined in the Time Share Law. A check is an example of a negotiable instrument. A "negotiable instrument" generally is a document that the Developer could give to someone else who could then force the Buyer to keep his or her promise to pay free from any claim or defense that the Buyer might have against the Developer. "Loan Documents" means any "purchase money contract" as defined in the Time Share Law. In general, "purchase money contract" refers to things like a promissory note, an agreement of sale, or other contract in which the Buyer agrees to repay a loan made to finance the Buyer's purchase of a Vacation Ownership Interest and made to the Buyer by the Developer or by a lender that is (i) affiliated with the Developer or (ii) to whom the Developer referred the Buyer.

"Closing" refers to completing the sale of a Vacation Ownership Interest. This normally includes recording your Vacation Ownership Deed and any mortgage that you sign, and payment to the Developer of all sums due under your Purchase Contract.

"Blanket liens" are certain kinds of encumbrances (for example, a mortgage) as defined in the Time Share Law that affect two or more Vacation Ownership Interests.

An escrow account for the Developer and its sales agents has been established with Hawaii Resort Escrow, Inc. (the "Escrow Agent"). Its address, telephone and fax numbers are 810 Richards Street, Suite 770, Honolulu, Hawaii 96813. Telephone: (404) 954-9831; Fax No. (404) 954-9898.

The Developer or the sales agent must give each Buyer's Funds, Notes and Loan Documents to the Escrow Agent to hold in this account. But, as permitted by Hawaii's Time Share Law, the Developer or any sales agent may initially hold all Notes (such as a Buyer's check) and Loan Documents (a) that are payable to the Escrow Agent, or (b) that are not negotiable instruments, until: (1) the Seven-Day Cancellation Period expires; and (2) the expiration of any longer period stated in the Purchase Contract in which a Buyer may cancel.

## 14. ESCROW AGREEMENT

The Escrow Agreement is dated August 12, 2003, and it applies to all sales made on or after that date. When you sign your Purchase Contract, you also adopt the Escrow Agreement, just as if you had signed it yourself. Be sure to read it. The Escrow Agreement contains the Developer's and your instructions for the handling of your Funds, Notes and Loan Documents, and for Closing your purchase. Some of the key provisions of the Escrow Agreement may be summarized as follows:

**14.1. RELEASE OF BUYER'S FUNDS.** No matter what else the contract documents say, the Escrow Agent may not release your Funds, Notes or Loan Documents to the Developer or a sales agent, or to someone else for the benefit of the Developer or a sales agent, until the last of these events occurs:

A. The Hawaii Real Estate Commission has issued an effective date for a Final Condominium Public Report. This has already happened for phases 1, 2 and 3 of the Condominium. Real Estate Commission Registration No. 4652 covers phase 1 of the Condominium and Registration No. 5129 covers phases 2 and 3 of the Condominium.

B. Your Purchase Contract "has become binding, and the requirements of sections 514A-40, 514A-39.5 and 514A-63 have been met" as that phrase is used in Section 514A-65 of the Hawaii Condominium Property Act.

C. The Escrow Agent has received a copy of a receipt for the Hawaii Disclosure Statement signed by you.

D. Your Seven-Day Cancellation Period has expired.

E. If and only if (i) your Purchase Agreement was made before the date when the Hawaii Real Estate Commission issues an effective date for a Final Condominium Public Report on the phase in which your Unit is located, and (ii) the Hawaii Real Estate Commission does not issue an effective date for a Final Condominium Public Report on that phase by the date on which the Contingent Final Public Report for that phase expires, then these conditions must be met:

- ❖ The Seller has given you written notice, by certified mail, that you have the right to rescind because the Real Estate Commission did not issue an effective date for a Final Public Report on the phase containing your Unit by the date on which the Contingent Final Public Report for that phase expired, and
- ❖ Both you and the Seller sign documents giving up (in legal terms, "waiving") your rights to rescind.

F. The Escrow Agent receives a sworn statement from the Developer stating, among other things, that the Developer has not received a valid notice of cancellation from you.

**14.2. CLOSING DATE.** The Developer must pick the day for the closing. That date is called the "Closing Date". It must occur within 90 days after the Closing Conditions are met. The Developer, however, can postpone the closing if it wishes to do so. Neither the Developer nor the Escrow Agent have to give you notice of the Closing Date.

**14.3. CLOSING CONDITIONS.** The Escrow Agent will close the sale on the Closing Date if all of the

"Closing Conditions" listed in the Escrow Agreement (including the following, among others) have happened:

A. The Escrow Agent has not received notice that the Developer or you have cancelled your Purchase Contract in the manner provided in the Escrow Agreement.

B. The Escrow Agent has received all necessary closing documents and money.

C. A title insurance company authorized to do business in Hawaii is committed to issue, after your Vacation Ownership Deed is recorded, a policy of title insurance on your Vacation Ownership Interest.

1) The title policy must insure that your Vacation Ownership Interest is subject only to any Mortgage signed by you, the Permitted Encumbrances, and anything else that doesn't make your title unmarketable.

D. As to each existing Blanket Lien, (i) the Escrow Agent is prepared to record or can confirm that someone else has already recorded a release of your Vacation Ownership Interest from the Blanket Lien, or (ii) in the case of mechanics' or materialmen's lien, your title policy includes an endorsement providing coverage against such liens.

E. The requirements described in section 14.1, above, have been met.

#### **14.4. FUNDS IN ESCROW.**

A. The Escrow Agreement provides that any interest earned on Funds in escrow will belong to the Developer.

B. The Escrow Agent may release a Buyer's Funds to the Developer prior to Closing if, as then permitted by law or by the Director pursuant to law, the Developer posts a bond, letter of credit, or other financial assurance that assures repayment to the Escrow Agent of any refund due the Buyer prior to Closing.

**14.5. REFUNDS.** The Escrow Agent will refund your Funds (without interest) if and only if:

A. You or the Developer give a valid notice of cancellation during the Seven-Day Cancellation Period (this applies only if your offer and sale was made wholly or partly in Hawaii).

B. You give a valid notice of rescission under Section 514A-64.5 of the Condominium Property Act. This applies only if (i) your Purchase Agreement was made before the date when the Hawaii Real Estate Commission issued an effective date for a Final Condominium Public Report on the phase of the Condominium in which your Unit is located, and (ii) the Hawaii Real Estate Commission did not issue an effective date for a Final Condominium Public Report on that

phase by the date on which the Contingent Final Public Report expired.

C. You give a valid notice of cancellation under Section 514A-63 of the Condominium Property Act.

D. The Developer gives notice to the Escrow Agent that you have used any right to cancel that you have under the Purchase Agreement (other than the rights described in paragraphs A, B, or C, above). In that case, the Escrow Agent will refund your funds.

E. You give notice to the Escrow Agent that you have exercised any right to cancel that you have under the Purchase Agreement (other than the rights described in paragraphs A, B, or C, above). In that case, the Escrow Agent will notify the Developer of your decision to cancel. If the Developer approves your cancellation in writing, then your Funds, less any escrow cancellation fee, will be refunded. Otherwise, the Escrow Agent may deposit your money in court.

F. If the Developer instructs the Escrow Agent to do so, the Escrow Agent will refund your Funds.

#### **14.6. CANCELLATION BECAUSE THE BUYER DEFAULTS.**

If you default and the Developer cancels your Purchase Agreement then your Funds will be delivered as provided in your Purchase Agreement. If the Purchase Agreement provides that your Funds are to be paid to the Developer as liquidated damages, then before doing so the Escrow Agent must give you notice, by registered or certified mail, stating that the Developer has declared that you are in default. If the Escrow Agent receives an objection from you within thirty (30) days after sending the notice to the you, then the Escrow Agent may deposit your Funds in court. Otherwise, the Escrow Agent may pay your Funds to the Developer.

#### **14.7. PROTECTION OF THE ESCROW AGENT.**

The Escrow Agreement contains various protections for the Escrow Agent such as the following:

A. If there is any dispute or conflicting claims, the Escrow Agent may deposit your Funds with a court. The court would resolve the dispute or conflict.

B. Both the Developer and you agree to protect and pay (or, in legal terms, "indemnify") the Escrow Agent for losses it suffers for acting as instructed in the Escrow Agreement. But this indemnity does not include losses due to the Escrow Agent's negligence or misconduct.

### **15. ESTABLISHMENT OF A NON-PROFIT CORPORATION, ASSOCIATION MEMBERSHIP**

#### **15.1. FORMATION OF THE ASSOCIATION.**

Ocean Resort Villas Vacation Owners Association was formed on July 3, 2001. Everyone who owns a Vacation Ownership Interest is a member of the Association. This includes the Developer as to all unsold Vacation Ownership Interests.

#### **15.2. THE ASSOCIATION'S PURPOSES AND DUTIES, IN GENERAL.**

The Association is the association of persons who own Vacation Ownership Interests in the Plan as required by the Hawaii Time Share Law. It has all of the powers and must perform all of the duties listed in the Vacation Plan Documents. For example:

- ◆ It pays the Plan Expenses and manages the financial affairs of the Plan. This includes preparing annual budgets, collecting Assessments and Personal Charges, and so on.
- ◆ It manages and maintains the Vacation Property, and provides check-in, check-out, and housekeeping services.
- ◆ It signed an Affiliation Agreement with the Club which requires that the Club Operator provide reservation services for the Plan. If that arrangement ends, then the Association would provide reservation services for the Plan.
- ◆ It enforces the Vacation Plan Documents.

The Association is not responsible for the acts and omissions of Owners and Occupants. However it does have the right to remove Occupants who fail to leave their Assigned Unit on time.

#### **15.3. OPERATION OF THE ASSOCIATION.**

Members participate in the administration and management of the program through their membership and voting in the Association, and their election of Directors to govern it. Each Owner of a Vacation Ownership Interest is automatically a Member of the Association, and only Owners are Members.

The Association meets at least once every year and may meet more often by having special meetings. To have a meeting, Members owning at least 15% of the total number of votes in the Association (not counting the votes of the Developer) must be present. Generally, a majority of the votes cast at any meeting will control, unless a higher percentage is required by the Vacation Plan Documents. The Developer's votes are included unless the Vacation Plan Documents expressly state that the Developer is not included.

The Bylaws of the Association contain, among other things, the rules for running the Association. For example, they include rules: (1) on how to call and run meetings; (2) on how members and Directors will vote and how decisions will be made; (3) on how Directors and officers will be elected or appointed; (4) governing the actions of Directors, officers and committees; and (5) on how to handle books and records. The

Bylaws also provide Directors, officers and other Association agents protections on claims made against them because they acted for the Association.

**15.4. VOTING.** The Owner of each Every-Year Vacation Ownership Interest has two votes and the Owner of each Every-Other-Year Vacation Ownership Interest has one vote. When a Vacation Ownership Interest is owned by more than one person, its co-Owners do not each receive one or two votes. Instead, the co-Owners of that Vacation Ownership Interest must share the one or two votes for that Vacation Ownership Interest. Only one vote may be cast for each Every-Other-Year Vacation Ownership Interest, and only two votes may be cast for each Every-Year Vacation Ownership Interest. The Developer may cast the vote of any Vacation Ownership Interests it owns, but in some cases the votes of the Developer are not counted. When electing Directors, Owners have two votes (one for an Every-Other-Year Vacation Ownership Interest) for each Director to be elected. The Owners may give all of their votes to one candidate or distribute them among several candidates.

All Owners are encouraged to participate actively in the Association. So long as there is any substantial number of unsold Vacation Ownership Interests, as a practical matter the Developer may have significant voting power and therefore control over the Association and the Board, especially if other Owners do not participate.

**15.5. THE BOARD OF DIRECTORS.** The Board of Directors may exercise all powers and perform all duties of the Association. However the Board may not do anything that, by law or under the Vacation Plan Documents, can only be done by the Owners.

The Board consists of five Directors although this can be changed. The Directors will be elected by vote of the members, including the Developer except that at least one Director must be elected by members other than the Developer. The initial Directors, however, were appointed by the Developer and are employees or agents of the Developer.

The Board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association. The Board must hire a Plan Manager for the Plan.

On conflicts of interest, the Bylaws provide as follows: Except as otherwise provided by law, any member of the Board, any officer of the Association and any member of any Association committee (i.e. an "interested party") may be present at any Board or committee meeting, may be counted for quorum purposes, and may participate in the discussion of and voting on any matter on which the interested party, or any entity in which the interested party has any financial or other special interest, has an interest provided that (a) the interested party must first disclose his or her conflict of interest or the conflict must be known to all the other persons considering the matter; and (b) if the vote of the interested party is necessary in order

for the matter to be authorized, approved or ratified, the result must be fair and reasonable to the Association. Any claim of the Association that such a matter is void or voidable or otherwise subject to change because the result was not fair or equitable to it, must be made within three (3) years from the date the matter was authorized, approved or ratified. Before pursuing any such claim, the Association must make reasonable efforts to modify the result so as to make it fair and equitable.

**15.6. DELEGATION OF RESPONSIBILITIES, DUTIES AND AUTHORITIES TO THE PLAN MANAGER.**

The Association must require the Plan Manager to perform the duties and obligations of the Association except for those that cannot be delegated by law or under the Vacation Plan Documents.

The Management Contract has a term of 5 years from the date when the first Vacation Ownership Deed is recorded (which happened on July 14, 2003). The Association may terminate the contract at any time for cause if the Plan Manager violates a material part of it and fails to cure its violation within the time permitted by the Management Contract or any longer time permitted by the Board. After the first term and each later term ends, the Management Contract automatically will be renewed for additional three year terms unless the Association sends a notice canceling the Management Contract at least 90 days before the next renewal date. The Association may give that notice only if Owners holding more than 50% of the total number of votes for all Vacation Ownership Interests in the Plan (not counting the votes of the Developer) vote not to renew it at an annual or special meeting of the Association held within one year before the renewal date, and this may be difficult. The Plan Manager may resign at any time upon 90 days notice to the Association. The Developer appointed the initial Plan Manager.

The Managing Agent for the Condominium has a licensing arrangement with Westin License Company to use the name "Westin" and other service marks and trademarks (the *Marks*) owned or licensed to the Westin License Company. As a result, (i) the Plan will be designated as a Westin resort while the licensing arrangement is in effect, and (ii) the Condominium, the Master Association, and the Vacation Ownership Plan must be operated, managed, and maintained according to the standards established by the Westin License Company to protect its Marks (the *Westin Standards*). The fees, costs, and expenses to maintain the affiliation with Westin License Company will be Common Expenses of the Condominium, Project Expenses of the Master Association, and/or the Plan Expenses of the Plan. If the licensing arrangement ends for any reason, the Condominium, the Master Association, and the Plan will not be able to use the Marks (including the Westin name). This may happen if, for example (i) the management agreements with the Managing Agents or the Plan Manager end for any reason; or (ii) the Condominium, the Master Association, or the Plan is not managed, operated, and maintained in a manner consistent with the Westin

Standards, or (iii) the licensing arrangement expires and is not renewed, or (iv) if other normal business defaults occur.

The Plan Manager has certain right to use the names "Kaanapali Ocean Resort", "Ka'anapali Ocean Resort", "Kaanapali North Beach" and "Ka'anapali North Beach" with respect to the Condominium, the Master Association, and/or the Plan under an agreement with the owner of those names (the "Ka'anapali Agreement"). As a result, (i) the Plan will be designated as the "Ka'anapali Ocean Resort Villas Vacation Ownership Plan" or by other names used to identify the Vacation Property or the Vacation Ownership Plan as being located in Ka'anapali North Beach, and (ii) the availability and use of these names is subject to the terms, conditions, and requirements of the Management Agreement and the Ka'anapali Agreement. The fees, costs and expenses to comply with those agreements will be Common Expenses of the Condominium, Project Expenses of the Master Association, and/or the Plan Expenses of the Plan. If the Management Agreement or the Ka'anapali Agreement end for any reason, the Condominium, the Master Association, and/or the Plan will not be able to use these names.

**15.7. CHANGING THE VACATION PLAN DOCUMENTS.**

**A. DECLARATION.** Generally, the Vacation Plan Declaration may be changed by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Vacation Ownership Interest), and (ii) a Majority of the Owners Voting (not counting the Developer's Vacation Ownership Interests and votes) provided that the Owners voting for the amendment must hold at least twenty-five percent of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes).

**B. BYLAWS.** Generally, the Bylaws may be changed by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Vacation Ownership Interest), and (ii) a Majority of the Owners Voting (not counting the Developer's Vacation Ownership Interests and votes) provided that the Owners voting for the amendment must hold at least ten percent of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes).

**C. ARTICLES.** Changes to the articles generally require the vote of two-thirds of the Owners present at an Association meeting plus the Developer (if it owns, or holds a mortgage on, a Vacation Ownership Interest).

**D. OTHER CHANGES.** The Developer has special and reserved rights to change the Plan and the Vacation Plan Documents as previously discussed. The Board may change the Articles to conform to the Declaration or Bylaws. The Plan Manager may, with the Board's approval, change the Association Rules. A Majority of the Owners may vote to change the Association Rules at a meeting of the Association so long as the notice of the meeting stated that the change

would be considered at the meeting. Any change to the Association Rules requires the consent of the Developer and the Club Operator. The Club Operator may change the Club Rules in the manner provided in them. The SVN Operator may change the SVN Rules in the manner provided in them. The Association and the Club Operator may change the Club Affiliation Agreement. The Club Operator and the SVN Operator may change the SVN Affiliation Agreement. No amendment to the Vacation Plan Documents may change the rights and privileges of the Developer or the Club Operator unless they sign it.

## **16. DEVELOPER IS ALSO ACQUISITION AGENT OR SALES AGENT OR PLAN MANAGER**

The Developer is also the sales agent. Buyers should understand that the sales agents represent only the Developer and not any individual Buyer.

The Plan Manager is also the Club Operator. That company is related to the Developer and the SVN Operator. The Developer is the Owner of any unsold Vacation Ownership Interests. The Developer also has certain other special rights, such as the right to reserve use periods not reserved within sixty days before the Check-In Day. The Club Operator also has the right to reserve use periods not reserved within sixty days before the Check-In Day and certain other special rights. In short, both the Developer and the Club Operator have interests that compete with the interests of the other Owners. Because of this and because the Plan Manager is related to these companies, the Plan Manager has potential conflicts of interest.

For example, the Plan Manager must enforce the Vacation Plan Documents. This may give rise to conflicts in determining whether and how to interpret or enforce the Vacation Plan Documents when the interests of the Developer or the Club Operator may be affected, and the amount of any Assessment or Personal Charges to be charged to or collected from the Developer or the Club Operator under the Vacation Plan Documents.

The Club Operator provides reservation and exchange services to the program. A conflict of interest may arise to the extent that Club Operator has the authority to confirm reservations and exchanges for the Developer, for the Club Operator, the SVN Operator, for the individual Owners, or for members of other Club Vacation Plans or at other SVN Resorts. For instance, Owners may find themselves competing with the Club Operator for last minute reservations of otherwise unreserved time periods. Although the Developer and the Club Operator can reserve any unreserved Use Periods, they may not do so more than sixty days in advance.

A conflict may also arise to the extent that Club Operator or the SVN Operator have the right (i) to assign points to the

Vacation Property and/or to property included in other Club or SVN Resorts being developed by their affiliates, or (ii) have the right to set the number of points required to use units in other Club Resorts or SVN Resorts. Points assigned to other Club Resorts or SVN Resorts, however, will not affect your ability to reserve a unit in this Plan during the Home Resort Reservation Periods.

Further, the same company may serve as the Plan Manager of the Plan, the Managing Agent of the Condominium, and the Managing Agent of the Master Association. The Condominium and the Master Association may include as members persons who are not Owners of Vacation Ownership Interests in the Plan. Since they are related to the Developer, conflicting demands may be made upon the company because of its service in these differing roles.

Potential conflicts of interest may be mitigated by the right of the Association to terminate the Plan Manager's contract for cause should it put the interests of the Developer above the proper management and administration of the Plan for the benefit of all Owners. The Association also has the right to terminate the Club Affiliation Agreement for cause. Also, proper management of the Plan is in the Developer's interest so long as the Developer is still selling Vacation Ownership Interests in the Plan and receiving payments of the purchase price from the Buyers. The Club Operator and the SVN Operator have similar interests because each Vacation Ownership Interest sold by the Developer also results in a new member joining the Club and SVN.

Although not a conflict of interest, you should realize that the Club Operator and the SVN Operator have the right to choose other exchange programs and/or benefits to be offered through the Club or SVN, and/or to determine the terms and conditions under which such programs or benefits may be offered, and/or to stop offering any such programs or benefits. Normal business considerations, including financial or other benefits to be derived by the Club Operator, the SVN Operator, or their affiliates, may influence their decisions on these matters.

## **17. COMPLIANCE WITH COUNTY REQUIREMENTS**

The County of Maui has confirmed that the units are located in a zone designated for hotel use and thus may be used for timesharing.

## **18. SALES IN VIOLATION OF HAWAII TIME SHARE LAW**

Section 514E-11.3 of Hawaii law provides that every sale or transfer made in violation of the Hawaii Time Share Law is voidable at the election of the Buyer.

## 19. SERVICE OF PROCESS

This refers to the official delivery of papers involved in a lawsuit. The Developer may be served by serving process on The Corporation Company, 1000 Bishop Street, 15<sup>th</sup> Floor, Honolulu, Hawaii 96813.

## 20. MORE DISCLOSURES

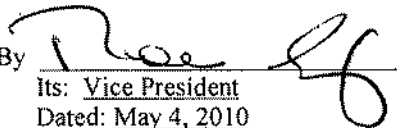
Vacation Ownership Interests are offered and sold as real estate. Purchases should be made for personal use and enjoyment and for value as a vacation experience and for spending leisure time, not as an investment or for rental income purposes or for appreciation or for value at resale. No promises about rentals or resale services, or any other arrangement for economic benefit, are made or authorized.

While the Seller may provide financing for you, it will do so only for its own benefit. The Seller has not agreed to act as your agent in seeking a loan from someone else. If you are borrowing from someone other than Seller, then (i) you must get the loan yourself and the Seller has no obligation to help you do so, (ii) you must pay all costs and expenses charged by that lender, and (iii) you must make sure that your lender is ready to Close by the Closing Date.

## 21. THIS DISCLOSURE IS A SUMMARY ONLY. FOR MORE INFORMATION, READ ALL OF THE DOCUMENTS CAREFULLY

This document contains disclosures required by Section 514E-9, HRS and Section 16-106-3, HAR, of the Time Share Law. It also contains information that the Developer believes will be of general interest to Buyers. Buyers should understand that it is not possible or practical to include in this Disclosure Statement all points that each Buyer may consider important, or a summary of all the documents involved. It is also not possible for the Developer to predict which points may turn out to be important to the Buyers. Each Buyer is therefore cautioned to read carefully the Vacation Plan Documents, the Club Documents, the SVN Documents, the Condominium Documents, the Master Association Documents, the Escrow Agreement, and his or her Purchase Agreement, Buyer Certification, Vacation Ownership Deed, and any note and mortgage to be sure that the purchase will satisfy his or her own personal requirements and expectations. Each Buyer is also cautioned that by signing a Purchase Agreement, he or she accepts and agrees to obey all of these documents.

SVO PACIFIC, INC., a Florida corporation

By   
Its: Vice President  
Dated: May 4, 2010

## EXHIBIT "A"

### PERMITTED ENCUMBRANCES

Each buyer's Vacation Ownership Interest will be subject to these encumbrances:

1. The lien of real property taxes not yet due and owing.
2. Reservation of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 29, 1960, as contained in that certain instrument dated January 29, 1960, recorded in the Office of the Registrar of Conveyances in Book 3822, page 37.
3. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded as Land Court Document No. 2734238, as amended by that certain Amendment to Declaration dated March 12, 2003, and recorded as Land Court Document No. 2920781, and by that certain Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 6, 2003, and recorded as Land Court Document No. 2974209, as amended by that certain First Amendment to the Restated Declaration of Condominium Property Regime, dated August 25, 2003, and recorded as Land Court Document No. 2983215; (ii) the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2734239, as amended by that certain Amended and Restated Bylaws of the Association of Apartment Owners of Ocean Resort Villas, dated August 6, 2003, and recorded as Land Court Document No. 2974210; (iii) the Condominium Rules; (iv) Condominium Map No. 1431; and (v) Declaration of Merger of Condominium Phases of Ocean Resort Villas, dated August 28, 2001, and recorded as Land Court Document No. 2734237.
6. The "Master Association Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association dated September 5, 2001, recorded as Land Court Document No. 2737946, and by that certain First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association, dated August 21, 2003, recorded as Land Court Document No. 2982410, and by that certain Ocean Resort Master Association Declaration of Annexation, dated August 5, 2003, and recorded as Land Court Document No. 2974211 (ii) the Articles of Incorporation of Ocean Resort Master Association, (iii) the Bylaws of the Ocean Resort Master Association, and (iv) any rules and regulations adopted thereunder.
7. The "Vacation Plan Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Villas Vacation Ownership Plan dated September 14, 2001, recorded as Land Court Document No. 2737947, as amended by those certain Declarations of Annexation, recorded as Land Court Document Nos. 2852617 and 2974212, as amended by that certain First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership, dated August 21, 2003, recorded as Land Court Document No. 2982411, as amended by that certain Second Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership dated November 10, 2003, recorded as Land Court Document No. 3102691; (ii) the Articles of Incorporation of Ocean Resort Villas Vacation Owners Association, (iii) the Bylaws of the Ocean Resort Villas Vacation Owners Association (a copy is attached to the Declaration), and (iv) any rules and regulations adopted thereunder.
8. Designation of Easement "42", for road, utility and pedestrian purposes, as shown on Maps 15 and 74, as set forth by Land Court Order No. 29190, filed November 7, 1968.
9. Easement dated March 9, 1970, filed as Document No. 498923 for a right of way over Easement "42".
10. Subdivision Agreement (Large Lots) dated August 6, 1990, filed August 20, 1990, as Document No. 1756822,

and recorded August 20, 1990, as Document No. 90-127827.

11. Private Water System Agreement dated October 2, 1991, recorded October 7, 1991, as Document No. 91-136263 as amended by Amendment to Agreement dated October 14, 1992, recorded October 20, 1992, as Document No. 92-169921 (Not noted on Transfer Certificate of Title No. 569,700).
12. Restriction of Access Rights, as shown on Maps 2 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
13. A 40 foot Building Setback, as shown on Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
14. Designation of Easement "172" (area 4,432 square feet), for sewer force purposes, as shown Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
15. Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions, (North Beach Shoreline Setback Area) dated December 29, 1998 (effective December 14, 1998), filed January 13, 1999, as Document No. 2513420, and recorded January 13, 1999, as Document No. 99-005138, as amended by instrument dated December 6, 2000, filed December 6, 2000, as Document No. 2668965, and recorded December 6, 2000, as Document No. 2000-170916.
16. Designation of Easements 246, 247, 248, 250, 251, and 252, and Restriction of Vehicular Access Rights, all as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
17. Reservations of the State of Hawaii, as set forth in Land Court Order No. 138359, filed May 8, 2000, including matters relating to the following: (a) Claims, if any, of native tenants, (b) Claims, if any, to any historic, religious and archaeological sites, (c) Claims, if any, to rights of access through public highways, trails and pathways and historical uses on and across the parcels to the shoreline be determined, protected and not restricted; (d) Claims, if any, to waters having their source upon or flowing under the parcels.
18. Encroachments shown on survey map dated May 12, 2000, prepared by James R. Thompson, Licensed Professional Land Surveyor.
19. Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917. First Amendment to By-Laws of Kaanapali North Beach Master Association, Inc. dated

September 17, 2003, filed December 3, 2003, as Document No. 3036052, and recorded December 3, 2003, as Document No. 2003-267151. Supplemental Declaration of Kaanapali North Beach dated August 5, 2003, filed August 5, 2003, as Document No. 2972191, and recorded August 5, 2003, as Document No. 2003-162023. Designation of Successor Declarant and Assignment of Declarant's Rights and Interest, dated December 21, 2000, filed February 20, 2001, as Document No. 2684122, and recorded February 20, 2001, as Document No. 2001-022804. Designation of Successor Declarant and Assignment of Declarant's Rights and Interest under Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach, dated January 28, 2003, filed January 28, 2003, as Document No. 2885398, and recorded January 28, 2003, as Document No. 2003-015949. Designation of Successor Declarant and Assignment of Declarant's Rights and Interests under Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated August 26, 2003, filed August 27, 2003, as Document No. 2983238, and recorded August 27, 2003 as Document No. 2003-180662.

20. Grant of Easement and Agreement (Roadway and Utility Purposes) dated December 6, 2000, filed December 6, 2000, as Document No. 2668969.
21. Easement dated December 6, 2000, filed December 6, 2000, as Document No. 2668970 for roadway, bikeway, pedestrian and utility purposes.
22. Grant of Easements and Covenants to Share Costs (Roadway Lot 34 -Lots 98 and 101) dated December 6, 2000, filed December 6, 2000, as Document No. 2668971.
23. Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389.
24. Unilateral Declaration of Restrictions; Joinder Agreement (North Beach Unit Count and Drainage) dated February 15, 2001, filed February 16, 2001 as Document No. 2683897, and recorded February 16, 2001 as Document No. 2001-022448.
25. Declaration of Restrictions (Unit Count) dated February 15, 2001, filed March 8, 2001 as Document No. 2688326, and recorded March 8, 2001 as Document No. 2001-032604.
26. Designation of Easement "261", as shown on Map 87, as set forth by Land Court Order No. 142094, filed May 25, 2001.

27. Grant of Easements and Agreement Regarding Allocation of Retention Capacity (north Beach – Mauka Retention Basin): dated October 20, 2004, filed October 20, 2004, and recorded October 20, 2004 as Document No. 2004-214492.
28. Designation of Easements 269, 270 and 271 for electrical purposes as shown on Map 91, as set forth in Land Court Order No. 159828.
29. Easement for utility purposes recorded as Document No. 3230468.
30. Covenants, conditions, easements, reversions, and restrictions contained in the Vacation Ownership Deed used to transfer the Vacation Ownership Interest to the Buyer.

**EXHIBIT "B"**

**LIST OF VACATION UNITS**

**KAHAKAI BUILDING  
(Building A)**

UNIT TYPE	UNIT NUMBERS	RELATIVE VALUATION PER UNIT	COMMON INTEREST PER UNIT
One Bedroom Ocean View	<b>First Floor:</b> 2124, 2125 <b>Second Floor:</b> 2201, 2203, 2224, 2225 <b>Third Floor:</b> 2301, 2303, 2324, 2325 <b>Fourth Floor:</b> 2401, 2403, 2424, 2425 <b>Fifth Floor:</b> 2501, 2503, 2524, 2525 <b>Sixth Floor:</b> 2601, 2603, 2624, 2625	43, 873.44	0.002853946
Two Bedroom Ocean View	<b>First Floor:</b> 2108/10, 2109/11, 2112/14, 2113/15, 2116/18, 2117/19, 2120/22, 2121/23 <b>Second Floor:</b> 2200/02, 2204/06, 2205/07, 2208/10, 2209/11, 2212/14, 2213/15, 2216/18, 2217/19, 2220/22, 2221/23 <b>Third Floor:</b> 2300/02, 2304/06, 2305/07, 2308/10, 2309/11, 2312/14, 2313/15, 2316/18, 2317/19, 2320/22, 2321/23 <b>Fourth Floor:</b> 2400/02, 2404/06, 2405/07, 2408/10, 2409/11, 2412/14, 2413/15, 2416/18, 2417/19, 2420/22, 2421/23 <b>Fifth Floor:</b> 2500/02, 2504/06, 2505/07, 2508/10, 2509/11, 2512/14, 2513/15, 2516/18, 2517/19, 2520/22, 2521/23 <b>Sixth Floor:</b> 2600/02, 2604/06, 2605/07, 2608/10, 2609/11, 2612/14, 2613/15, 2616/18, 2617/19, 2620/22, 2621/23	52,000.00	0.003382575
Two Bedroom Ocean Front	<b>First Floor:</b> 2130/31 <b>Second Floor:</b> 2230/31 <b>Third Floor:</b> 2330/31 <b>Fourth Floor:</b> 2430/31 <b>Fifth Floor:</b> 2530/31 <b>Sixth Floor:</b> 2630/31	52,000.00	0.003382575
Two Bedroom Deluxe Ocean Front	<b>First Floor:</b> 2126/28, 2127/29 <b>Second Floor:</b> 2226/28, 2227/29 <b>Third Floor:</b> 2326/28, 2327/29 <b>Fourth Floor:</b> 2426/28, 2427/29 <b>Fifth Floor:</b> 2526/28, 2527/29 <b>Sixth Floor:</b> 2626/28, 2627/29	71,653.10	0.004661000

**MAKANI KAI BUILDING  
(Building B)**

UNIT TYPE	UNIT NUMBERS	RELATIVE VALUATION PER UNIT	COMMON INTEREST PER UNIT
One Bedroom Ocean View	<b>First Floor:</b> 3102, 3124, 3125 <b>Second Floor:</b> 3200, 3202, 3224, 3225 <b>Third Floor:</b> 3300, 3302, 3324, 3325 <b>Fourth Floor:</b> 3400, 3402, 3424, 3425 <b>Fifth Floor:</b> 3500, 3502, 3524, 3525 <b>Sixth Floor:</b> 3600, 3602, 3624, 3625	43,873.44	0.002853946
Two Bedroom Ocean View	<b>First Floor:</b> 3101/03, 3104/06, 3105/07, 3108/10, 3109/11, 3112/14, 3113/15, 3116/18, 3117/19, 3120/22, 3121/23 <b>Second Floor:</b> 3201/03, 3204/06, 3205/07, 3208/10, 3209/11, 3212/14, 3213/15, 3216/18, 3217/19, 3220/22, 3221/23 <b>Third Floor:</b> 3301/03, 3304/06, 3305/07, 3308/10, 3309/11, 3312/14, 3313/15, 3316/18, 3317/19, 3320/22, 3321/23 <b>Fourth Floor:</b> 3401/03, 3404/06, 3405/07, 3408/10, 3409/11, 3412/14, 3413/15, 3416/18, 3417/19, 3420/22, 3421/23 <b>Fifth Floor:</b> 3501/03, 3504/06, 3505/07, 3508/10, 3509/11, 3512/14, 3513/15, 3516/18, 3517/19, 3520/22, 3521/23 <b>Sixth Floor:</b> 3601/03, 3604/06, 3605/07, 3608/10, 3609/11, 3612/14, 3613/15, 3616/18, 3617/19, 3620/22, 3621/23	52,000.00	0.003382575
Two Bedroom Ocean Front	<b>First Floor:</b> 3130/31 <b>Second Floor:</b> 3230/31 <b>Third Floor:</b> 3330/31 <b>Fourth Floor:</b> 3430/31 <b>Fifth Floor:</b> 3530/31 <b>Sixth Floor:</b> 3630/31	52,000.00	0.003382575
Two Bedroom Deluxe Ocean Front	<b>First Floor:</b> 3126/28, 3127/29 <b>Second Floor:</b> 3226/28, 3227/29 <b>Third Floor:</b> 3326/28, 3327/29 <b>Fourth Floor:</b> 3426/28, 3427/29 <b>Fifth Floor:</b> 3526/28, 3527/29 <b>Sixth Floor:</b> 3626/28, 3627/29	71,653.10	0.004661000

**AHELANI BUILDING  
(Building C)**

UNIT TYPE	UNIT NUMBERS	RELATIVE VALUATION PER UNIT	COMMON INTEREST PER UNIT
One Bedroom Ocean View	First Floor: N/A Second Floor: 4211, 4213 Third Floor: 4311, 4313 Fourth Floor: 4411, 4413 Fifth Floor: 4511, 4513 Sixth Floor: 4611, 4613	43,873.44	0.002853946
Two Bedroom Ocean View	First Floor: 4107/09 Second Floor: 4207/09 Third Floor: 4307/09 Fourth Floor: 4407/09 Fifth Floor: 4507/09 Sixth Floor: 4607/09	52,000.00	0.003382575
Two Bedroom Island View	First Floor: 4100/01, 4106/08, 4114/16, 4115/17, 4122/23 Second Floor: 4200/01, 4206/08, 4214/16, 4215/17, 4222/23 Third Floor: 4300/01, 4306/08, 4314/16, 4315/17, 4322/23 Fourth Floor: 4400/01, 4406/08, 4414/16, 4415/17, 4422/23 Fifth Floor: 4500/01, 4506/08, 4514/16, 4515/17, 4522/23 Sixth Floor: 4600/01, 4606/08, 4614/16, 4615/17, 4622/23	52,000.00	0.003382575
Two Bedroom Deluxe Island View	First Floor: 4102/04, 4118/20, 4119/21 Second Floor: 4202/04, 4218/20, 4219/21 Third Floor: 4302/04, 4318/20, 4319/21 Fourth Floor: 4402/04, 4418/20, 4419/21 Fifth Floor: 4502/04, 4518/20, 4519/21 Sixth Floor: 4602/04, 4618/20, 4619/21	71,653.10	0.004661000
Two Bedroom Deluxe Ocean View	First Floor: 4103/05 Second Floor: 4203/05 Third Floor: 4303/05 Fourth Floor: 4403/05 Fifth Floor: 4503/05 Sixth Floor: 4603/05	71,653.10	0.004661000

## EXHIBIT "C"

### SPECIAL RIGHTS OF THE DEVELOPER, THE CLUB OPERATOR, AND THE NETWORK OPERATOR

The Developer owns all unsold Vacation Ownership Interests and generally has the same rights as other Owners with respect to those Vacation Ownership Interests. In addition, the Developer has the following "Reserved Rights" that other Owners do not have.

#### **DEVELOPER:**

1. The Developer may: (i) use one or more Vacation Units as model apartments; (ii) use one or more of the Vacation Units for customer relations, sales, marketing, and/or administrative offices, and (iii) show the Vacation Units to potential buyers; provided in each case that no First Deed or Agreement of Sale has been recorded for any such Vacation Unit.
2. The Developer may use its Vacation Periods for any purpose, no matter what else the Vacation Plan Documents provide. This includes, among other things, use for rental, sales and other commercial purposes permitted by law. If the Developer rents these Use Periods, it has the right to keep the rent.
3. So long as the Developer owns any Vacation Ownership Interest or apartment, it may use: (i) the common elements of the Condominium for any purpose permitted by law and by the Condominium Documents, free from the restrictions imposed by the Vacation Plan Documents, and (ii) the Master Association Amenities for any purpose permitted by law and by the Master Association Documents, free from the restrictions imposed by the Vacation Plan Documents.
4. The Developer may change the name of the Vacation Ownership Plan at any time.
5. In certain Use Years, there will be 53 Use Weeks instead of 52. The Developer has the right to reserve and use the Vacation Units for one Use Week in each Use Year that contains a 53rd Use Week. The Developer must pay to the Association an amount equal to (i) the actual expense to the Association in maintaining and providing services (such as housekeeping) to the Vacation Unit and its Occupants during the Use Periods reserved and used by the Developer, and (ii) a reasonable amount, to be set by the Board, for reserve expenses allocable to such use.
6. The Developer has the right to reserve any Use Periods that, for any reason, are not reserved as of sixty (60) days before the Check-In Day. The Developer must pay to the Association an amount equal to (i) the actual expense to the Association in maintaining and providing services (such as housekeeping) to the Vacation Unit and its Occupants during the Use Periods reserved and used by the Developer, and (ii) a reasonable amount, to be set by the Board, for reserve expenses allocable to such use.
7. The Developer gets to choose the initial Plan Manager and it is a company related to the Developer.
8. The Developer may add apartments to the Plan. It may also remove any apartments if it owns all of the Vacation Ownership Interests in them.
9. The Developer may create new Unit Types and new kinds of Vacation Ownership Interests having new kinds of reservation and use rights. It may also create new kinds of Event Weeks. The Developer may do these things only with respect to apartments being added to the Plan or apartments where the Developer owns all of the Vacation Ownership Interests.
10. The Developer may divide an Every-Year Vacation Ownership Interest into two Every-Other Year Vacation Ownership Interests. Nobody else can do that.
11. Certain parts of the Vacation Plan Documents cannot be changed without the Developer's written consent.
12. Without the Developer's written consent, an Owner may not lease, rent, or otherwise contribute his or her Vacation Ownership Interest or its reservation or use rights to (i) another vacation ownership or time share plan or program, (ii) a fractional ownership plan, or (iii) a Competitor of the Developer.
13. Each Owner promises not to enter into a "Rental Pool" or similar arrangement where the Owner's Vacation Period is placed together in a pool with other Owners' Vacation Periods and rented, or where rental income and/or expenses are shared in some other way. Only the Developer can enforce this restriction.
14. The Developer has a right of first refusal on each Vacation Ownership Interest as discussed in Section 7.
15. The Developer chooses the first Board of Directors for the Association.
16. The Board may not incur or commit the Association to incur legal fees and costs of more than \$10,000 in a dispute with the Developer or any company related to the Developer, or in a dispute with the Club Operator or any company related to the Club Operator, unless:
  - a. The Board obtains from at least two law firms and provides to the Owners: (1) A list of all of the Association's claims, (2) An estimate of the likelihood of prevailing on each claim, and (3) An estimate of the total amount of legal fees, court costs and expenses that the Association is likely to incur through the trial or completion of any arbitration or other proceeding (assuming that the Association will

prevail on only those claims where the law firms give the Association more than a 60% chance of prevailing), and (4) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on..

- b. A Majority of the Owners vote at a special meeting of the Association to authorize the Board to start and prosecute the lawsuit or any other arbitration or other legal proceeding. This may be difficult to do. The Vacation Ownership Interests and votes of the Developer, however, will not be counted.

This rule does not apply to suits against the Developer or any company related to it if the suit is filed solely to collect Assessments or Personal Charges, or Subsidy Contract payments that are past due or for breach of any contract to provide goods or services to the Association (for example, the Management Agreement or the Club Affiliation Agreement).

17. The Association must furnish a copy of the list of Owners to the Developer upon request. It may not furnish the list to anyone else without first notifying the Developer and giving the Developer an opportunity to object to release of the list.
18. The Developer may transfer property to the Association and the Association must accept it.
19. The Developer has the right to determine the Relative Valuation for each type of Vacation Unit. This is used to divide the Plan Expenses among the different Unit Types. The Relative Valuation per square foot for a new Unit Type cannot be more than twenty percent (20%) higher or lower than the Relative Valuation per square foot for other Unit Types having the same number of bedrooms if the Unit Types have similar features (for example, size [ $\pm$ 150 square fee], location, number of bathrooms, and views).
20. Certain Association actions require both the approval of the Owners and the approval of the Developer. For example, an increase of more than 20% in the Regular Assessment requires this. Likewise, an amendment of the Declaration requires this.
21. The Developer must pay the Assessments and Personal Charges for each Vacation Ownership Interest its owns. Instead of doing so, however, the Developer may enter into a "Subsidy Contract" with the Association in which the Developer agrees to pay to the Association the difference between the actual cost incurred by the Association and the Assessments charged to other Owners.

22. The Developer is not liable for any decision it makes on insurance for the Association unless it was grossly negligent or was guilty of intentional misconduct.

23. Without the consent or approval of any person, including any Owner and anyone having a contract to buy a Vacation Ownership Interest, the Developer may change the Declaration at any time:

- ❖ For any purpose before any First Deed or Agreement of sale is recorded.
- ❖ To comply with the laws and regulations of the State of Hawaii.
- ❖ To comply with the real estate laws of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with (i) the registration of the Plan to permit the sale of Vacation Ownership Interests there, or (ii) so long as the Plan is part of the Club, to permit the registration of the Club, or (iii) so long as any Owner is an SVN Member, to permit the registration of SVN.
- ❖ In any Declaration of Annexation adding new Unit Types or creating new kinds of Vacation Ownership Interests.
- ❖ In any amendment creating new Event Weeks.

However, unless it is signed by the Owner and the Owner's Lender (if any), no amendment may:

- ❖ Take away the right of any Owner to reserve a Use Week and to use a Vacation Unit during his Vacation Period;
  - ❖ Take away the right of an Owner having a Fixed, Event or Ultra Premium Vacation Period to use a Vacation Unit during the Owner's Use Week.
  - ❖ Take away the right of an Owner having the right to use a certain Vacation Unit during his or her Vacation Period.
  - ❖ Change an Owner's undivided interest in a Vacation Unit.
  - ❖ Change the right of the Owner to cast one vote for an Every-Other-Year Vacation Ownership Interest or two votes for an Every-Year Vacation Ownership Interest.
24. No amendment may change the rights and privileges of the Developer unless the Developer signs it.
  25. If the Developer signs and records a document that expressly transfers some or all of its rights or duties as the Developer under the Vacation Plan Documents to

someone else, then that person will become the "Developer" to the extent of the rights and duties transferred.

#### **CLUB OPERATOR AND SVN OPERATOR:**

1. The Club Operator has the right to permit members of Other Club Vacation Plans to use the Vacation Units in the Plan if they properly reserve it through the Club. The SVN Affiliation Agreement may authorize the SVN Operator to permit SVN Members to use the Vacation Units in the Plan if they properly reserve it through the SVN program.
2. The Club Operator has the right to change the Reservation Rules in the manner and under the circumstances provided in them. The Club Operator has delegated this

right to the SVN Operator. The SVN Operator has the right to change the SVN Rules.

3. At any time when the Plan is part of the Club, no amendment may change the rights and privileges of the Plan Operator or the Club Operator unless the Club Operator signs it.
4. If the Club Operator signs and records a document that expressly transfers some or all of its rights or duties to someone else, then that person will become the Club Operator to the extent of the rights and duties transferred.
5. The Association must furnish a copy of the list of Owners to the Club Operator upon request.

## EXHIBIT "D"

### CONDOMINIUM DEVELOPER'S RESERVED RIGHTS

The Developer has reserved various rights under the Condominium Documents. Some of the Developer's Reserved Rights are or may be necessary or helpful to developing the Project in phases. Even so, the exercise of the Developer's Reserved Rights is not limited to the development of the Project in phases except to the extent that the Declaration expressly states otherwise. The Developer's Reserved Rights under the Condominium Documents include, among others, the right:

- ❖ To delete from the Condominium any land designated in the Condominium Declaration for possible removal (see section 21);
- ❖ To add back into the Condominium any "Adjacent Parcel", meaning a parcel previously deleted or any part or all of Lot 101 as shown on Map 86 of Land Court Application No. 1744 (section 22);
- ❖ To design, develop, construct and add new buildings and improvements on the land of the Condominium or on any Adjacent Parcel (sections 19 and 23) and to merge any condominium on an Adjacent Parcel with the Condominium;
- ❖ To create new apartments in any new buildings and improvements constructed on the land or on any Adjacent Parcel added into the Condominium (section 18) and to create parking stalls or other limited common elements and assign them to those apartments;
- ❖ To expand Apartment 101 to include any new improvements constructed on the Project or on any Adjacent Parcel annexed into the Project (section 18);
- ❖ To create new apartments and/or common elements from the limited common elements of any commercial apartment (section 24);
- ❖ To convert any part of any apartment owned by the Developer into limited common elements for that apartment (section 25);
- ❖ To convert all or any part of any apartment owned by the Developer or its limited common elements into general common elements (section 25);
- ❖ To divide any commercial apartment into two or more apartments, and to combine two or more commercial apartments into one apartment (section 17);
- ❖ To change or remove any wall, floor or ceiling between two adjacent commercial apartments or between a commercial apartment and its limited common elements;

- ❖ To change the ownership share (in legal terms, the "common interest in the common elements") of each apartment when apartments are created, divided, or combined;
- ❖ To change the Condominium as needed or helpful to comply with law or with certain governmental permits, approvals or zoning requirements (sections 25 and 26);
- ❖ To create, grant, accept or otherwise deal (i) with any easements over, under, across or through the common elements, or (ii) easements in favor of the Condominium or its land (section 7.4);
- ❖ To enter the Condominium and to permit its employees, agents, contractors, and so on, to do so; and
- ❖ To make noise, dust, vibrations and do other annoying things when using these or other reserved rights of the developer.

This is only a summary of certain Developer's Reserved Rights. The nature and extent of these rights is described in and governed by the Condominium Documents.

The Developer may exercise the Developer's Reserved Rights separately or in one or more combinations and at one or more times. The Developer has no duty to exercise the Developer's Reserved Rights. For example, the Developer has no duty to develop any new phases of the Project. Conversely, the use of these rights on one occasion does not limit or otherwise affect the Developer's right to use them again from time to time.

The Developer may use the Developer's Reserved Rights in most cases without being required to obtain the approval, consent, or joinder of anyone else, and without having to give notice to anyone else. This includes, but is not limited to, the Association, any apartment owner, any lender, or any other Interested Person.

When an apartment owner or any other Interested Person acquires an apartment or any other interest in the Project, he or she automatically does each of these things:

He or she takes his or her interest in the Project subject to the Developer's Reserved Rights, and each and every exercise and/or assignment of them.

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

- The Developer's Reserved Rights and its use of them from time to time;
- That this may change the Project;

- That this may result in the recalculation of the common interest of some or all apartments in some cases; and
- That the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the use of its rights. This includes, but it is not limited to, amendments to some or all of the Condominium Documents.

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

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

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

Each Owner also appoints the Association as his or her attorney-in-fact with full right and power to receive and accept on his or her behalf any legal notice required by Chapter 501, Hawaii Revised Statutes, and to accept service of process (meaning legal papers) on his or her behalf in connection with any Land Court petition or other legal proceeding in the Land Court. This power of attorney appointment is permanent and it includes full power of substitution.

**Amendments in Connection with Exercise of Developer's Reserved Rights.** The Developer has the right to amend some or all of the Condominium Documents in connection with the exercise of some of the Developer's Reserved Rights. For example, the Developer may amend some or all Condominium Documents when using its reserved rights to build additional phases of the Condominium, to create new apartments in those phases, to designate limited common elements for those apartments, to remove land from the Project, and so on.

**General Rights.** The Developer also has reserved the right to change the Condominium Documents:

- ❖ In any way and for any purpose before the date when the Developer first records a deed transferring an apartment or a Vacation Ownership Interest to someone other than the Developer or its Lenders.
- ❖ To file the "as-built" statement (with plans, if necessary or convenient) required by Section 514A-12 of the Condominium Property Act. The Developer may do this each time a phase or increment of the Project, or any New Improvement is completed. It may also do this at any other time required by law or permitted by the Declaration.
- ❖ To comply with the real estate laws of any place (for example, the State of Hawaii) or the requirements of any government agency (such as the Hawaii Real Estate Commission or the California Department of Real Estate) in connection with the registration of the Project, or any Vacation Ownership Program (or any Adjacent Project), to permit the sale of apartments or Vacation Ownership Interests (or any apartments, time share interests, or fractional ownership interests in an Adjacent Project);
- ❖ To correct any misstatements of fact in the Condominium Documents.

## **EXHIBIT "E"**

### **INSTALLMENT PURCHASE TERMS**

[NOTE: All amounts are in U.S. Dollars]

- 1. PURCHASE PRICES:** Prospective Purchasers are advised that the prices at which Vacation Ownership Interests may be purchased vary but presently will not exceed the prices stated below. The sales agents will furnish a copy of the current price list to you. You are encouraged to ask about any special purchase prices and terms that may be offered from time to time. Please refer to your Purchase Agreement for the actual initial purchase price of your own Vacation Ownership Interest.
- a. **ONE BEDROOM OCEAN VIEW VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):
    - i. Every-Other-Year: \$29,900
    - ii. Every-Year: \$42,900
    - iii. Christmas//Obon/Golden Week (Every Year): \$46,900
    - iv. New Years (Every Year): \$50,900
  - b. **TWO BEDROOM ISLAND VIEW VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):
    - i. Every-Other-Year: \$38,900
    - ii. Every-Year: \$54,900
    - iii. Christmas/Obon/Golden Week (Every Year): \$58,900
    - iv. New Years (Every Year): \$60,900
  - c. **TWO BEDROOM OCEAN VIEW VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):
    - i. Every-Other-Year: \$45,900
    - ii. Every-Year: \$72,900
    - iii. Christmas/Obon/Golden Week (Every Year): \$78,900
    - iv. New Years (Every Year): \$82,900
  - d. **TWO BEDROOM OCEAN FRONT VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):
    - i. Every-Other-Year: \$65,900
    - ii. Every-Year: \$109,900
    - iii. Christmas/Obon/Golden Week (Every Year): \$114,900
    - iv. New Years (Every Year): \$119,900
  - e. **TWO BEDROOM DELUXE ISLAND VIEW VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):
    - i. Every-Other-Year: \$38,900
    - ii. Every-Year: \$56,900
    - iii. Christmas/Obon/Golden Week (Every Year): \$64,900
    - iv. New Years (Every Year): \$69,900

**f. TWO BEDROOM DELUXE OCEAN VIEW VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):

- i. Every-Year: \$72,900
- ii. Christmas/Obon/Golden Week (Every Year): \$79,900
- iii. New Years (Every Year) : \$84,900

**g. TWO BEDROOM DELUXE OCEAN FRONT VILLA** (for a Floating Vacation Period with Floating Unit Use Rights):

- i. Every-Year: \$124,900
- ii. Christmas/Obon/Golden Week (Every Year): \$129,900
- iii. New Years (Every Year) : \$139,900

**h. UPGRADE OPTIONS:**

- i. Fixed Vacation Period: Add 10% to the base price.
- ii. Ultra Premium Vacation Period: Add 30% to the base price.
- iii. Fixed Unit Use Right: Add another 10% to the base price [in addition to any amount added as items (i), (ii), or (iii)].

**2. INSTALLMENT PURCHASE TERMS** generally will be as follows: not less than ten percent down; an interest rate between 4.9% and 16.9%; and monthly installment payments over a term of not more than twenty years. There are no points, no prepayment penalties, and no balloon payments. Larger down payments and shorter terms will result in lower interest rates. The interest rate may also be reduced if a Buyer makes the monthly payments automatically from the Buyer's bank account through an Automatic Payment Plan Authorization ("APPA Program") or an Automatic Credit Card Authorization ("ACCA Program"). The Developer may offer other terms from time to time. The loan will be made using a note and mortgage. Notwithstanding the interest rates listed below, the Buyer will not pay an interest rate in excess of 12%, prior to Closing. The Buyer must pay interest at the lesser of 12% per annum or the rate of one percent per month on the difference between the Purchase Price and the Initial Deposit as those figures are shown on the Buyer's Sales Contract.

**3. ADMINISTRATIVE FEE:** These charges, sometimes referred to as "closing costs", are per transaction, not per Vacation Ownership Interest. One transaction may include more than one Vacation Ownership Interest. A policy of title insurance will be issued to protect the Buyer. If the Developer provides a mortgage loan to the Buyer, a separate policy must be issued to the mortgage lender. The amount shown below for title insurance is based on a quote provided by Hawaii Vacation Title Services, Inc. ("Vacation Title"). The charge will be the same whether Vacation Title issues only an owner's policy or an owner's and a lender's policy, and regardless of how many Vacation Ownership Interests are covered by the policy or policies. Buyers are free to choose any title company licensed in the State of Hawaii. If the Buyer chooses a title company other than Vacation Title, then the Buyer must give a written notice to the Escrow Agent stating the name of such title insurance company chosen by the Buyer. If the Buyer does not choose a title company, then Vacation Title will issue the policy or policies.

A Buyer will be required to pay closing costs not to exceed \$1000.00 (assuming that Vacation Title is to issue the title policy or policies). If the Buyer chooses a title company other than Vacation Title, then the Developer will pay up to a maximum of One Hundred Dollars (\$100.00) towards the cost of the title policy or policies. The Buyer must pay any amounts above that. The Administrative Fee paid by Buyer is applied to the expenses incurred by Developer to close the sale. Any excess is retained by the Developer for its expenses in selling the property. The Administrative Fee is not a finance charge and must be paid whether Purchaser pays in cash or finances the purchase. The following amounts represent estimated costs applicable to a standard closing. Some of these fees are paid by the Developer and some are paid by the Buyer. If Buyer is a corporation, an additional corporate name search fee (currently \$25.00) will be charged.

A.	Escrow Fee:	\$ 85.00
B.	Title Insurance Policy	\$100.00
C.	Administration	\$285.00

D. Recording Fees:

- |                                     |          |
|-------------------------------------|----------|
| a. Deed                             | \$ 25.00 |
| b. Issuance of Certificate of Title | \$ 25.00 |
| c. Mortgage (if applicable)         | \$ 25.00 |

In addition, the State of Hawaii charges a conveyance tax at the rate of \$.10 per \$100.00 of the purchase price, and this amount is paid as part of the Administrative fee.

**4. COLLECTION AGENT AND FEES.** This applies only if the Developer finances your purchase. The Developer will designate an agent to collect each Buyer's loan payments and it may be an affiliate of the Developer or the Developer itself. The collection agent will impose standard charges due to any failure of a Buyer to pay, to pay on time, or dishonored checks and so on.

# EXHIBIT "F"

## ASSESSMENTS

NOTE: This page summarizes the amounts that an Owner who is buying one week for the first time in the Westin Ka'anapali Ocean Resort Villas must pay based on the budgets that appear on the next three pages. For other owner situations, please refer to the footnotes to such budgets.

One Bedroom Every-Other-Year	Condominium Association:	\$ 173.36
	Master Association:	\$ 67.65
	Vacation Ownership Association:	\$ 834.47
	TOTAL:	\$ 1,075.48
One Bedroom Every-Year	Condominium Association:	\$ 346.71
	Master Association:	\$ 135.30
	Vacation Ownership Association:	\$ 1,515.41
	TOTAL:	\$ 1,997.42
Two Bedroom Every-Other-Year	Condominium Association:	\$ 205.47
	Master Association:	\$ 80.18
	Vacation Ownership Association:	\$ 964.30
	TOTAL:	\$ 1,249.95
Two Bedroom Every-Year	Condominium Association:	\$ 410.93
	Master Association:	\$ 160.36
	Vacation Ownership Association:	\$ 1,775.07
	TOTAL:	\$ 2,346.36
Two Bedroom Deluxe Every-Other-Year	Condominium Association:	\$ 283.12
	Master Association:	\$ 110.49
	Vacation Ownership Association:	\$ 1,278.28
	TOTAL:	\$ 1,671.89
Two Bedroom Deluxe Every-Year	Condominium Association:	\$ 566.23
	Master Association:	\$ 220.97
	Vacation Ownership Association:	\$ 2,403.02
	TOTAL:	\$ 3,190.22

### NOTES:

- All amounts are stated in U.S. dollars.
- The Vacation Ownership Association assessment for Every-Other-Year Vacation Ownership Interests includes a \$20 bookkeeping fee.
- The Vacation Ownership Association assessment includes Club Dues in the amount of \$113.53.

**OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION  
APPROVED BUDGET OF OPERATING EXPENSES  
JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	Unit Week - Annual		
			One-Bedroom Unit (1)	Two Bedroom Lockoff Unit (1)	Two Bedroom Deluxe Lockoff Unit (1)
Based on 280 residential units					
REVENUES					
Maintenance Fee Revenue	\$ 22,281,958	\$ 1,856,830	\$ 1,260.75	\$ 1,494.27	\$ 2,059.01
Interest Revenue	16,244	1,354	0.92	1.09	1.50
Club Rental Revenue	108,326	9,027	6.13	7.26	10.01
Biennial Service Fee Revenue	116,853	9,738	6.61	7.84	10.80
Total Operating Revenue	\$ 22,523,381	\$ 1,876,948	\$ 1,274.41	\$ 1,510.46	\$ 2,081.32
EXPENSES					
Housekeeping & Rooms	\$ 5,823,291	\$ 485,274	\$ 329.49	\$ 390.52	\$ 538.11
Administrative & General	1,165,117	97,093	65.92	78.13	107.67
Financial Services	331,816	27,651	18.77	22.25	30.66
Technnology Services	56,382	4,699	3.19	3.78	5.21
Annual Audit	7,800	650	0.44	0.52	0.72
Reserve for Uncollectible Accounts (2)	1,676,453	139,704	94.86	112.43	154.92
Repairs & Maintenance	1,629,628	135,802	92.21	109.29	150.59
Insurance	181,405	15,117	10.26	12.17	16.76
Income Taxes	31,700	2,642	1.79	2.13	2.93
Management Fee	1,671,837	139,320	94.59	112.12	154.49
Owner Services	516,092	43,008	29.20	34.61	47.69
Ad Valorem Taxes	6,385,981	532,165	361.33	428.26	590.11
General Excise Tax	995,057	82,921	56.30	66.73	91.95
Prior-Year (Surplus)/Deficit Reduction	2,050,821	170,902	116.04	137.53	189.51
Total Operating Expenses	\$ 22,523,381	\$ 1,876,948	\$ 1,274.41	\$ 1,510.46	\$ 2,081.32

**APPROVED BUDGET OF RESERVES FOR REPLACEMENT  
JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	Unit Week - Annual		
			One-Bedroom Unit (1)	Two Bedroom Lockoff Unit (1)	Two Bedroom Deluxe Lockoff Unit (1)
REVENUES					
Reserve Fee Revenue	\$ 2,494,227	\$ 207,852	\$ 141.13	\$ 167.27	\$ 230.48
EXPENSES					
Replacement Reserves					
Roof Replacement	N/A	N/A	N/A	N/A	N/A
Pavement Resurfacing	N/A	N/A	N/A	N/A	N/A
Building Painting	\$ 77,504	\$ 6,459	\$ 4.39	\$ 5.20	\$ 7.16
Unit Furnishings, Equipment and Other Capital Expenditures	2,416,724	201,394	136.74	162.07	223.32
Deferred Maintenance	N/A	N/A	N/A	N/A	N/A
Total Reserve Expenses	\$ 2,494,227	\$ 207,852	\$ 141.13	\$ 167.27	\$ 230.48
Total Maintenance & Reserve Fee (1)	\$ 24,776,186	\$ 2,064,682	\$ 1,401.88	\$ 1,661.54	\$ 2,289.49
Club Dues (3)	1,637,103	136,425	113.53	113.53	113.53
Total Maintenance, Reserve Fee & Club Dues	\$ 26,413,288	\$ 2,201,107	\$ 1,515.41	\$ 1,775.07	\$ 2,403.02

**REPLACEMENT RESERVE ANALYSIS  
DECEMBER 31, 2009**

Description	Estimated Life	Estimated Replacement Cost	Remaining Life (4)	Estimated Balance 12/31/09
Replacement of Unit Furnishings and Equipment, and Other Capital Expenditures	1 to 20 years	\$ 31,024,706	0 to 15 years	\$ 3,025,071
Deferred Maintenance	-	-	-	-
Roof Replacement	-	-	-	-
Pavement Resurfacing	-	-	-	-
Building Painting	5 to 10 years	874,176	3 to 4 years	\$ 85,237
<b>Totals</b>		<b>\$ 31,898,882</b>		<b>\$ 3,110,308</b>

(1) Biennial Unit Week fees are one-half of those shown plus a \$20 bookkeeping fee.

(2) Reserve for uncollectible accounts includes an allowance for unpaid Club Dues.

(3) Club Dues include the SVN Membership Fee. The fee for single-week Owners is \$113.53 (\$109 SVN Fee + Hawaii tax). For multi-week Owners it is \$147.91 (\$142 SVN Fee + Hawaii tax). In addition, international (non-U.S.) Owners are charged \$25 for the inte

(4) Estimated remaining useful life as of December 31, 2009.

A certain number of Vacation Ownership Interests have been deeded by the Developer to the Association to use for maintenance purposes.

The Assessments for each Vacation Ownership Interest deeded to the Association will be included in the budget as a Plan Expense.

This means that the other Vacation Ownership Interests must all pay a share of the Assessments for any Vacation Ownership Interest deeded to the Association.

**ASSOCIATION OF APARTMENT OWNERS OF OCEAN RESORT VILLAS, INC.**  
**APPROVED BUDGET OF OPERATING EXPENSES**  
**JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	Unit Week - Annual			Commercial Units
			One-Bedroom Unit	Two Bedroom Lockoff Unit	Two Bedroom Deluxe Lockoff Unit (1)	
Based on 280 residential units and 3 commercial units						
Maintenance Fee Revenue	\$ 5,675,721	\$ 472,977	\$ 314.53	\$ 372.79	\$ 513.68	\$ 116,858.44
Interest Revenue	4,309	359	0.24	0.28	0.39	88.71
Total Operating Revenue	\$ 5,680,029	\$ 473,336	\$ 314.77	\$ 373.07	\$ 514.07	\$ 116,947.16
EXPENSES						
Housekeeping & Rooms	\$ 522,869	\$ 43,572	\$ 28.98	\$ 34.34	\$ 47.32	\$ 10,765.45
Administrative & General	180,668	15,056	10.01	11.87	16.35	3,719.82
Financial Services	5,069	422	0.28	0.33	0.46	104.37
Licenses & Permits	1,182	99	0.07	0.08	0.11	24.34
Annual Audit	7,800	650	0.43	0.51	0.71	160.60
Security	563,938	46,995	31.25	37.04	51.04	11,611.02
Reserve for Uncollectible Accounts	709,821	59,152	39.34	46.62	64.24	14,614.63
Repairs & Maintenance	409,075	34,090	22.67	26.87	37.02	8,422.52
Utilities (Electricity, Gas, Water, Sewer & Telephone)	2,653,878	221,156	147.07	174.31	240.19	54,641.17
Cable Television	93,607	7,801	5.19	6.15	8.47	1,927.29
Internet	44,363	3,697	2.46	2.91	4.02	913.40
Insurance	513,810	42,818	28.47	33.75	46.50	10,578.93
Management Fee	568,764	47,397	31.52	37.36	51.48	11,710.39
Prior-Year (Surplus)/Deficit Reduction	(678,158)	(56,513)	(37.58)	(44.54)	(61.38)	(13,962.71)
North Beach Master Association	83,342	6,945	4.62	5.47	7.54	1,715.95
Total Operating Expenses	\$ 5,680,029	\$ 473,336	\$ 314.77	\$ 373.07	\$ 514.07	\$ 116,947.16

**APPROVED BUDGET OF RESERVES FOR REPLACEMENT**  
**JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	Unit Week - Annual			Commercial Units
			One-Bedroom Unit	Two Bedroom Lockoff Unit	Two Bedroom Deluxe Lockoff Unit	
REVENUES						
Reserve Fee Revenue	\$ 580,687	\$ 48,391	\$ 32.18	\$ 38.14	\$ 52.55	\$ 11,955.87
EXPENSES						
Replacement Reserves						
Roof Replacement	\$ 27,079	\$ 2,257	\$ 1.50	\$ 1.78	\$ 2.45	\$ 557.52
Pavement Resurfacing	93,724	7,810	5.19	6.16	8.48	1,929.70
Building Painting	205,319	17,110	11.38	13.49	18.58	4,227.34
Unit Furnishings, Equipment and Other Capital Expenditures	208,095	17,341	11.53	13.67	18.83	4,284.50
Deferred Maintenance	46,470.93	3,873	2.58	3.05	4.21	956.80
Total Reserve Expenses	\$ 580,687	\$ 48,391	\$ 32.18	\$ 38.14	\$ 52.55	\$ 11,955.87
Total Maintenance & Reserve Fee						
	\$ 6,256,408	\$ 521,367	\$ 346.71	\$ 410.93	\$ 566.23	\$ 128,814.31

**REPLACEMENT RESERVE ANALYSIS**  
**DECEMBER 31, 2009**

Description	Estimated Life	Estimated Replacement Cost	Remaining Life (1)	Estimated Balance 12/31/09
Replacement of Unit Furnishings and Equipment, and Other Capital Expenditures	5 to 50 years	\$ 5,285,763	0 to 45 years	\$ 1,212,305
Deferred Maintenance	10 to 25 years	1,261,000	3 to 20 years	289,214
Roof Replacement	20 to 50 years	1,375,356	13 to 45 years	315,442
Pavement Resurfacing	6 to 8 years	857,142	1 year	196,588
Building Painting	6 to 12 years	1,879,232	1 to 7 years	431,007
<b>Totals</b>		<b>\$ 10,658,493</b>		<b>\$ 2,444,556</b>

(1) Estimated remaining useful life as of December 31, 2009.

A certain number of Vacation Ownership Interests have been deeded by the Developer to the Association to use for maintenance purposes.

The Assessments for each Vacation Ownership Interest deeded to the Association will be included in the budget as a Plan Expense.

This means that the other Vacation Ownership Interests must all pay a share of the Assessments for any Vacation Ownership Interest deeded to the Association.

**OCEAN RESORT MASTER ASSOCIATION  
APPROVED BUDGET OF OPERATING EXPENSES  
JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	KOR Unit Week - Annual			KOR North Unit Week - Annual
			One-Bedroom Unit	Two-Bedroom Lockoff Unit	Two-Bedroom Deluxe Lockoff Unit	Two-Bedroom Lockoff Unit
Based on 280 residential units and 3 commercial units						
REVENUES						
Maintenance Fee Revenue	\$ 4,442,188	\$ 370,182	\$ 130.81	\$ 155.04	\$ 213.64	\$ 160.33
Interest Revenue	167,205	13,934	4.92	5.84	8.04	6.03
Late Fee Revenue	149,485	12,457	4.40	5.22	7.19	5.40
Miscellaneous Revenue	7,896	658	0.23	0.28	0.38	0.28
Resort Service Fee Revenue	55,000	4,583	1.62	1.92	2.65	1.99
Developer Contribution	439,650	36,638	12.95	15.34	21.14	15.87
Total Operating Revenue	\$ 5,261,423	\$ 438,452	\$ 154.94	\$ 183.63	\$ 253.04	\$ 189.90
EXPENSES						
Administrative & General	\$ 1,413,903	\$ 117,825	\$ 41.64	\$ 49.35	\$ 68.00	\$ 51.03
Financial Services	9,739	812	0.29	0.34	0.47	0.35
Annual Audit	7,800	650	0.23	0.27	0.38	0.28
Activities	14,015	1,168	0.41	0.49	0.67	0.51
Reserve for Uncollectible Accounts	180,513	15,043	5.32	6.30	8.68	6.52
Repairs & Maintenance	1,424,925	118,744	41.96	49.73	68.53	51.43
Utilities (Electricity, Gas, Water & Sewer)	971,363	80,947	28.60	33.90	46.72	35.06
Insurance	327,214	27,268	9.64	11.42	15.74	11.81
Management Fee	417,692	34,808	12.30	14.58	20.09	15.08
Excise Tax	12,983	1,082	0.38	0.45	0.62	0.47
Ad Valorem Tax	2,198	183	0.06	0.08	0.11	0.08
Prior-Year (Surplus)/Deficit Reduction	479,078	39,923	14.11	16.72	23.04	17.29
Total Operating Expenses	\$ 5,261,423	\$ 438,452	\$ 154.94	\$ 183.63	\$ 253.04	\$ 189.90

**APPROVED BUDGET OF RESERVES FOR REPLACEMENT  
JANUARY 1, 2010 through DECEMBER 31, 2010**

	All Units Annual	All Units Monthly	KOR Unit Week - Annual			KOR North Unit Week - Annual
			One-Bedroom Unit	Two-Bedroom Lockoff Unit	Two-Bedroom Deluxe Lockoff Unit	
<b>REVENUES</b>						
Reserve Fee Revenue	\$ 152,419	\$ 12,702	\$ 4.49	\$ 5.32	\$ 7.33	\$ 5.50
<b>EXPENSES</b>						
Replacement Reserves						
Roof Replacement	N/A	N/A	N/A	N/A	N/A	N/A
Pavement Resurfacing	\$ 88,435	\$ 7,370	\$ 2.60	\$ 3.09	\$ 4.25	\$ 3.19
Building Painting	338	28	0.01	0.01	0.02	0.01
Unit Furnishings, Equipment and Other Capital Expenditures	63,646	5,304	1.87	2.22	3.06	2.30
Deferred Maintenance	N/A	N/A	N/A	N/A	N/A	N/A
Total Reserve Expenses	\$ 152,419	\$ 12,702	\$ 4.49	\$ 5.32	\$ 7.33	\$ 5.50
<b>Total Maintenance &amp; Reserve Fee</b>	<b>\$ 4,594,607</b>	<b>\$ 451,154</b>	<b>\$ 135.30</b>	<b>\$ 160.36</b>	<b>\$ 220.97</b>	<b>\$ 165.83</b>

**REPLACEMENT RESERVE ANALYSIS  
DECEMBER 31, 2009**

Description	Estimated Life	Estimated Replacement Cost	Remaining Life (1)	Estimated Balance 12/31/09
Replacement of Unit Furnishings and Equipment, and Other Capital Expenditures	3 to 32 years	\$ 4,659,820	28 years	\$ 157,549
Deferred Maintenance	N/A	N/A	N/A	N/A
Roof Replacement	N/A	N/A	N/A	N/A
Pavement Resurfacing	8 to 32 years	5,567,375	1 to 28 years	188,233
Building Painting	8 to 16 years	17,296	1 to 14 years	585
<b>Totals</b>		<b>\$ 10,244,491</b>		<b>\$ 346,366</b>

(1) Estimated remaining useful life as of December 31, 2009.

A certain number of vacation ownership interests have been deeded by the Developer to the Association to use for maintenance purposes.

The Assessments for each Vacation Ownership Interest deeded to the Association will be included in the budget as a Plan Expense.

This means that the other Vacation Ownership Interests must all pay a share of the Assessments for any Vacation Ownership Interest deeded to the Association.

FILED 07/03/2001 10:20 AM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

**OCEAN RESORT VILLAS  
VACATION OWNERS ASSOCIATION**

DOMESTIC NONPROFIT

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
1010 Richards Street  
Mailing Address: P.O. Box 40, Honolulu, HI 96810

ARTICLES OF INCORPORATION  
(Section 415B-34, Hawaii Revised Statutes)

IN THE MATTER OF THE INCORPORATION )  
OF )  
OCEAN RESORT VILLAS )  
VACATION OWNERS ASSOCIATION )

ARTICLES OF INCORPORATION

McCORRISTON MILLER  
MUKAI MacKINNON LLP

CHARLES E. PEAR, JR.  
Five Waterfront Plaza, Suite 400  
500 Ala Moana Boulevard  
Honolulu, Hawaii 96813

Telephone: 808-529-7300

3007000

# *Ocean Resort Villas Vacation Owners Association*

## **ARTICLES OF INCORPORATION**

Section 415B-34, Hawaii Revised Statutes

The person who signed this document desires to form a nonprofit corporation under the laws of the State of Hawaii and certifies the following:

### **ARTICLE 1 DEFINITIONS**

In this document, the following terms have the following meanings:

**Section 1.1** The term "*Hawaii Nonprofit Corporation Act*" means Chapter 415B, Hawaii Revised Statutes, as it may be amended from time to time, or any successor or replacement law.

**Section 1.2** The term "*Act*" means Chapter 514E, Hawaii Revised Statutes, as it may be amended from time to time, or any successor or replacement law.

**Section 1.3** The term "*Association*" means the corporation.

**Section 1.4** The term "*Declaration*" means that certain "Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements and Restrictions" recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and any changes made to it from time to time.

**Section 1.5** Certain other terms used in these Articles are defined in the Declaration or in the Bylaws of the Association. Those terms will have the same meaning here as in the Declaration or Bylaws unless the context requires otherwise.

### **ARTICLE 2 NAME**

The name of the corporation is *Ocean Resort Villas Vacation Owners Association*.

### **ARTICLE 3 INITIAL ADDRESS**

The address of the corporation's initial office is 10 Hooehui Street, Suite 307, Lahaina, Hawaii 96761.

### **ARTICLE 4 DURATION**

The corporation will exist forever unless it is dissolved according to the Hawaii Nonprofit Corporation Act.

### **ARTICLE 5 PURPOSES AND POWERS**

**Section 5.1 Purposes.** The corporation is organized for the following purposes:

A. To be the association of Owners required by the Declaration and the Act for the Ocean Resort Villas Vacation Ownership Plan, and to have the rights and duties of that Association as provided in the Vacation Plan Documents or by law;

B. To provide an entity to further the interests of the Members, the Developer, the Club Operator, and the Network Operator; and

C. To transact any or all lawful activities for which nonprofit corporations may be incorporated under the Hawaii Nonprofit Corporation Act or for which an owners association may be established under the Act.

**Section 5.2 Powers and Duties.** The corporation has and may exercise any or all of these powers and has each of these duties and obligations:

A. The powers, duties and obligations granted to or imposed on the Association in the Declaration or the Bylaws;

B. The powers, duties and obligations of a nonprofit corporation under the Hawaii Nonprofit Corporation Act.

C. The powers, duties and obligations of an association of time share owners under the Act and the Rules.

D. Any other powers, duties and obligations necessary or helpful to carry out the functions of the Association under the Declaration, the Bylaws, or the Affiliation Agreement, or that otherwise promote the general benefit of the Members.

**Section 5.3 Specific Powers.** Without limiting the powers and duties of the Association as stated in Section 5.2, the Association has the following specific powers:

A. To manage, control, and operate the plan as provided in the Vacation Plan Documents;

B. To manage, control, operate, maintain, repair, replace, and improve the Vacation Units, the Common Furnishings, and any other property for which the corporation has a right or duty to provide such services;

C. To pay the expenses and costs described in the Vacation Plan Documents, and to charge and collect the Assessments, Personal Charges, Club Fees, Network Fees, and other amounts described in the Vacation Plan Documents;

D. To enforce the Vacation Plan Documents;

E. To join and participate in the Club on the terms and conditions stated in the Club Affiliation Agreement with the Club Operator or in any replacement Club Affiliation Agreement allowed by the Declaration and Bylaws; and

F. To participate in the Network on the terms and conditions stated in the Club Affiliation Agreement and (i) the Network Affiliation Agreement between the Club and the Network Operator, or (ii) in any replacement Network Affiliation Agreement allowed by the Declaration and Bylaws; and

G. To join and participate in any other Exchange Program (to the extent permitted by the Vacation Plan Documents), trade organizations, or other travel related activities or programs that may benefit the Members; and

H. To engage in activities that will foster, promote, or advance the common interests of the Members or encourage and promote vacation ownership in the State of Hawaii.

I. To make contracts and guarantees and incur liabilities, borrow money, issue notes and other obligations, and to secure any of its obligations by mortgage or pledge of all or any part of its property, assets, or income;

J. To act as principal, agent, joint venturer, partner, or in any capacity that may be authorized or approved by the Board; and

K. To exercise all other rights and powers and to perform all other duties of the Association under the Vacation Plan Documents.

**Section 5.4 Purposes and Powers.** The provisions of sections 5.1, 5.2, and 5.3 will each be construed as purposes and powers.

**Section 5.5 Limits on Association Powers.** The purposes, powers and duties of the Association are subject to any limits set by law or by the Declaration, the Bylaws, or the Affiliation Agreement. The Developer, the Club Operator, and the Network Operator are each expressly declared to be intended third-party beneficiaries of this limitation. This means that this limitation is intended to protect them and that they may enforce it.

**ARTICLE 6  
BOARD OF DIRECTORS**

**Section 6.1 Authority of Board.** Subject to any limits imposed by law:

A. The business and affairs of the Association are controlled by its Board of Directors. Except as limited by law or by the Declaration or Bylaws, the Board may exercise all powers and must perform all duties of the Association. The Board may not, however, take any action that, by law or under the Declaration or Bylaws, must be taken, authorized or approved by the Members of the Association, or by some part or percentage of them.

B. The Bylaws govern the method of electing, removing and filling vacancies in the Board, and the term of office of Directors and officers.

C. Subject to any limitations in the Hawaii Nonprofit Corporation Act, the Board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the Plan Manager or the Plan Operator. This authority is subject to any limits contained in the Declaration or in the Bylaws.

**Section 6.2 Number of Directors.** The Board will have not less than three (3) Directors nor more than nine (9). The number of Directors may be changed by an amendment to these Articles or to the Bylaws.

**Section 6.3 Initial Directors and Officers.** The initial Board will consist of five (5) Directors. The following are the names and residence addresses of the initial officers and Directors:

---

<u>Name</u>	<u>Office</u>	<u>Residence Street Address</u>
Joel Pope	President/Director	124 South Sewalls Point, Stuart, Florida 34996
Helen H. W. Lanford	Vice President/Director	1140 Eha Street, #30-206, Waihuku, Hawaii 96793
Teri Castleberry	Secretary/Director	386 Misty Meadow Drive, Ocoee, Florida 34761
Thorp S. Thomas	Treasurer/Director	3828 Lake Serene Drive, Orlando, Florida 32836
Paulette Temple	Assistant VP/Director	728 Crescent Valley Ranch Road, Davenport, Florida 33837

---

These persons will hold office until replacement officers and Directors are elected or appointed in the manner provided in the Bylaws.

Assistant Secretaries and/or Assistant Treasurers. The Board will determine the title, term of office, authority and duties of these officers.

**ARTICLE 7  
OFFICERS**

**Section 7.1 Required Officers.** The corporation must have a President, a Vice-President, a Secretary, and a Treasurer.

**Section 7.2 Other Officers.** The Association may have other officers as may be deemed necessary or useful, including one or more Assistant Vice Presidents,

**Section 7.3 Appointment of Officers.** The Board will appoint the officers required by Section 7.1. The Board may appoint any officers permitted by Section 7.2 at a later date, or it may authorize the President or another other officer to do so.

**Section 7.4 Qualifications of Officers.** Unless the Bylaws provide otherwise, any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President must be a Director. The Vice President,

Secretary, and Treasurer may be Directors but they do not have to be Directors.

## **ARTICLE 8 MEMBERS AND VOTING**

**Section 8.1 Members.** The corporation has members. Memberships will be issued only in the manner and on the conditions described in the Declaration and Bylaws. The corporation may have different kinds or classes of Members as described in these Articles or in the Declaration or Bylaws.

**Section 8.2 Voting.** The Members are entitled to vote as provided in these Articles and the other Vacation Plan Documents.

A. The Owner of each Every-Other-Year Vacation Ownership Interest has one vote. The Owner of each Every-Year Vacation Ownership Interest has two votes. When a Vacation Ownership Interest is owned by more than one person, its co-Owners do not each receive one or two votes. Instead, the co-Owners of that Vacation Ownership Interest must share the one or two votes for that Vacation Ownership Interest. Only one vote may be cast for each Every-Other-Year Vacation Ownership Interest, and only two votes may be cast for each Every-Year Vacation Ownership Interest.

B. Voting will not be done by class except where the Vacation Plan Documents expressly provide otherwise. For example:

1) Section 10.1 of these Articles, and certain provisions of the other Vacation Plan Documents, require (i) the vote of the Members other than the Developer, plus (ii) the vote or written consent of the Developer. In those cases, voting will be done by class and the Developer will be considered to be a separate class.

2) Section 10.3 of these Articles, and certain provisions of the other Vacation Plan Documents, permit the amendment of these Articles or other Vacation Plan Documents by vote or written consent of the Developer alone. In such cases, the Developer will be considered to be the sole member of a separate class of voting Members and only the Developer can vote on such issues.

3) In cases where the Vacation Plan Documents provide for action by a "Majority of the Owners" or by a "Majority of the Members" or similar provisions, the votes of all Members, including the Developer if it is then a Member, will be counted without regard to the existence of separate classes. For example, if the Developer has 1,000 votes and the other Members have 1,000 votes, then 1,001 votes would constitute a majority.

4) In cases where the Vacation Plan Documents provide for action solely by vote of a "Majority of the Owners (not counting the votes of the Developer)" or by a "Majority of the Owners Voting (not counting the votes of the Developer)" or similar provisions, the Developer will be considered to be the sole member of a separate class of voting Members, and it will not be able to vote on such issues. This does not limit the Developer's right to vote in circumstances like those described in section 8.2B.1).

C. If any Member or the Member's guest violates the Vacation Plan Documents, the Association may, among other things, suspend the Member's rights under the Vacation Plan Documents, including the Member's rights to vote or participate in any matter before the Association. The nature of this right and the procedures for suspension are stated in the Declaration and Bylaws.

D. In all other respects, voting rights are governed by and may be limited, enlarged or denied as provided in the Vacation Plan Documents.

## **ARTICLE 9 NONPROFIT NATURE**

The corporation is nonprofit in nature. It cannot authorize or issue shares of stock. No dividends may be paid and no part of the income or profit of the corporation may be distributed to its Members, Directors, or officers. Subject to any limits contained in the Declaration or Bylaws: (a) the Association may pay reasonable compensation to its Members, officers or Directors for services actually provided to or for the benefit of the Association, and (b) the Association may reimburse any expenses incurred for the Association by any officer, Director, Member, agent or employee, or any other person or corporation authorized by the Board. Upon dissolution or final liquidation, the Association may make distributions to its Members in

accordance with the requirements of the Bylaws and the Hawaii Nonprofit Corporation Act, and no such distribution will be deemed to be a dividend or a distribution of income or profit (as now provided by the Hawaii Nonprofit Corporation Act).

#### ARTICLE 10 AMENDMENTS

**Section 10.1 Amendment by Vote of Members.** Except as provided in sections 10.2 and 10.3, these Articles may be amended by a resolution adopted by the vote of (i) a majority of a quorum of the Board, (ii) two-thirds of the Members present at a properly called meeting of the Association; and (iii) so long as the Developer owns a Vacation Ownership Interest or holds a Mortgage on a Vacation Ownership Interest, or is deemed to be a Member, the Developer. The term "Two-Thirds of the Members" means Members holding two-thirds of the votes held by Members present at the meeting, in person or by proxy.

**Section 10.2 Amendment Without Vote of Members.** These Articles may be amended by the vote of a majority of the Directors in office as necessary to conform the Articles to any change to the Declaration or Bylaws made by the Developer when using its reserved rights to amend the Declaration or Bylaws. No Members are entitled to vote on any amendment proposed for this purpose.

**Section 10.3 Amendment By Developer.** These Articles may be amended by the vote or written consent

of the Developer when using its reserved rights to amend the Vacation Plan Documents as described in the Declaration or Bylaws. No other Members are entitled to vote on any amendment to be made in this manner, and no notice is required for any meeting called for the purpose of making an amendment in this manner.

**Section 10.4 Amendment of Developer's, Club Operator's or Network Operator's Rights.** No amendment may change the rights and privileges of the Developer under these Articles or the other Vacation Plan Documents unless the Developer approves the amendment in writing. So long as the Plan is part of the Club no amendment may change the rights and privileges of the Club Operator under these Articles or the other Vacation Plan Documents unless the Club Operator approves the amendment in writing. Likewise, so long as the Plan is part of the Club and the Club is part of the Network, no amendment may change the rights and privileges of the Network Operator under these Articles or the other Vacation Plan Documents unless the Network Operator approves the amendment in writing.

#### ARTICLE XI REGISTERED AGENT

The initial registered agent in Hawaii is Helen M. Lanford. Her street address is 10 Hoohui Street, Suite 307, Lahaina, Maui, Hawaii 96761.

I CERTIFY under the penalties of Section 415B-158, Hawaii Revised Statutes, that I have read the statements contained in this document and that the statements are true and correct.

DATED this 5th day of March, 2001.

HELEN H. W. LANFORD  
(Type/Print Name of Incorporator)

Helen H. W. Lanford  
(Signature of Incorporator)

AL 11

TO: HONOLULU, HAWAII

2734947  
SEP 18 2001 12:30

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

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

This document contains 91 pages.

Tax Map Key: 2<sup>nd</sup> Div., 4-4-14-3

## *Ocean Resort Villas Vacation Ownership Plan*

### DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VACATION OWNERSHIP

(A Vacation Ownership Plan in the  
OCEAN RESORT VILLAS,  
a Fee Simple Condominium)

THIS DECLARATION is made on the 14<sup>th</sup> day of September, 2001, by SVO PACIFIC, INC. (the "Developer").

The Developer owns the Apartments described in Exhibit "A" which is attached to and part of this Declaration. They are located in the Ocean Resort Villas condominium. This Declaration establishes a plan for sharing the ownership and use of the Apartments described in Exhibit "A" and any other Apartments submitted to this Declaration in the future. This plan is called the "Vacation Ownership Plan" or just the "Plan." The name of the Plan is *Ocean Resort Villas Vacation Ownership Plan*.

To help you read this Declaration, we included a table of contents. Key terms are defined in Chapter 1 and in the glossary of legal terms in Section 18.3. Other terms are defined elsewhere in this Declaration. To help you find them, we also included an index of all defined terms.

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## 1. DEFINITIONS.

This Chapter 1 defines certain words or phrases having special meanings in this Declaration or in the Bylaws. Other Chapters include definitions of key words or phrases that are introduced or explained in those Chapters. Section 19.5 contains a glossary of key legal terms. Finally, some terms are defined elsewhere in this document in order to put them in context. These terms will have these special meanings except where the context clearly requires otherwise.

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

**1.1 THE VACATION PLAN.** The Ocean Resort Villas Vacation Ownership Plan is a plan for sharing the use of certain Condominium Apartments. The Plan also provides for sharing the expenses of owning and operating the Apartments and the Plan. The nature of the Plan and the rights and duties of the Developer and anyone else who participates in the Plan are described in various legal documents. These definitions are used to describe the Plan and the documents that govern it:

**A. "VACATION OWNERSHIP PLAN" or "PLAN"** means the Plan created by and existing under this Declaration and the other Vacation Plan Documents.

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

1) **"DECLARATION"** means this document.

2) **"ARTICLES"** means the Articles of Incorporation of the Ocean Resort Villas Vacation Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. The Articles established and govern the Association as a corporation.

3) **"BYLAWS"** means the Bylaws of the Association. The Bylaws are attached as Exhibit "C" to this Declaration.

4) **"ASSOCIATION RULES"** means the Rules adopted by the Developer and any changes made to them from time to time by the Plan Manager (with the Board's approval) acting under Section 12.3H of this Declaration.

**C. "DEVELOPER"** means SVO Pacific, Inc., a Florida corporation. The Developer created the Plan.

**D. "DEVELOPER'S RESERVED RIGHTS"** means all rights reserved to the Developer in this Declaration or in the

Bylaws. For example, see the Developer's rights described in Sections 3.4B, 3.5A, 4.1, 4.9, 17.1, 17.2, 17.4A, and 18.1B. This is not intended to be a list of all of the Developer's Reserved Rights.

**1.2 THE ASSOCIATION.** The Association serves as the association of persons who own Vacation Ownership Interests in the Plan. These definitions are used to describe the Association and its members:

**A. "ASSOCIATION"** means the Ocean Resort Villas Vacation Owners Association. It is a Hawaii non-profit corporation. Do not confuse it with the "Condominium Association", the "Master Association", or the "Ka'anapali North Beach Association." Those associations are described later in this Declaration.

1) **"BOARD"** means the Board of Directors of the Association.

2) **"PLAN MANAGER"** means the agent hired by the Developer to manage the Vacation Ownership Plan. It also means any replacement agent hired by the Board to manage the Plan. See Section 12.4 for details.

**B. "OWNER" OR "VACATION OWNER"** means the owner of a Vacation Ownership Interest. The following persons are "Owners":

1) The Owner named in the First Deed of a Vacation Ownership Interest and any person to whom that Vacation Ownership Interest is later transferred, while he or she owns it.

2) The buyer under an Agreement of Sale. While an Agreement of Sale is in effect, only the buyer (and not the seller) will be considered the Owner. Even so, the seller may keep the right to vote on "matters substantially affecting his security interest" as that phrase is used in the Condominium Property Act. If the Agreement of Sale is canceled, the seller will become the Owner again. "Agreement of Sale" is defined in the glossary (Section 19.5).

3) Someone who leases a Vacation Ownership Interest. This applies only to the extent and for the purposes stated in a recorded lease of a Vacation Ownership Interest as required by the Condominium Property Act.

4) The Developer with respect to any Vacation Ownership Interest not transferred by a First Deed or an Agreement of Sale or a recorded lease.

**1.3 VACATION OWNERSHIP INTERESTS.** This Declaration divides the Apartments included in the Plan into "Vacation Ownership Interests." The Developer intends to sell these Vacation Ownership Interests to the public. The Owners of the Vacation Ownership Interests will have the right to use the

Apartments included in the Plan on the terms and conditions stated in the Vacation Plan Documents. Different kinds of Vacation Ownership Interests have different use rights. These terms are used to describe the Vacation Ownership Interests:

A. "VACATION OWNERSHIP INTEREST" means an Every-Year Vacation Ownership Interest or an Every-Other-Year Vacation Ownership Interest. See Section 4.2 for details.

B. "EVERY-YEAR VACATION OWNERSHIP INTEREST" or "ANNUAL VACATION OWNERSHIP INTEREST" means a Vacation Ownership Interest that gives its Owner the right to reserve the use of a Vacation Unit every Use Year.

C. "EVERY-OTHER-YEAR VACATION OWNERSHIP INTEREST" or "BIENNIAL VACATION OWNERSHIP INTEREST" means an Even-Year Vacation Ownership Interest or an Odd-Year Vacation Ownership Interest. See Section 4.3 for details.

1) "EVEN-YEAR VACATION OWNERSHIP INTEREST" means a Vacation Ownership Interest that gives its Owner the right to reserve the use of a Vacation Unit in Use Years that end in an even number (for example, 2002, 2004, and so on).

2) "ODD-YEAR VACATION OWNERSHIP INTEREST" means a Vacation Ownership Interest that gives its Owner the right to reserve the use of a Vacation Unit in Use Years that end in an odd number (for example, 2001, 2003, and so on).

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

A. "VACATION UNIT" means an Apartment included in the Vacation Ownership Plan. Each Apartment described in Exhibit "A" is a "Vacation Unit." Each Apartment added to the Plan by the Developer acting under Section 17.2 is also a "Vacation Unit."

B. "COMMON FURNISHINGS" means all things owned or leased by the Association for use by the Owners or for operating or maintaining the Vacation Property or the Plan. It includes, for example, furniture, appliances, and furnishings (like linens and kitchenware) in the Vacation Units, as well as equipment (like computers, tools and ladders) and motor vehicles owned or leased by the Association for the benefit of the Plan. The Association may also buy or lease things like bicycles, surfboards, videotapes, and other recreational property for use by or to rent to Owners and other Occupants. These are also Common Furnishings.

C. "VACATION PROPERTY" means the Vacation Units and the Common Furnishings

1.5 THE CONDOMINIUM. The Vacation Units are Condominium Apartments in the Ocean Resort Villas condominium. The Condominium is governed by the Condominium Documents. These documents created the Condominium and divided it into Apartments and Common Elements. They also describe the rights and duties of the Condominium Developer and the Apartment Owners. These definitions are used to describe the Condominium and the documents that govern it:

A. "CONDOMINIUM" means the Ocean Resort Villas condominium project. The Condominium consists of Apartments and Common Elements.

1) "APARTMENT" means any "Apartment" (as defined by the Condominium Property Act) in the Condominium.

2) "COMMON ELEMENTS" means all parts of the Condominium except the Apartments. Some Common Elements, called "*Limited Common Elements*", may be used only by the Owners of certain Apartments.

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

1) "CONDOMINIUM DECLARATION" means the "Declaration of Condominium Property Regime of Ocean Resort Villas" described in Exhibit "A". It established and governs the Condominium.

2) "CONDOMINIUM BYLAWS" means the "Bylaws of the Association of Apartment Owners of Ocean Resort Villas" described in Exhibit "A".

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

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

5) "DECLARATION OF MERGER" means the "Declaration of Merger of Condominium Phases of Ocean Resort Villas" described in Exhibit "A". It provides for an administrative merger of the Condominium with one or more other condominium projects on adjacent parcels of land. This means that the condominium projects would be managed and used as if they were one.

If there is a merger under the Declaration of Merger, then:

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

(b) The terms "Condominium Declaration", "Condominium Bylaws", and "Condominium Map" will refer to the Condominium Declaration, Bylaws, and Condominium Map for each of the merged projects.

The Declaration of Merger explains which documents govern in case of inconsistencies.

**C. "CONDOMINIUM ASSOCIATION"** means the Association of Apartment Owners of Ocean Resort Villas. It is an Association of all of the Owners of Apartments in the Condominium. The Condominium Association manages the Condominium. It is separate from the Association, the Master Association, and the Ka'anapali North Beach Association.

If there is a merger under the Declaration of Merger, then the term "Condominium Association" will mean the Association of Apartment Owners for the merged projects.

**D. "CONDOMINIUM DEVELOPER"** means the "Developer" under the Condominium Declaration. If the Condominium Developer transfers some or all of its rights or duties as the "Developer" under the Condominium Documents to someone else, then that person will become the "Condominium Developer" to the extent of the rights or duties transferred.

**1.6 MASTER ASSOCIATION.** The Developer is developing the Ocean Resort Villas condominium. The Developer may also develop other condominium projects, hotels, vacation ownership or time share projects, and/or fractional ownership projects on land next to the Ocean Resort Villas condominium or elsewhere in Ka'anapali North Beach.

The Ocean Resort Villas condominium includes various amenities. For example, it has waterfalls, a water slide, a slide mountain, swimming pool, koi pond, spas, pool decks, pool bathrooms, beach and pool showers, and tennis courts.

The Developer wants to be sure that the owners and occupants of the resort apartments in the Ocean Resort Villas condominium may use these amenities and perhaps certain other amenities. It also wants to provide a way to make these amenities available to owners and occupants of other projects located in Ka'anapali North Beach.

To accomplish this, the Developer created the Master Association. The Developer intends to transfer a certain Apartment to the Master Association. Certain amenities of the Ocean Resort Villas condominium are "limited common elements" of that Apartment. This means that the Master Association, as the owner of that Apartment, will have the right to use those amenities. The Master Association will, in

turn, make these amenities available to the members of the Master Association and their Guests.

All owners of resort Apartments in the Ocean Resort Villas condominium will be members of the Master Association. In addition, the Developer may arrange membership for some or all of the owners and occupants of other projects located in Ka'anapali North Beach.

The Developer would prefer that the landscaping and grounds of the Ocean Resort Villas condominium and other projects in Ka'anapali North Beach provide a complementary vacation ambience consistent with a first class destination resort. The Developer also wants to be sure that they can be updated and enhanced over the years to keep up with modern trends for first class destination resorts. To accomplish this, the Developer has designated most or all of the grounds and landscaping of the Ocean Resort Villas condominium as limited common elements of the Apartment previously mentioned. The Developer intends for the Master Association to manage and maintain the grounds and landscaping for the Ocean Resort Villas condominium and possibly for other projects.

Finally, the Developer intends to reserve the right to use some of the property owned or controlled by the Master Association for the Developer's own purposes. For example, the Developer wants to be able to do these things:

- ❖ It wants to be able to show the amenities and the grounds to persons who might buy apartments, time share interests or fractional ownership interests.
- ❖ It wants to be able to offer activities to these prospective purchasers.
- ❖ It wants to be able to establish booths or concessions for the sale of tourist activities or other incentives intended to encourage prospective purchasers to attend a sales presentation.
- ❖ It wants to be able to conduct receptions for purchasers and prospective purchasers for the purpose of promoting the sales of apartments, time share interests or fractional ownership interests.

These definitions are used to describe the Master Association.

**A. "MASTER ASSOCIATION"** means the Ocean Resort Master Association. It is a non-profit Hawaii corporation.

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

1) "MASTER DECLARATION" means the "Declaration Of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association". It dedicates certain property for use by the Master Association.

2) "MASTER ARTICLES" means the Articles of Incorporation of Ocean Resort Master Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. They established and govern the Master Association as a corporation.

3) "MASTER BYLAWS" means the bylaws adopted by the Master Association.

4) "MASTER RULES AND REGULATIONS" means any rules and regulations adopted by the Master Association.

C. "MASTER ASSOCIATION AMENITIES" means any amenities made available by the Master Association for use by the Owners and Occupants of the Vacation Units.

1.7 THE STARWOOD PACIFIC VACATION CLUB. The Developer has arranged for the Plan to become part of the Starwood Pacific Vacation Club. The Starwood Pacific Vacation Club is designed to link certain timeshare resorts together. This gives the Owners more opportunities for places to stay when choosing their vacation destination. These definitions are used to describe the Starwood Pacific Vacation Club and related matters.

A. "CLUB" means the Starwood Pacific Vacation Club.

B. "STARWOOD PACIFIC VACATION CLUB" is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered to Owners and Other Club Members by the Club Operator from time to time. The benefits and services include: (i) a reservation system that lets Owners reserve a Vacation Unit in the Plan, (ii) an exchange program that lets Owners reserve Units in other Club Resorts; and (iii) any other vacation, travel, entertainment, or other benefits that the Club Operator may offer to the Owners or Other Club Members from time to time. The Club is not a legal entity or Association of any kind. It is a business owned and operated by the Club Operator. It is subject to change from time to time as the Club Operator determines in its sole discretion, subject to any limitations contained in the Club Documents.

C. "CLUB OPERATOR" means SVO Hawaii Management, Inc., a Hawaii corporation.

D. "CLUB DOCUMENTS" means any documents governing the Club, and any changes and additions properly made to any of them from time to time, including but not limited to these documents:

1) "CLUB AFFILIATION AGREEMENT" means an agreement between the Club Operator and the Association

that requires or permits Owners to participate in the Club. The Developer may also be a party to the agreement. The Club Affiliation Agreement provides, among other things, that all Owners of Vacation Ownership Interests in the Plan automatically will be enrolled in and will continue to be members of the Club.

2) "CLUB RULES" means any rules adopted by the Club Operator from time to time. Among other things, the Club Rules describe how to reserve property in this Plan or in other Club Resorts.

3) "CLUB POLICIES" means any policies and procedures adopted by the Club Operator from time to time.

E. "CLUB VACATION PLAN" means any vacation ownership or time share plan or program, or any fractional ownership program, where at least one owner of a time share interest or fractional ownership interest is a member of the Club. The Ocean Resort Villas Vacation Ownership Plan will be a "Club Vacation Plan" while the Club Affiliation Agreement is in effect. Any Club Vacation Plan other than this one is called an "Other Club Vacation Plan" or "Another Club Vacation Plan".

1) "RESORT" means property containing a Unit. Normally "Resort" would mean a real estate development, such as a condominium project. But there may be other kinds of Resorts. For example, a ship may also be considered a "Resort" and its cabins may be considered to be "Units".

2) "RESORT DOCUMENTS" means the documents that govern a particular Resort. It does not include any Club Documents, Exchange Contract, or similar documents.

3) "UNIT" means (i) a condominium unit, townhouse unit, apartment, hotel room, house, mobile home, recreational vehicle, houseboat, cabin of a ship, pleasure yacht, or other property which is suitable and intended to provide overnight lodging for one or more persons, or (ii) a campsite suitable and intended to provide overnight parking and utility services for a recreational vehicle.

4) "CLUB UNIT" means a Unit in a Club Vacation Plan that is available for reservation by Club Members.

5) "CLUB RESORT" means any Resort that contains a Club Unit.

F. "CLUB MEMBER" means anyone who is a member of the Club.

G. "OTHER CLUB MEMBERS" and "MEMBERS OF OTHER CLUB VACATION PLANS", and similar terms mean Club Members who do not own a Vacation Ownership Interest in the Ocean Resort Villas Vacation Ownership Plan.

**1.8 THE STARWOOD VACATION NETWORK.** The Club Operator may arrange for the Club to become part of the Starwood Vacation Network. The Starwood Vacation Network links certain timeshare resorts and vacation clubs together. These definitions are used to describe the Starwood Vacation Network and related matters.

**A. "NETWORK"** means the Starwood Vacation Network.

**B. "STARWOOD VACATION NETWORK"** is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered to Network Members by the Network Operator from time to time. The benefits and services include: (i) an Exchange Program that lets Network Members reserve Units in other Resorts participating in the Network; and (ii) any other vacation, travel, entertainment, or other benefits that the Network Operator may offer to the Network Members from time to time. The Network is not a legal entity or Association of any kind. It is a business owned and operated by the Network Operator, and it is subject to change from time to time as the Network Operator determines in its sole discretion.

**C. "NETWORK OPERATOR"** means Starwood Vacation Exchange Company, a Delaware corporation.

**D. "NETWORK MEMBER"** means anyone who is a member of the Network.

**1.9 EXCHANGE PROGRAM.** In some circumstances, Owners can exchange their use rights in this Plan for the right to use other property that is not part of this Plan. This is called an "exchange". This is discussed in greater detail later. These definitions are used to describe Exchange Programs.

**A. "EXCHANGE PROGRAM"** means a service that permits Owners to trade their use rights in the Plan for the right to use other property. For example, the Network is an Exchange Program because it allows Owners in this Plan to trade their use rights for the right to use Units in other Vacation Plans participating in the Network. The Club is also an Exchange Program to the extent that it is used by Owners in this Plan to trade their use rights for the right to use Units in other Club Vacation Plans.

**B. "EXCHANGE COMPANY"** means the operator of an Exchange Program. For example, the Club Operator is an Exchange Company.

**C. "EXTERNAL EXCHANGE PROGRAM"** means any Exchange Program that permits Owners to trade their use rights in this Plan for the right to use property that is not part of the Club.

**D. "EXCHANGE CONTRACT"** means an agreement between the Club Operator and an Exchange Company to make its External Exchange Program available to Owners.

**E. "EXCHANGE USER"** means a person, other than an Owner, whose use of a Vacation Unit is arranged through an Exchange Program. Members of Other Club Vacation Plans are Exchange Users when they are using a Vacation Unit in this Plan.

**1.10 GUESTS AND OCCUPANTS.** Owners may allow someone else to use their reserved time and they may also bring guests. The nature of these rights, and the related responsibilities, are discussed later. These definitions are used to describe occupants of the Vacation Units and their guests:

**A. "OCCUPANT"** means an Owner, Exchange User, or other person who has the right to occupy a Vacation Unit or using any other part of the Condominium. The Guest of any of those persons is also an "Occupant."

**B. "GUEST"** means an Occupant's family, visitors, renters, employees, servants, tenants, *Licenseses* (persons permitted in the Vacation Unit) and *Invitees* (persons invited in). An Exchange User is not considered a "Guest" of the Owner whose Vacation Period he or she uses.

**1.11 KA'ANAPALI NORTH BEACH.** Ka'anapali North Beach is a community association that includes the Condominium and certain other parcels of land. It has its own separate association and its own board of directors. It is governed by its own declaration, and bylaws, and various other documents. Because the Condominium is part of Ka'anapali North Beach, it is governed by the Ka'anapali North Beach Documents. These definitions are used to describe Ka'anapali North Beach:

**A. "KA'ANAPALI NORTH BEACH"** means all of the property that is subject to the Ka'anapali North Beach Declaration.

**B. "KA'ANAPALI NORTH BEACH DOCUMENTS"** means the following documents and any changes and additions properly made to any of them from time to time:

**1) "KA'ANAPALI NORTH BEACH DECLARATION"** means the "Declaration of Covenants, Conditions, Easements and Restrictions for Ka'anapali North Beach" described in Exhibit "A". It established and governs the Ka'anapali North Beach community.

**2) "ARTICLES OF INCORPORATION OF KA'ANAPALI NORTH BEACH MASTER ASSOCIATION, INC."** means the document filed with the Department of Commerce and Consumer Affairs of the State of Hawaii to establish the Ka'anapali North Beach Association as a corporation.

3) "BYLAWS OF KA'ANAPALI NORTH BEACH MASTER ASSOCIATION, INC." means the bylaws adopted by the Ka'anapali North Beach Association.

4) "OTHER KA'ANAPALI NORTH BEACH DOCUMENTS" means any documents that are "Governing Documents" as that term is defined in the Ka'anapali North Beach Declaration.

C. "KA'ANAPALI NORTH BEACH ASSOCIATION" means the Ka'anapali North Beach Master Association, Inc., a Hawaii nonprofit corporation. If the rights or duties of the Ka'anapali North Beach Association are transferred to someone else, then that person will become the "Ka'anapali North Beach Association" to the extent of the rights or duties transferred. The Ka'anapali North Beach Association serves as the association of all of the Owners of real property in Ka'anapali North Beach. Note that the Ka'anapali North Beach Association is completely separate from the Association, the Condominium Association, and the Master Association.

D. "KA'ANAPALI NORTH BEACH AMENITIES" means any amenities or other common areas in Ka'anapali North Beach that are available for use by Owners and Occupants during their Vacation Periods. The Developer cannot promise that there will be any Ka'anapali North Beach Amenities, or that they will be available for use by Owners or other Occupants.

## 2. CREATION OF THE PLAN

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

- ❖ It intends to create a plan for the Owners to share the use, enjoyment, management, upkeep and repair of the Vacation Property and the operation of the Vacation Ownership Plan.
- ❖ It intends to comply with the legal requirements necessary to create the Vacation Ownership Plan and to impose it on the Association and on each Vacation Unit and anyone who has any rights or interests in it.
- ❖ It intends to create or reserve easements in favor of the Developer or other persons.
- ❖ It intends to increase the value, desirability and enjoyment of each Vacation Unit and any interest in it for the benefit of the Developer, the Club Operator, and each of the Owners.

2.2 ADOPTION OF THE VACATION PLAN DOCUMENTS. The Developer declares that:

A. The Vacation Units, and all the Developer's rights in them, are subject to the Vacation Plan Documents. (In legal terms, the Developer is "submitting all of its estate, right, title and interest" to those documents).

B. The Vacation Plan Documents will govern the Vacation Plan and the Vacation Units. In legal terms, the Vacation Units will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Vacation Plan Documents, from now until the Vacation Ownership Plan ends. Anyone who occupies or uses any of the Vacation Property must obey them.

C. The Vacation Plan Documents will be binding on each Vacation Unit. They will also be binding on, and are intended to benefit these persons:

- 1) The Developer.
- 2) The Association.
- 3) The Club Operator.
- 4) Anyone else who owns all or any part of any Vacation Unit, or any Vacation Ownership Interest or other interest in it, now or in the future. This includes, for example, all present and future Owners and their Lenders.
- 5) Anyone who, by law or by agreement, stands in the place of the persons listed in items 1) to 4). Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Vacation Plan Documents. It does not matter how or when a person obtains an interest in a Vacation Unit or whether he or she ever signed the Vacation Plan Documents or expressly agreed to obey them. He or she must still obey them just as if he or she signed them.

All of these people also have the right to enforce the Vacation Plan Documents in any way permitted by the Act or the Vacation Plan Documents.

In legal terms, the Vacation Plan Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this Subsection.

## 2.3 DEVELOPER'S RESERVED RIGHTS.

A. UNDER THE CONDOMINIUM DOCUMENTS. Regardless of what Section 2.2 says, the Developer reserves to itself any and all rights it has under the Condominium Documents as the Condominium Developer. These rights are called the "Developer's Reserved Rights" in the Condominium Documents. They include, for example, the

Developer's rights to build more phases and to create more Apartments on the Condominium, the right to change the Common Elements and each Apartment's common interest in the Common Elements, and various other rights.

**B. UNDER THE MASTER ASSOCIATION DOCUMENTS.**

Regardless of what Section 2.2 says, the Developer reserves to itself any and all rights it has under the Master Association Documents as the Developer of the Master Association. These rights are called the "*Developer's Reserved Rights*" in the Master Association Documents. They include, for example, the Developer's rights to upgrade, add to, or change the Master Association Amenities and the right to operate one or more concession stands, and to conduct certain other commercial operations in or on the Master Association Amenities.

**C. NATURE OF THE DEVELOPER'S RESERVED RIGHTS.**

The Developer alone may exercise the Developer's Reserved Rights under the Condominium Documents and/or under the Master Association Documents. Those rights will not be subject to the Vacation Plan Documents. And those rights will not be transferred to the Association or any Owner unless the Developer signs and records a document that clearly says so. The Developer makes no promise and has no duty to exercise any of the Developer's Reserved Rights under the Condominium Documents or under the Master Association Documents. Neither the Owners nor the Association will have any legal right to insist that it do so.

**3. DESIGNATIONS FOR USE PURPOSES**

**3.1 INTRODUCTION.** The Vacation Ownership Plan provides a system for sharing the use of the Vacation Property. The essential concept is that the Owners will each have the right to use a Vacation Unit for about a week every year or two. This Chapter introduces the concept of a "Use Period" and explains how the use of each Vacation Unit is divided into nightly and weekly Use Periods. It also sets up rules governing when an Owner's rights to use a Vacation Unit begin and end.

**3.2 DEFINITIONS.**

**A. "PLAN OPERATOR"** means the Club Operator at any time when the Plan is part of the Club. If the Plan is no longer part of the Club, then "Plan Operator" means the Association. Note: At any time when the Plan is part of the Club, the Club Operator may assign some or all of its rights and duties, including its rights and duties as Plan Operator, to someone else. It may also subcontract with someone else to perform the duties of the Plan Operator.

**B. "RESERVATION RULES"** means the Club Rules and any changes made to them from time to time by the Club Operator. If the Plan is no longer part of the Club, then

"Reservation Rules" means the Association Rules adopted under Section 12.3H.

**C. "CHECK-IN TIME"** means the time after which Owners and Occupants may check in with the Plan Manager and then occupy their Assigned Unit. The Association Rules set the Check-In Time. They may set different Check-In Times for different Vacation Units.

**D. "CHECK-OUT TIME"** means the time by which Owners and Occupants must move out of their Assigned Unit and check out with the Plan Manager. The Association Rules set the Check-Out Time. They may set different Check-Out Times for different Vacation Units.

**E. "USE PERIOD"** means a Use Week, a Split Week, or a Use Night.

1) "**USE WEEK**" means a period beginning at Check-In Time on one day (the "*Check-In/Check-Out Day*") and ending at Check-Out Time on the same day of the following week.

2) "**SPLIT WEEK**" means a period of less than seven consecutive Use Nights. The Reservation Rules may further define "Split Week".

3) "**USE NIGHT**" means a period beginning at Check-In Time on one day and ending at Check-Out Time the next day.

**F. "CHECK-IN DAY"** means the first day of a Use Period.

**G. "CHECK-OUT DAY"** means the last day of a Use Period.

**H. "VACATION PERIOD"** means a Use Period reserved by an Owner, the Developer, or the Plan Operator for use by an Owner, Exchange User, or other Occupant.

1) "**SPLIT VACATION PERIOD**" means a Vacation Period of less than seven consecutive Use Nights. The Reservation Rules may further define "Split Vacation Period".

**I. "SERVICE PERIOD"** means a Major Service Period or a Minor Service Period.

1) "**MINOR SERVICE PERIOD**" means the time between Check-Out Time and Check-In Time later that day.

2) "**MAJOR SERVICE PERIOD**" means a Use Period set aside for annual maintenance and repair. Each year, the Association may choose up to three Use Nights in each Vacation Unit to be the Major Service Period for that Vacation Unit. If needed to maintain or upgrade the Vacation Units and if the Plan's vacancy rate is high enough to permit it, the Association may set aside additional Use Periods as

Major Service Periods. When choosing Major Service Periods, the Association may not select a Use Week that would prevent use of a Vacation Unit during the Owner's Use Week by an Owner having a Fixed Vacation Period, an Ultra Vacation Period, an Ultra Premium Vacation Period, or an Event Vacation Period.

**3.3 VACATION CALENDAR.** Each year the Plan Operator will prepare a "Vacation Calendar". A sample Vacation Calendar is attached to this Declaration as Exhibit "D". The Vacation Calendar will divide the year into 52 (or, depending on the calendar year, 53) Use Weeks. The Use Weeks will be numbered from 1 to 52 (or 53). The 52 (or 53) Use Weeks make up the "Use Year". The Use Year begins at Check-In Time on the first day of Use Week no. 1 (which will be one of the first seven days of the calendar year) and ends at Check-Out Time on the first day of Use Week no. 1 of the next calendar year.

**A. CHECK-IN/CHECK-OUT DAY.** The Vacation Calendar will state the Check-In/Check-Out Day for each Vacation Unit. It will be a Friday, Saturday or Sunday unless the Vacation Calendar says otherwise. The Plan Operator may change the Check-In/Check-Out Day for any Vacation Unit during any Use Year by extending or shortening a Use Period used as a Service Period or any unreserved or unused Use Period in that Vacation Unit. The Plan Operator may not change the Check-In/Check-Out Day if doing so will shorten an Occupant's Vacation Period or will change, less than six months in advance, the Check-In/Check-Out Day for any Use Period already reserved by an Owner. There is no requirement (a) that all Vacation Units have the same Check-In/Check-Out Day; (b) that any Vacation Unit have the same Check-In/Check-Out Day every Use Year; or (c) that the mix of Check-In/Check-Out Days among all Vacation Units be identical for each Use Year or during any Use Year.

### 3.4 EVENT WEEKS.

**A. INITIAL EVENT WEEKS.** Most Use Weeks are identified by Use Week number. Some Use Weeks, called "Event Weeks", are identified by name, as follows:

1) "NEW YEARS WEEK" means the last Use Week in the Use Year.

2) "CHRISTMAS WEEK" means the next to last Use Week in the Use Year.

3) "GOLDEN WEEK" means the Use Week during which Golden Week is recognized as a national holiday in Japan. Golden Week consists of April 29 and May 3, 4 & 5. The Use Week that includes the most number of these dates will be deemed Golden Week for purposes of this Declaration.

4) "OBON WEEK" means the Use Week that includes August 15. Obon is a religious holiday in Japan.

When August 15th falls on a Check-In/Check-Out Day, the Vacation Calendar will state which Use Week will be Obon Week.

**B. ADDITIONAL EVENT WEEKS.** The Developer may create new Event Weeks:

1) When adding Apartments to the Vacation Ownership Plan. The Developer may do so by identifying the new Event Week in the Declaration of Annexation for the Apartments being added to the Vacation Ownership Plan.

2) With respect to Vacation Units in which the Developer owns all of the Vacation Ownership Interests such that the Developer could remove those Vacation Units from the Plan as described in Section 17.4A. The Developer may do so by amending this Declaration to identify the new Event Weeks.

**3.5 DESIGNATION OF UNIT TYPES.** Although the Condominium Declaration may divide the Apartments differently, for purposes of the Vacation Ownership Plan, all Vacation Units will be considered to be one of eight "Unit Types", as follows:

- ❖ One-Bedroom Ocean View Villa.
- ❖ One-Bedroom Island View Villa.
- ❖ Two-Bedroom Ocean Front Villa.
- ❖ Two-Bedroom Ocean View Villa.
- ❖ Two-Bedroom Island View Villa.
- ❖ Two-Bedroom Deluxe Ocean Front Villa.
- ❖ Two-Bedroom Deluxe Ocean View Villa.
- ❖ Two-Bedroom Deluxe Island View Villa.

A list of the Vacation Units showing their Unit Type is attached as Exhibit "B".

**A. ADDITIONAL UNIT TYPES.** Under the Condominium Documents, the Condominium may be expanded by adding new phases. The Developer may include in the Vacation Ownership Plan one or more Apartments in any later phase of the Condominium. The Developer may create new Unit Types as follows:

1) It may do so when it adds Apartments to the Vacation Ownership Plan. It does not matter whether those Apartments are located in the first phase or any later phase of the Condominium. The Developer may do this by identifying the new Unit Type in the Declaration of Annexation for the Apartments being added to the Vacation Ownership Plan.

2) It may do so with respect to Vacation Units in which the Developer owns all of the Vacation Ownership Interests such that the Developer could remove those Vacation Units from the Plan as described in Section 17.4A. The Developer may do this by amending this Declaration to identify the new Unit Types.

**3.6 LOCK-OFF UNITS.** Some of the Vacation Units have been designed so that they can be used either as a whole Unit or on a "lock-off" basis. For example, a Two-Bedroom Ocean View Villa can be used on a lock-off basis. It may be used as a two-bedroom Apartment. But it may also be used as two separate Units: a one-bedroom Unit and a studio Unit, each having its own separate front door that can be locked. In this Declaration, when a Vacation Unit can be used on a lock-off basis, it is sometimes called a "*Lock-Off Unit*".

**A. LOCK-OFF USE.** When a Vacation Unit is used as a whole Unit, it is called a "*Full Unit*". When it is used as two separate Units on a lock-off basis, then the larger Unit is called the "*Deluxe Side*" and the other Unit is called the "*Guest Side*." The Reservation Rules may permit an Owner who has the right to use a Lock-Off Unit for one Use Week to choose either (a) to use a Full Unit for one Use Week, or (b) to use a Deluxe Side for one Use Week and a Guest Side for another Use Week.

#### **4. CREATION OF VACATION OWNERSHIP INTERESTS**

**4.1 CREATION OF THE VACATION OWNERSHIP INTERESTS.** Each Vacation Unit is here and now divided into fifty-two (52) separate Every-Year Vacation Ownership Interests. The Developer may (but does not have to) further divide each Every-Year Vacation Ownership Interest into one Even-Year Vacation Ownership Interest and one Odd-Year Vacation Ownership Interest. There are at least fifty-two (52) Vacation Ownership Interests in each Vacation Unit and there may be up to one hundred and four (104) Vacation Ownership Interests in each Vacation Unit. For obvious reasons, there must be one Even-Year Vacation Ownership Interest for each Odd-Year Vacation Ownership Interest; the reverse is also true. So long as this requirement is met, the Developer may divide each Vacation Unit into any combination of Every-Year Vacation Ownership Interests and Every-Other-Year Vacation Ownership Interests.

**4.2 NATURE OF A VACATION OWNERSHIP INTEREST.** An Vacation Ownership Interest consists of these things:

**A.** A membership in the Association.

**B.** An undivided interest in a Vacation Unit. The term "undivided interest" is defined in the glossary. It refers to the idea that a person will be one of the co-Owners of a Vacation Unit. The other co-Owners will be the Owners of other

Vacation Ownership Interests in that Vacation Unit. The undivided Interest will be one-fifty-second (1/52nd) for an Every-Year Vacation Ownership Interest and one-one-hundred and fourth (1/104<sup>th</sup>) for an Every-Other-Year Vacation Ownership Interest.

**C.** The right to reserve the use of a Vacation Unit for one Use Week in every Use Year (for an Every-Year Vacation Ownership Interest) or every other Use Year (for an Every-Other-Year Vacation Ownership Interest). The reservation rights are discussed in more detail in Sections 4.3, 4.4, and 4.4G.

**D.** During the Use Period reserved, the right to use (i) a Vacation Unit and the Common Furnishings in it, (ii) the Common Elements of the Condominium and any Limited Common Elements available to the Vacation Unit, (iii) the Master Association Amenities to the extent permitted under the Master Association Documents, and (iv) the Ka'anapali North Beach Amenities, if any, to the extent permitted under the Ka'anapali North Beach Documents.

#### **4.3 EVERY-YEAR, EVEN-YEAR AND ODD-YEAR RESERVATION RIGHTS.**

**A. EVERY-YEAR VACATION OWNERSHIP INTERESTS.** An Owner of an Every-Year Vacation Ownership Interest has the right to reserve and then to use a Vacation Unit for one Use Week in each Use Year.

**B. EVEN-YEAR VACATION OWNERSHIP INTERESTS.** An Owner of an Even-Year Vacation Ownership Interest has the right to reserve and then to use a Vacation Unit for one Use Week in each Use Year that ends in an even number (for example, 2000, 2002, 2004, and so on). To be clear, the Use Week reserved must fall within a Use Year that ends in an even number, but the reservation may be requested at any time permitted by the Reservation Rules.

**C. ODD-YEAR VACATION OWNERSHIP INTERESTS.** An Owner of an Odd-Year Vacation Ownership Interest has the right to reserve and then to use a Vacation Unit for one Use Week in each Use Year that ends in an odd number (for example, 2003, 2005, and so on). To be clear, the Use Week reserved must fall within a Use Year that ends in an odd number, but the reservation may be requested at any time permitted by the Reservation Rules.

**4.4 KINDS OF VACATION PERIODS.** A Vacation Ownership Interest can have a Floating Vacation Period, a Fixed Vacation Period, an Event Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period. Except as provided in Section 4.9A, the kind of Vacation Period for a particular Vacation Ownership Interest cannot be changed. Note that the Developer may create Vacation Ownership Interests having new kinds of reservation and use rights. See Section 17.2B.

**A. FLOATING VACATION PERIOD.** If a Vacation Ownership Interest has a Floating Vacation Period, then the Owner must reserve a Use Week. To do so, the Owner must follow the procedures in the current Reservation Rules. An Owner cannot reserve a Use Period chosen by the Association to be a Major Service Period or any Use Week that is already reserved or that any other person has the exclusive right to reserve. A Vacation Ownership Interest that has a Floating Vacation Period is called a "*Floating Vacation Ownership Interest*."

**B. FIXED VACATION PERIODS.** If a Vacation Ownership Interest has a Fixed Vacation Period, then its Owner has the exclusive right (meaning the first chance) to reserve a specific Use Week in each Use Year (for an Every-Year Vacation Ownership Interest) or in every other Use Year (for an Every-Other-Year Vacation Ownership Interest). A Vacation Ownership Interest that has a Fixed Vacation Period is called a "*Fixed Vacation Ownership Interest*." It has these features:

1) **OWNER'S USE WEEK.** In the case of a Fixed Vacation Period, "*Owner's Use Week*" means the Use Week that the Owner has the exclusive right to reserve. The Owner's First Deed will fix the Owner's Use Week by Use Week number or name. Note that even though the Owner has the exclusive right to reserve a specific Use Week, the Check-In and Check-Out Days of the Owner's Use Week may change as provided in Section 3.3A.

2) **RESERVATION.** The Owner must reserve the Owner's Use Week by the deadline stated in the Reservation Rules. If the Owner does not do so, then the Owner has the right to reserve a different Use Week (subject to availability) just as if the Owner had a Floating Vacation Period. In either case, the Owner must follow the procedures in the current Reservation Rules. The reservation deadline cannot be less than sixty (60) days after the first day when the Owner can request a reservation.

**C. ULTRA VACATION PERIODS.** If a Vacation Ownership Interest has an Ultra Vacation Period, then the Plan Operator will automatically reserve a specific Use Week for use by that Owner each Use Year (for an Every-Year Vacation Ownership Interest) or every other Use Year (for an Every-Other-Year Vacation Ownership Interest). A Vacation Ownership Interest that has an Ultra Vacation Period is called an "*Ultra Vacation Ownership Interest*." It has these features:

1) **OWNER'S USE WEEK.** In the case of an Ultra Vacation Period, "*Owner's Use Week*" means the Use Week that the Plan Operator automatically reserves for use by the Owner. The Owner's First Deed will fix the Owner's Use Week by Use Week number or name. Note that even though a specific Use Week will automatically be reserved for the Owner, the Check-In and Check-Out Days of the Owner's Use Week may change as provided in Section 3.3A.

2) **CONFIRMATION.** Although the Plan Operator automatically reserves the Owner's Use Week, the Owner must contact the Plan Operator and confirm his or her reservation at least thirty (30) days before the Check-In Day of the Owner's Use Week. Otherwise, the Plan Operator may cancel the automatic reservation. If it does, then the Owner has the right to reserve a different Use Week (subject to availability) just as if the Owner had a Floating Vacation Period. The Owner must follow the procedures in the current Reservation Rules to confirm his or her automatic reservation or to reserve a different Use Week.

**D. ULTRA PREMIUM VACATION PERIODS.** If a Vacation Ownership Interest has an Ultra Premium Vacation Period, then the Plan Operator will automatically reserve a specific Use Week for use by that Owner each Use Year (for an Every-Year Vacation Ownership Interest) or every other Use Year (for an Every-Other-Year Vacation Ownership Interest). A Vacation Ownership Interest that has an Ultra Premium Vacation Period is called an "*Ultra Premium Vacation Ownership Interest*." It has these features:

1) **OWNER'S USE WEEK.** In the case of an Ultra Premium Vacation Period, "*Owner's Use Week*" means the Use Week that the Plan Operator automatically reserves for use by the Owner. The Owner's First Deed will fix the Owner's Use Week by Use Week number or name. Note that even though a specific Use Week will automatically be reserved for the Owner, the Check-In and Check-Out Days of the Owner's Use Week may change as provided in Section 3.3A.

**E. EVENT VACATION PERIODS.** If a Vacation Ownership Interest has an Event Vacation Period, then the Plan Operator will automatically reserve a specific Use Week for use by that Owner each Use Year (for an Every-Year Vacation Ownership Interest) or every other Use Year (for an Every-Other-Year Vacation Ownership Interest). A Vacation Ownership Interest that has an Event Vacation Period is called an "*Event Vacation Ownership Interest*." It has these features:

1) **OWNER'S USE WEEK.** In the case of an Event Vacation Period, "*Owner's Use Week*" means the Use Week that the Plan Operator automatically reserves for use by the Owner. The Owner's First Deed will fix the Owner's Use Week by Event Week name. Note that even though a specific Event Week will automatically be reserved for the Owner, the Check-In and Check-Out Days of the Owner's Use Week may change as provided in Section 3.3A.

**F. TEMPORARY FLOATING USE.** The Reservation Rules may permit the Owner of a Fixed, Event, Ultra, or Ultra Premium Vacation Period to give up his or her special reservation rights for that Use Year and instead be treated as if the Owner had a Floating Vacation Period for that Use Year. In that case, the Owner will have the same reservation and use

rights as an Owner of a Floating Vacation Ownership Interest for that particular Use Year. The Reservation Rules may impose conditions or limitations on the ability of an Owner to do this.

**G. SPLIT WEEKS.** Instead of reserving an entire Use Week, an Owner can reserve up to a total of seven Use Nights as Split Week Use Periods. An Owner may do this only if and to the extent that the Reservation Rules permit it.

**4.5 FIXED AND FLOATING UNIT USE RIGHTS.** A Vacation Ownership Interest can have a "Floating Unit Use Right" or a "Fixed Unit Use Right". Note that the Developer may create Vacation Ownership Interests having new kinds of unit use rights. See Section 17.2B.

**A. FLOATING UNIT USE RIGHT.** If a Vacation Ownership Interest has a Floating Unit Use Right, then the Owner has the right to reserve any Vacation Unit that is the same Unit Type as the Owner's Unit. The Owner cannot, however, reserve a Vacation Unit that is already reserved by someone else or that someone else has the exclusive right to reserve. The Owner also does not have the right to reserve any specific Vacation Unit. This is true even though he or she owns an interest in a specific Vacation Unit.

The Vacation Unit that an Owner will use may not be determined at the time when the Owner makes or confirms his or her reservation. Instead, at the time of Check-In, the Plan Operator may assign to the Owner the use of any Vacation Unit that is considered to be the same Unit Type as the Owner's Unit.

**B. FIXED UNIT USE RIGHT.** If a Vacation Ownership Interest has a Fixed, Event, Ultra, or Ultra Premium Vacation Period, then it may also have a Fixed Unit Use Right. This means that the Owner will have the right to use his or her own Vacation Unit during the Owner's Use Week. An Owner automatically gives up the Fixed Unit Use Right if any of these things happen:

- ❖ If the Owner has a Fixed Vacation Period and does not reserve the Owner's Use Week by the deadline stated in the Reservation Rules.
- ❖ If the Owner has an Ultra Vacation Period and does not confirm his or her reservation by the deadline stated in the Reservation Rules.
- ❖ If the Owner has a Fixed, Event, Ultra, or Ultra Premium Vacation Period and if the Owner gives up his or her special reservation rights for that Use Year and chooses instead to be treated as if the Owner had a Floating Vacation Period for that Use Year as provided in Subsection 4.4F.

**4.6 LOCK-OFF USE.** If the Reservation Rules permit it:

**A.** An Owner entitled to use a Lock-Off Unit for one Use Week may reserve either (a) a Full Unit for one Use Week, or (b) the Deluxe Side of a Lock-Off Unit for one Use Week and the Guest Side of a Lock-Off Unit for one Use Week.

**B.** An Owner may elect to use the Deluxe Side of a Lock-Off Unit during his or her Fixed, Event, Ultra, or Ultra Premium Vacation Period and to give up the right to use the Guest Side during his or her Fixed, Event, Ultra, or Ultra Premium Vacation Period for that Use Year. In that case, the Owner would have the right to reserve the Guest Side of a Lock-Off Unit (that is the same Unit Type as the Owner's Unit) in that same Use Year just as if he or she had a Floating Vacation Period during that Use Year. The Reservation Rules may also do the reverse (i.e., permit an Owner to use the Guest Side of a Lock-Off Unit during the Fixed, Event, Ultra, or Ultra Premium Vacation Period, and to reserve the Deluxe Side of a Lock-Off Unit that is the same Unit Type on a floating basis).

**4.7 MULTIPLE OWNERS; PRIMARY CONTACT PERSON.** If more than one person owns a Vacation Ownership Interest, they may still reserve only one Use Week. If a Vacation Ownership Interest is owned by more than one person or if it is owned by a corporation or other legal entity, the Reservation Rules may require that the Owner choose one person to be the Primary Contact Person. The "Primary Contact Person" is the person to whom notices must be sent and who can make and cancel reservations and otherwise act for the co-Owners of that Vacation Ownership Interest. The Reservation Rules may require that the Owner pay a fee to the Plan Operator to change the Primary Contact Person.

**4.8 ASSIGNED UNIT.** The Vacation Unit assigned to an Owner or other Occupant for use during his or her Vacation Period is called his or her "Assigned Unit." If an Owner chooses to reserve part of a Vacation Unit on a lock-off basis, then the Deluxe Side or the Guest Side of the Unit assigned to the Owner or other Occupant at check-in will be his or her "Assigned Unit". If someone uses a particular Vacation Unit pursuant to his or her Fixed Unit Use Right, that Vacation Unit will be his or her "Assigned Unit".

**4.9 FIRST DEED.**

**A. NATURE OF A FIRST DEED.** The term "First Deed" means the recorded deed by which the Developer first transfers a Vacation Ownership Interest. The First Deed for each Vacation Ownership Interest establishes the features of the Vacation Ownership Interest and reserves certain special rights in favor of the Developer. A document that transfers the Developer's entire remaining interest in a Vacation Unit is not a First Deed if (i) it says that it is not a First Deed, or (ii) some or all of the Developer's rights under this Declaration as

the Developer of that Vacation Unit are transferred with it. If the Developer reacquires title to a Vacation Ownership Interest, it may change the features of that Vacation Ownership Interest by issuing a new First Deed for it.

**B. CONTENT OF FIRST DEED.** The First Deed for each Vacation Ownership Interest must do these things:

- 1) It must assign an identification number to the Vacation Ownership Interest.
- 2) It must state whether the Vacation Ownership Interest is an Every-Year Vacation Ownership Interest, an Even-Year Vacation Ownership Interest, or an Odd-Year Vacation Ownership Interest.
- 3) It must state whether the Vacation Ownership Interest has a Floating Vacation Period, a Fixed Vacation Period, an Event Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period. If it has a Fixed Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period, then the First Deed must identify the Use Week by Use Week number or by name. If it has an Event Vacation Period, then the First Deed must identify the Event Week by name.
- 4) It must state whether the Vacation Ownership Interest has a Fixed or Floating Unit Use Right.

**C. RULES FOR FIRST DEEDS.**

1) **OVERLAPPING WEEKS.** If a First Deed transfers an Event Week, then no later First Deed for the same Vacation Unit may transfer a Fixed, Ultra, or Ultra Premium Vacation Period that may overlap with the Event Week already transferred. Likewise, if a First Deed identifies a Fixed, Ultra, or Ultra Premium Vacation Period by Use Week number, then no later First Deed for the same Vacation Unit may transfer an Event Vacation Period having an Event Week that may overlap with the numbered Fixed Use Week already transferred. For these purposes, Golden Week overlaps Use Week nos. 16, 17 and 18; Obon Week overlaps Use Week nos. 32 and 33; Christmas Week overlaps Use Week nos. 51 and 52; and New Years Week overlaps Use Week nos. 52 and 53. Note that Christmas Week never overlaps with New Years Week.

2) **LIMITS ON NUMBER OF SPECIAL VACATION PERIODS.** No more than fifty percent (50%) of the Vacation Ownership Interests in any Vacation Unit may have a Fixed Vacation Period, an Event Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period. To be clear, at least fifty percent (50%) of the Vacation Ownership Interests in each Vacation Unit must have a Floating Vacation Period.

**5. RESERVATION RULES**

**5.1 INTRODUCTION.** For each Vacation Ownership Interest an Owner owns, he or she has the right to reserve a Vacation Unit for one Use Week in every Use Year (for an Every-Year Vacation Ownership Interest) or every other Use Year (for an Every-Other-Year Vacation Ownership Interest). These rights are defined, limited and governed by the Vacation Plan Documents, including the rules contained in this Chapter 5.

**5.2 RESERVATION SYSTEM.** The Plan Operator must set up a reservation system. The reservation system is subject to the following requirements and may include other provisions as the Plan Operator deems appropriate.

**A. RESERVATION RULES.** To use a Unit, an Owner must reserve a Use Period in the manner provided in the Reservation Rules. The Club Rules contain the Reservation Rules. If the Plan is no longer part of the Club, then the Association Rules adopted under Section 12.3H must implement a reservation system.

**B. DELINQUENT OWNERS.** An Owner is not allowed to reserve, use or exchange a Vacation Unit if (i) the Owner has not paid any Regular Assessment, Special Assessment, Personal Charge, or Club Fees due or past due, or (ii) the Plan Operator learns that the Owner has not paid any amounts due under any note or mortgage made by the Owner in favor of the Developer. The Plan Operator may cancel a reservation held by an Owner if that Owner does not pay any Regular Assessment, Special Assessment, Personal Charge, or Club Fees due or past due. The Plan Operator does not have to pay the amounts due or past due from an Owner even if the Plan Operator does not enforce the provisions of this Subsection 5.2B.

**C. ADVANCE PAYMENTS.** The Plan Operator may require that an Owner pay in advance the estimated Regular Assessment and Club Fees for a future year as a condition to accepting reservation requests for that year. Any interest earned on the amount paid will belong to the Association. It will not be paid or credited to the account of the Owner. If it turns out that the amount paid is more than the amount due, then the Plan Operator will either refund the difference or apply it to the following year's Assessments or Club Fees, as the Plan Operator chooses. If the amount paid is less than the amount due, the Owner must pay the shortfall when the Plan Operator asks for it.

**D. RESERVATION WINDOWS.** The Reservation Rules must set the Reservation Window for each Use Period. A "Reservation Window" is a period of time when an Owner or other person may request a reservation. For example, the Reservation Rules might provide that the Reservation Window for a Use Period begins one year before the Check-In Day for that Use Period. This means that if a Use Week starts on July 1, 2004, the Plan Operator would begin taking

reservations for it on July 1, 2003. A person can only reserve a Use Period during that Use Period's Reservation Window. The Reservation Window for a Use Period cannot start more than two years before the check in day of that Use Period.

**E. RESERVATION PERIODS.** If the Plan is part of the Club, then the Reservation Rules must divide the Reservation Window for each Use Period into Reservation Periods as provided in this Subsection 5.2E. A "Reservation Period" is a part of a Reservation Window. The dates when Reservation Periods start or end may be different for different Club Resorts or Club Vacation Plans, or other Resorts or Vacation Plans available through the Club, subject to these limits:

**1) HOME RESORT RESERVATION PERIODS.** "Home Resort Reservation Period" means a Reservation Period when only Owners in this Plan may reserve a Use Period in a Vacation Unit included in this Plan. There must be at least one Home Resort Reservation Period and there may be more. The Reservation Rules may give different names to the Home Resort Reservation Periods.

**(a) REQUIRED RESERVATION PERIODS.**

(1) There must be at least one Home Resort Reservation Period during which an Owner having a Fixed Vacation Period has the exclusive right to reserve the Owner's Use Week.

(2) There must be at least one Home Resort Reservation Period during which an Owner having a Floating Vacation Period has the right to request a reservation (without competition from Other Club Members or other Exchange Users) for any Use Period that nobody else has reserved and that no other persons have the exclusive right to reserve.

These Reservation Periods cannot begin more than two years before the Check-In Day for any Use Period. They may overlap. They must last at least forty-five (45) days. But if they begin more than eighteen months before the Check-In Day for any Use Period, then they must last at least ninety (90) days. During these Reservation Periods, an Owner may only reserve a Vacation Unit that is the same Unit Type as the Owner's Unit.

**(b) OTHER RESERVATION PERIODS.** The Reservation Rules may create other Reservation Periods that are Home Resort Reservation Periods.

**2) CLUB RESERVATION PERIODS.** "Club Reservation Period" means a Reservation Period when members of Club Vacation Plans (including Owners in this Plan) may reserve a Use Period in any Club Unit (including a Vacation Unit in this Plan) that nobody else has reserved and that no other persons have the exclusive right to reserve. There must be one or more Club Reservation Periods at all times when the Plan is affiliated with the Club. The

Reservation Rules may give different names to the Club Reservation Periods.

**3) DEVELOPER AND CLUB OPERATOR RESERVATIONS.** The Reservation Rules may create one or more Reservation Periods during which the Developer and/or the Club Operator, using their rights under Sections 8.7C and 8.8A, may reserve any Use Period in a Vacation Unit that nobody else has reserved and that no other persons have the exclusive right to reserve. This means the Owners and Other Club Members may have to compete with the Developer and/or the Club Operator for a reservation. This Reservation Period may not start more than sixty (60) days before the Check-In Day of a Use Period. It may overlap with other Reservation Periods.

**4) ADDITIONAL RESERVATION PERIODS.** In addition to these reservation periods, there may be other Reservation Periods. They may appear, for example, when the Developer creates a new Unit Type or a new kind of Vacation Ownership Interest as discussed in Section 17.2B or when the Club Operator creates new kinds of Reservation Periods as permitted by the Club Documents, or in similar circumstances. For example, suppose the Developer decides to add a group of Units and to create a new kind of Vacation Ownership Interest that gives certain Owners the first chance to reserve those Units at certain times such as Aloha Week. If so, the Developer might create a new Reservation Period when only those Owners can reserve one of those Units for Aloha Week. This Reservation Period might be one of the Home Resort Reservation Periods. It might begin and end before the start of any other Home Resort Reservation Periods, but it would not have to do so. This is called a "Special Reservation Period" because it is a time when only Owners having certain special reservation rights may make a reservation. The Reservation Period for an Ultra Vacation Period is an example of a Special Reservation Period, and there may be others.

**F. PROTECTION OF SPECIAL RESERVATION RIGHTS.** Except as provided in Subsection 4.4F and Section 14.5, the Reservation Rules must not allow the Developer, the Club Operator, Other Club Members, or anyone else to reserve:

(a) The Use Week of an Owner having a Fixed Use Period until after the deadline for the Owner to reserve the Owner's Use Week.

(b) The Use Week of an Owner having an Ultra Vacation Period until after the deadline for the Owner to confirm the reservation of the Owner's Use Week.

(c) The Use Week of an Owner having an Event Vacation Period or an Ultra Premium Vacation Period.

**G. RESERVATION PRIORITIES.** The Reservation Rules may create other reservation priorities. For example, they may give priority to the reservation requests of: (1) an Owner requesting two or more Use Weeks in a row over an Owner requesting a single Use Week; (2) an Owner requesting a reservation of two Units for the same Use Week over an Owner requesting only a single Unit for that Use Week (or *vice versa*); (3) an Owner owning more Vacation Ownership Interests over an Owner owning fewer Vacation Ownership Interests; (4) an Owner owning an Every-Year Vacation Ownership Interest over an Owner owning an Every-Other-Year Vacation Ownership Interest; (5) an Owner requesting a Full Unit over an Owner requesting either the Deluxe Side or the Guest Side; (6) an Owner requesting a full Use Week over an Owner requesting a Split Week. The Reservation Rules may also provide for rotating the use of Use Periods in great demand, such as holiday Use Periods, and for waiting lists.

**H. BONUS USE.** The Reservation Rules may but need not implement a system for use by Owners of Use Periods not reserved as of a certain period (which may not be more than 60 days) before the Check-In Day. This is called "*Bonus Use*."

**I. BANKING AND BORROWING USE RIGHTS.** The Reservation Rules may but need not implement a system that permits saving unused use rights from one Use Year for use in a later Use Year. This is called "*Banking*". The Reservation Rules may also implement a system that permits borrowing use rights from a future year for use in the current year. This is called "*Borrowing*". Banking and Borrowing are not allowed unless the Reservation Rules expressly permit it. Any Reservation Rules permitting Banking and Borrowing must be appropriately balanced and restricted. The Reservation Rules may impose conditions to and limits on Banking and Borrowing.

**J. TRANSACTION FEES.** The Reservation Rules may require that the Owners pay Transaction Fees. "*Transaction Fees*" are reasonable fees charged to an Owner by the Plan Operator and that relate to the manner in which an Owner uses his or her reservation or use rights. For example, the Plan Operator may charge Transaction Fees (i) for making multiple reservations, (ii) for Banking or Borrowing, (iii) for canceling or changing reservations, (iv) for bonus week reservations and other special reservation or use requests, or (v) to cover the added housekeeping and reservation costs of permitting an Owner to use a Vacation Unit on a lock-off basis or for a Split Week Use Period.

#### **K. OTHER RULES.**

1) The Reservation Rules may contain other rules. For example, the Reservation Rules may do some or all of these things:

(a) They may designate Units as smoking or non-smoking Units.

(b) They may limit the number of Split Week Use Periods that an Owner may reserve or the times when an Owner may reserve them.

(c) They may limit how far in advance an Owner may reserve a Split Week Use Period or a Lock-Off Unit.

(d) They may limit or prohibit an Owner from reserving only the Deluxe Side or the Guest Side of a Lock-Off Unit for less than a full Use Week.

(e) They may require that reservations be for a minimum or maximum number of Use Nights.

(f) They may limit an Owner's reservation rights if the Owner had a confirmed reservation in that Use Year but changed or canceled it.

(g) They may limit the time period within which an Owner may cancel a reservation without losing some or all of his or her reservation or use rights.

(h) They may permit the Plan Operator to cancel a reservation if an Owner's reservation or use rights have been suspended or have ended.

2) All Reservation Rules must comply with the one-to-one use-right to use-night requirement in the Act and Rules.

**L. CHANGES TO THE RESERVATION RULES.** The Plan Operator may change the Reservation Rules from time to time in the manner and under the circumstances provided in them. The Plan Operator must give notice of any change to the Owners. The Plan Operator may give this notice by mailing it to the Owners or by including it in a newsletter, by posting a notice on its Internet web site, or by email. It may also give this notice in any other way that is likely to be effective to give notice to the Owners.

**5.3 RESERVATION ERRORS.** If anyone entitled to occupy a Vacation Unit cannot do so due to an error by the Plan Operator or the Plan Manager, then the Association must find and pay for (as liquidated damages) other lodgings on Maui for the injured person and his or her Guests to stay during his or her Vacation Period. The lodgings should sleep as many people as the Occupant's Assigned Unit. If the Plan Operator or the Plan Manager made the error, then they must repay the Association for the cost of the substitute lodgings.

**5.4 AMENDMENT OF THIS CHAPTER.** So long as the Plan is part of the Club, this Chapter 5 may not be changed without the written consent of the Club Operator.

## 6. THE CLUB.

**6.1 INTRODUCTION.** The Starwood Pacific Vacation Club provides a reservation system that lets Owners reserve Vacation Units in the Plan. It also provides an Exchange Program that allows Owners and Other Club Members to reserve Units in the Plan or in other Club Resorts.

The Club is different from traditional Exchange Programs. In traditional Exchange Programs, the use rights for a Vacation Ownership Interest are generally deposited in the exchange system only if the Owner of that Vacation Ownership Interest decides to do so. But in the Club, if a Use Night is not reserved by a certain deadline, then any Club Member may reserve that Use Night. You could say that the Use Night is automatically “deposited” in the Club’s exchange system for use by all Club Members, not just the Owners in this Plan. (Of course, this does not apply to Ultra Premium or Event Vacation Periods because these Vacation Periods are reserved automatically.)

To make this system work, it is important to keep a balance between the number of Use Nights available for use by the Club Members and the number of Use Nights that the Club Members are entitled to use. This Chapter regulates the relationship between this Plan and the Club for this purpose and for other purposes.

### 6.2 DEFINITIONS.

**A. “CLUB FEES”** means the Annual Club Dues, Club Transaction Fees, and Additional Fees.

**1) “ANNUAL CLUB DUES”** means the fees charged by or through the Club Operator for providing reservation and exchange services and other Core Benefits to the Club Members, plus any taxes on those fees (see section 6.8D).

**2) “CLUB TRANSACTION FEES”** means Transaction Fees charged by or through the Club Operator to Club Members, plus any taxes on those fees (see section 6.8D).

**3) “ADDITIONAL FEES”** means any other fees charged by or through the Club Operator to the Club Members, such as fees for Optional Benefits, plus any taxes on those fees (see section 6.8D).

**B. “CLUB BENEFITS”** means Core Benefits and Optional Benefits.

**1) “CORE BENEFITS”** means (i) use of the reservation system provided by or through the Club Operator, (ii) use of the Club Operator’s Exchange Program, (iii) access to any External Exchange Program that may be available to Owners through the Club from time to time, and (iv) any other

vacation, travel, entertainment or other services or products included in the **Annual Club Dues**.

**2) “OPTIONAL BENEFITS”** means any vacation, travel, entertainment or other services or products offered by or through the Club Operator to Club Members on an optional basis for a separate fee.

**6.3 APPLICATION.** This Chapter 6 will apply at all times when the Plan is part of the Club.

**6.4 CLUB.** The Club Operator and the Association have entered into a contract or “*Club Affiliation Agreement*”. It provides that the Plan will be a Club Vacation Plan and that each Owner will be a Club Member. This will continue so long as there is a Club Affiliation Agreement between the Association and the Club Operator. If asked, the Plan Manager must sign and deliver to the Club Operator a document (in legal terms, a “joinder”) in which Plan Manager consents and agrees to the Club Affiliation Agreement.

**6.5 NATURE OF MEMBERSHIP.** Each Owner automatically becomes a member of the Club. If a Vacation Ownership Interest is owned by more than one person, they will all be members of the Club. An Owner will continue to be a member of the Club so long as he or she remains an Owner. A person’s membership in the Club cannot be separated from his or her Vacation Ownership Interest. Any attempt to do so will not be effective; it will be void. If a person is no longer an “Owner” then his or her membership in the Club will end automatically. If the Plan is no longer part of the Club, then each Owner’s membership in the Club will end automatically.

### 6.6 RESERVATION SYSTEM.

**A. RESERVATIONS.** While the Club Affiliation Agreement is in effect, the Club Operator will manage the reservation and use of the Use Periods through the Club. During that time, all requests for reservations to use the Vacation Units must be made through the Club Operator. This applies to reservation requests made during any of the Reservation Periods.

**B. EXCHANGE REQUESTS.** The Club serves as an Exchange Program because it allows Owners to use Units in Other Club Vacation Plans and allows Other Club Members to use Units in this Plan. The Club Operator also has the option to arrange for one or more Exchange Companies to make their External Exchange Program available to Club Members. While the Club Affiliation Agreement is in effect, all exchange requests must be made through the Club Operator. This applies to requests by Owner to use Units in Other Club Resorts. It also applies to requests by Owners to make an exchange through an External Exchange Program.

**C. RESERVATION BY OTHER CLUB MEMBERS.** During any Club Reservation Periods, any Club Member (not just Owners in this Plan) may request a reservation for a Use Period in any Vacation Unit in this Plan. If nobody else has already reserved that Use Period, and if no other persons have the exclusive right to reserve it, then the Plan Operator has the right and duty to confirm the reservation request of the Club Member, subject to the terms and conditions contained in the Club Documents, this Declaration, and the Bylaws.

**D. RESERVATION OF OTHER CLUB UNITS.** During any Club Reservation Periods, an Owner may request a reservation for any Club Unit (whether or not it is part of this Vacation Ownership Plan). If nobody else has already reserved that Use Period, and if no other persons have the exclusive right to reserve it, then the Plan Operator has the right and duty to confirm the reservation request of the Owner, subject to the terms and conditions contained in the Club Documents and subject also to the Resort Documents and the affiliation agreement for the Club Vacation Plan containing the Club Unit requested.

**E. OBLIGATIONS OF CLUB MEMBERS.** The requirements of Sections 7.4 and 7.5 will apply to Other Club Members when using the Vacation Property just as it would for any other Exchange User. Similar requirements are likely to apply to an Owner when using a Unit in another Club Resort. Owners must obey those requirements.

**6.7 POINTS.** While the Club Affiliation Agreement is in effect, the Reservation Rules may use a "points" system for allocating reservation and use rights but they do not have to do so. If they use a "points" system, then this Section 6.7 will apply.

#### **A. DEFINITIONS.**

1) **"POINTS"** means the symbolic unit of comparison used to represent the value of the reservation and use rights of an Owner's Vacation Ownership Interest as compared to the reservation and use rights of other persons in the Exchange Program.

2) **"POINT VALUE"** means the number of Points required to reserve a particular Unit for a Use Week or other Use Period.

3) **"POINTS CHART"** means a list or chart showing the Point Value for each Use Period in each Unit included in the Exchange Program.

**B. SETTING POINT VALUES.** The Plan Operator will assign a Point Value to each Use Period in this Plan and to each Use Period in any other Vacation Plan that can be reserved using Points through the Plan Operator. In setting Point Values, the Plan Operator may consider all factors that it considers to be relevant. This may include, for example: (i) the location, size, capacity, furnishings and other features of a

Unit or kind of Unit, (ii) the location (geographic, topographic, and scenic), recreational and other features of the Resort in which a Unit is located, (iii) demand and availability for purchaser use, (iv) the cost to buy, build, operate, or maintain a particular Unit or Resort, and (v) anything else that may be relevant in the Plan Operator's opinion. The Plan Operator's decisions on Point assignments are final.

1) **POINTS CHART.** Before the start of the first Reservation Window for a Use Year, the Plan Operator will prepare a Points Chart listing the Point Value of each Use Period for that Use Year. The Plan Operator may update the Points Chart during the Use Year. For example, it might do so to reflect things like the addition or deletion of Units, the creation of new unit types, and so on.

#### **2) CHANGES IN THE NUMBER OF POINTS.**

(a) From time to time, the Plan Operator may change the Point Value of a Use Period. These changes will not take effect until after they appear in the Points Chart.

(b) The Plan Operator may also make any changes required by law or by any governmental agency. This includes, but is not limited to, any change required in connection with the registration of any Club Vacation Plan, the Club, any other time share plan or program, or fractional ownership program participating in the Network, or the Network. These changes will take effect when required by law or by the governmental agency.

A change made after an Owner has a confirmed reservation will not affect the Point Value charged to that Owner for the use of the Use Period reserved.

**C. RULES GOVERNING POINT VALUES.** When preparing the Points Chart, the following rules will apply:

1) **POINT VALUES MAY DIFFER.** Each Use Night or Use Week may have a different Point Value. It is not necessary for the Point Value to be the same for all Use Nights or Use Weeks. Also, the Point Value for a particular Use Night or Use Week may change from one Use Year to the next.

2) **UNIT TYPES.** It is not necessary to compare each separate Unit in a particular Resort. Instead, the Plan Operator can divide the Units into different groups or types of Units. These groups may be limited to a particular Resort or may be used throughout the system. For example, the Plan Operator could divide all Units into one bedroom, two bedroom, and three bedroom unit types regardless of the size, the number of bathrooms, the view, and so on. The Plan Operator may then assign Points based on a comparison of the different unit types rather than on a comparison of specific Units.

(a) **LOCK-OFF UNITS.** If a Unit can be used as a Lock-Off Unit, then separate Point Values may be created for the Full Unit and also for each Lock-Off Unit. The sum of the Point Values for the Deluxe Side and the Guest Side may be higher than the Point Value for the Full Unit. This is because breaking up a Lock-Off Unit into two sides may mean that one of the sides may go unused. As a result, the Plan Operator may choose to reflect this fact in setting the Point Values for use of Lock-Off Units.

(b) **CHANGES IN UNIT TYPES.** From time to time, the Plan Operator may change the unit types or even create new unit types based on any factors that are relevant in the Plan Operator's opinion.

3) **SEASONS.** The Plan Operator does not have to compare each Use Night to every other Use Night when assigning Points. Instead, the Plan Operator may divide the calendar year into different periods, called "Seasons". For example, it might divide the year into peak, high, medium and low Seasons. It may then divide the Use Nights among the Seasons. It may then set Point Values based on a comparison of the different Seasons rather than a comparison of each specific Use Night or Use Week.

(a) **RESORTS.** It is not necessary for the Seasons to start on the same dates for all Resorts. For example, the Points Chart may provide different starting and ending dates for Seasons at each Resort. It is also not necessary that all Resorts have the same Seasons. For example, one Resort may only have only one Season. Another Resort may have three or four Seasons.

(b) **DAYS OF WEEK.** It is not necessary for any Season to begin or end on a specific day of the week. For example, a Season might begin on a Friday and end on a Sunday.

(c) **CHANGES IN SEASONS.** From time to time, the Plan Operator may change the starting and ending dates of the Seasons or even create new Seasons or delete existing Seasons based on any factors that are relevant in the Plan Operator's opinion.

4) **POINT VALUES FOR USE WEEKS.** The sum of the Point Values for each Use Night in a Use Week may be higher than the Point Value for the full Use Week. This is because breaking up a Use Week into smaller Use Periods may mean that some of the Use Nights may go unused. As a result, the Plan Operator may choose to reflect this fact in setting the Point Values for use of the individual Use Nights making up a Use Week.

5) **OTHER DISTINCTIONS.** The Plan Operator may draw other distinctions when preparing the Points Chart. It may do so in order to recognize new classes of Memberships or reservation and use rights created from time to time, or to enhance the administration and operation of the system, or for

any other purpose that is relevant in the Plan Operator's opinion.

#### **D. ASSIGNMENT OF POINTS.**

1) **VACATION OWNERSHIP INTERESTS.** Each year, the Plan Operator will assign to each Vacation Ownership Interest the number of Points equal to the Point Value of the Owner's Vacation Ownership Interest as shown on the Points Chart for that Use Year. In calculating the number of Points to assign to each Vacation Ownership Interest, the following Rules will apply:

(a) Point assignments will not be based on the use of Lock-Off Units but rather on use of a Full Unit (unless an owner's use rights are limited to one side of a Lock-Off Unit).

(b) Point assignments will not be based on individual Use Nights but rather on full Use Weeks.

(c) The Plan Operator will assign Points to Odd-Year Vacation Ownership Interests only for use during Use Years ending in an odd number.

(d) The Plan Operator will assign Points to Even-Year Vacation Ownership Interests only for use during Use Years ending in an even number.

2) **LIMITS ON POINT ASSIGNMENTS.** The total number of Points assigned to all of the persons to whom Points are assigned must not exceed the total of all the Point Values for all Use Periods to which Points are assigned.

#### **6.8 FEES.**

**A. ANNUAL CLUB DUES.** Each year every Owner must pay the Annual Club Dues charged to the Owner or to his or her Vacation Ownership Interest. The Club Operator will set the amount of the Annual Club Dues. In doing so, it must follow the rules stated in the Club Documents. All Owners must pay the full amount of the Annual Club Dues each Use Year, regardless of whether they own an Every-Year Vacation Ownership Interest or an Every-Other-Year Vacation Ownership Interest. Discounts in the Annual Club Dues may be offered to Owners who own more than one Vacation Ownership Interest but this is not required.

1) **LIMITS ON ANNUAL CLUB DUES.** The total Annual Club Dues for any Vacation Ownership Interest cannot be increased by more than ten percent (10%) over the amount of the Annual Club Dues for that Vacation Interest for the previous Use Year unless the increase is approved by the vote or written consent of a Majority of the Owners Voting (not counting the Developer's Vacation Ownership Interests and votes) at a meeting of the Association. An approval will not be effective unless the Owners who vote for or consent to the increase hold at least twenty-five percent of the total

number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes). No vote or written consent is required if the amount of the Annual Club Dues for a Vacation Ownership Interest would not have exceeded the limit except for a change in taxes or other governmental assessments (for example a tax on Exchange Program fees) or a change in the law. The rule limiting increases does not apply to Vacation Ownership Interests not participating in the Plan during the prior year. This happens when new Vacation Ownership Interests are created from time to time.

**B. TRANSACTION FEES.** In addition to the Annual Club Dues, an Owner must pay any Transaction Fee required by the Reservation Rules. The Club Operator will set the amount of the Transaction Fees. In doing so, it must follow the rules stated in the Club Documents.

**C. ADDITIONAL FEES.** In addition to the Annual Club Dues and Transaction Fees, an Owner must pay any Additional Fee charged to the Owner for Optional Benefits.

**D. TAXES.** If any Club Fee is subject to any general excise tax or any other gross income tax or similar tax based on the amount charged, an Owner must pay any additional amount necessary to cover the entire tax so that the net amount received by the Club Operator is not reduced in any way by the tax. Likewise, if general excise tax or other gross income tax or similar tax is charged on any part of the Club Fees paid by or through the Club Operator to another Exchange Company, an Owner must pay any additional amount necessary to cover the entire tax so that the net amount received by the Exchange Company is not reduced in any way by the tax. This Subsection D. does not apply to net income taxes charged to the Club Operator or to an Exchange Company.

**E. PAYMENT OF FEES.** The Club Operator may require that Club Fees be paid in cash or it may permit them to be paid using Points. If the fees are paid using Points, then the Club Operator may use those Points just like any other Club Member. For example, the Club Operator may reserve a Use Week and rent it to someone. In that case, the Club Operator would have the right to keep all amounts paid as rent.

**F. PROMISE TO PAY.** By acquiring a Vacation Ownership Interest, an Owner promises to pay all Club Fees charged to the Owner or to his or her Vacation Ownership Interest. Each Owner makes this promise whether or not he or she signs any document that expressly says so.

**G. PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay on time all Club Fees charged to the Owner or to his or her Vacation Ownership Interest. The amount of the Club Fees will become the personal debt of the Owner as of the date when they are assessed. An Owner cannot avoid liability for the Annual Club Dues by not using

his or her Vacation Ownership Interest or any benefits available through the Club, or by abandoning it. Even if an Owner transfers his or her Vacation Ownership Interest to someone else, the Owner is still personally obligated to pay all Club Fees due before the transfer takes effect.

**H. INTEREST, LATE CHARGES AND COSTS.** All sums not paid on time will be subject to: (i) interest at a rate set by the Club Affiliation Agreement or, if no rate is set, then at one percent per month from the due date; and (ii) a late charge equal to Ten Dollars (\$10.00) or ten percent (10%) of the amount due, whichever is more. The Ten Dollar amount will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. Index (see Section 12.31.3)(a)). An Owner must also pay all costs of collection, including court costs and attorneys' fees.

**I. COLLECTION OF FEES.** The Club Operator may collect Club Fees in any lawful manner. If asked by the Club Operator, the Association will use its best efforts to collect the Club Fees. This includes the obligation to use any enforcement rights that the Association has under the Vacation Plan Documents or by law. The Association will collect the Annual Club Dues as part of the Regular Assessment for each Vacation Ownership Interest if, and only if, the Club Operator gives the Association written directions to do so. The Association may delegate to the Club Operator the right to collect for the Association the Regular Assessments and Personal Charges due from the Owners. Likewise, the Club Operator may delegate to the Association the right to collect Annual Club Dues. Alternately, the Club Operator has the right to require that Regular Assessments be collected by a bonded collection and servicing agent. The costs of doing so will be a Plan Expense. Instead of collecting Annual Club Dues from each Owner individually, the Club Operator may elect to charge to the Association the entire amount of the Annual Club Dues for all Vacation Ownership Interests in the Plan. If so, the amount charged will be a Plan Expense. An Owner's failure to pay his or her share of this amount will not excuse the Association from its obligations to pay promptly to the Club Operator the full amount of the Annual Club Dues charged to the Vacation Ownership Plan in this fashion.

**J. SEPARATE FUNDS.** All funds belonging to the Association must be kept in separate accounts from funds belonging to the Club Operator, any other Exchange Company, or any Other Club Vacation Plans. All books and records of the funds and property of the Association must be kept separately from the books and records of the Club Operator, other Exchange Companies, and Other Club Vacation Plans. These requirements will still apply even if the Association collects Club Fees for the Club Operator or if the Club Operator collects Assessments and Personal Charges for the Association. If members pay using a single check or similar means of payment, the money from the check must be deposited into a trust account. Within thirty days after

deposit, all funds belonging to the Association must be paid from that account to the Association, and all funds belonging to the Club Operator, another Exchange Company, or any Other Club Vacation Plans must also be paid from that account to the Club Operator, the other Exchange Company, or to the association of the Other Club Vacation Plan.

**K. SUSPENSION OF RESERVATION RIGHTS.** The Plan Operator does not have to process or confirm the reservation request of any Owner who has not paid (i) all Club Fees, (ii) all Assessments, Personal Charges and other amounts owed to the Association, (iii) all interest, late charges and attorneys' fees charged by the Club Operator or the Association, and (iv) all amounts due under any note or mortgage made by the Owner in favor of the Developer.

**L. OTHER FEES.** The Association must pay any other fees charged to the Plan or the Association under the Club Affiliation Agreement. Those amounts will be Plan Expenses.

**6.9 RIGHTS AND DUTIES OF THE CLUB OPERATOR.** The Club Operator will have these rights and duties at all times when the Plan is part of the Club:

**A. ADDITION OF OTHER CLUB VACATION PLANS.** So long as the requirements of Section 6.11 are met, the Club Operator may include in the Club any other vacation ownership or time share plans or programs, or fractional ownership plans or programs. It may do so without the consent of the Owners, their Lenders, the Developer, the Association, or anyone else. However, the Club Operator does not have to include in the Club any other resort, residential, transient, time share or vacation ownership, fractional ownership, or other development that it owns, develops, or manages.

**B. REMOVAL OF OTHER CLUB VACATION PLANS.** The Club Operator may terminate, cancel, not renew, or otherwise end the affiliation agreement with any Other Club Vacation Plan without the consent of the Owners, their Lenders, the Developer, the Association, or anyone else. In that event, the Club Operator must also end the Club Membership of each Club Member from the Club Vacation Plan removed from the Club.

**C. EXTERNAL EXCHANGE PROGRAMS.** The Club Operator has the option but no duty to enter into one or more agreements, including "corporate" membership agreements, to affiliate the Club with one or more External Exchange Programs, including but not limited to the Network, vacation networks, vacation clubs, or multi-site vacation ownership plans, on such terms and conditions as are acceptable to the Club Operator. The Club Operator also has the option, from time to time, to enter into or otherwise arrange for one or more special exchange relationships with any entity other than an Exchange Company pursuant to which Club Members will have access to selected non-Club Resorts and non-Club

owners will have access to Club Units after one or more of the Home Resort Reservation Periods have expired. The Club Operator may do any of these things without the consent or approval of the Owners, the Association, or anyone else. In each case, the Association, the Plan Manager, and the Owners must cooperate fully with the Club Operator and must comply with the terms and conditions of any contract or agreement governing a special exchange relationship. Any special exchange relationship, and any arrangement with any vacation network, vacation club, or multi-site vacation ownership plan, must not violate the one-to-one use-right to use-night requirement of the Act.

**D. CLUB RULES.** The Club Operator adopted the first set of Club Rules. The Club Rules are not a part of this Declaration or the other Vacation Plan Documents. The Club Operator may change the Club Rules from time to time without the consent of the Association, any Owner, or anyone else. The Club Operator may only change the Reservation Rules in the manner and subject to the limits contained in the Club Documents and in Section 5.2L. Each Owner must obey the Club Rules.

**E. CLUB DOCUMENTS.** Subject to the requirements of the Club Affiliation Agreement, the Club Operator may change the Club Policies and any other Club Documents as it deems necessary or desirable from time to time. It may do so without the consent of the Association, any Owner, or anyone else.

**F. TERMINATION OF THE CLUB AFFILIATION AGREEMENT.** The Club Operator's agreements with every Other Club Vacation Plan, or the documents governing the Other Club Vacation Plan, must provide that if its affiliation agreement is terminated, cancelled, expires, or otherwise ends for any reason, the association of that Club Vacation Plan must honor all reservations held by Club Members or Exchange Users whose reservation was confirmed by or through the Club Operator before that Club Vacation Plan's affiliation agreement ended.

**G. COMPUTER SYSTEM.** The Club Operator or a related company owns or has a lease or license to use the computer hardware and software used to operate the reservation system. They will continue to own, or hold the lease or license on the hardware and software even after the Club Affiliation Agreement ends. If the Club Affiliation Agreement ends, then the Association, the Plan Manager, the Plan, and the Owners will no longer have any right to use these computer systems except as specifically otherwise stated in the Club Affiliation Agreement or as required by law.

**H. INTELLECTUAL PROPERTY RIGHTS.** The Club Operator or related companies own or have a license to use certain property, called "Intellectual Property", with respect to the Club, the Plan, and/or one or more External Exchange Programs. For example, the Club Operator owns the name

"Starwood Pacific Vacation Club". The Club Operator or a related company has the right to use the name "Westin Ka'anapali Ocean Resort". The Club Operator and/or the related companies may use these names, or variations of them, when referring to the Plan, the Condominium, or the Club. They may also use them in signs or on written or printed material such as newsletters, advertising material, and so on. They may also use these names on other things such as, for example, supplies like soap, shampoo, towels, and so on. Neither the Club Operator nor anyone else is transferring or licensing any of their rights in these names or any other Intellectual Property to the Association, the Plan, the Owners, or anyone else. The Club Operator and companies related to it will be the sole owners of these names and other Intellectual Property. Nothing in the Vacation Plan Documents or the Club Documents may be construed or interpreted otherwise. If the Club Affiliation Agreement is terminated, cancelled, expires, or otherwise ends for any reason, then the Association, the Plan Manager, the Plan, and the Owners will no longer have any right to use these names or any other Intellectual Property belonging to the Club Operator or to any company related to it. The Club Operator has the right to amend the Vacation Plan Documents, without the consent of anyone else, to delete all references to these names and any "Marks" or "Brand Name" as those terms are defined in the Club Affiliation Agreement.

**6.10 RIGHTS AND DUTIES OF THE ASSOCIATION.** The Association will have these rights and duties at all times when a Club Affiliation Agreement is in effect:

**A. COOPERATION.** The Association must cooperate fully with the Plan Operator in the promotion and operation of the Club and any External Exchange Program available through the Club.

**B. CLUB MEMBERS AND GUESTS.** The Association must provide to all Club Members and their Guests the same rights and privileges at the same rates provided to Owners and their Guests.

**C. RELATIONSHIP TO THE CLUB OPERATOR.** The Association will have no power or authority to bind the Club Operator, or any company related to it, in any way. The Association is a completely separate company from the Club Operator. Neither can make promises for the other.

**D. INFORMATION.**

1) The Association must promptly provide to the Club Operator a copy of the recorded deed for each Vacation Ownership Interest.

2) The Association must stay informed of new services and benefits provided to the Owners through the Club. The Association must explain the Club, and any External Exchange Program available through the Club, to

Owners and prospective Owners fairly, accurately and completely. The Association may not in any way misrepresent the Club, or any External Exchange Program available through the Club, or the Plan's relationship to the Club or any External Exchange Program available through the Club. The Association may not change or summarize (i) any Club Operator Materials (as that term is defined in the Club Affiliation Agreement) without first getting the written consent of the Club Operator, or (ii) any materials supplied by an Exchange Company about its External Exchange Program without first getting the written consent of the Exchange Company.

**E. COMPLIANCE WITH LAW.** The Association must comply with all federal, state and local laws, and all administrative rules, regulations and orders that apply to the Association or to the Vacation Plan or the manner in which either of them are operated.

**F. AFFILIATION AGREEMENT.** The Association has the power and authority to enter into the Club Affiliation Agreement and to agree to revisions to it. The Association must perform all of its duties under the Club Affiliation Agreement. Unless the Club Operator consents in writing, the Association has no power or authority to enter into (i) an agreement like the Club Affiliation Agreement with anyone else, or (ii) an agreement with anyone else to provide a common reservation system for Vacation Units and Units included in any other vacation ownership or time share plan or program, or fractional ownership program. Any attempt to do so will not be effective. It will be void. However, if the Plan is no longer part of the Club, then the Association may enter into an Exchange Contract with an established Exchange Company (such as Resort Condominiums International, LLC, or Interval International, Inc.) as provided in Section 7.2C. The Club Operator may enforce the limitations contained in this Subsection even after the Club Affiliation Agreement ends.

**G. TERMINATION OF THE AFFILIATION AGREEMENT.** If the Club Affiliation Agreement is terminated, cancelled, expires, or otherwise ends for any reason, the Association must do each of these things:

1) It must honor all reservations held by Other Club Members and Exchange Users whose reservation was confirmed by or through the Club Operator before the Club Affiliation Agreement was terminated, cancelled, expired, or otherwise ended.

2) It must do everything else required by the Club Affiliation Agreement.

The Club Operator has the right to enforce these requirements even after the Club Affiliation Agreement ends.

**6.11 CONTENTS OF THE CLUB AFFILIATION AGREEMENT.** The Club Affiliation Agreement must contain the following provisions:

**A. CLUB RESERVATIONS.**

1) The Club Affiliation Agreement must prohibit the Club Operator from including in the Club any other vacation ownership or time share plan or program, or any fractional ownership program, unless, under the arrangements between Club Operator and the Other Club Vacation Plan, Owners in this Plan will have reciprocal rights to reserve and use Club Units included in that Club Vacation Plan as stated in Sections 6.6C and 6.6D. However, the Club Operator may refuse to confirm the request of an Owner who has not paid his or her Assessments, Personal Charges, or Club Fees, or in other circumstances where it could refuse to confirm a reservation request by the Owner to use a Vacation Unit.

2) The Club Affiliation Agreement must prohibit the Club Operator from allowing Club Members from Another Club Vacation Plan to reserve Vacation Units in this Plan before the time when Owners in this Plan can reserve Units in that Other Club Vacation Plan.

**B. PURCHASER PROTECTIONS.** The Club Affiliation Agreement must prohibit the Club Operator from including in the Club any other vacation ownership or time share plan or program, or any fractional ownership program, unless the developer of that Other Club Vacation Plan has made reasonable arrangements to assure that:

1) **BLANKET LIENS.** The documents governing that Other Club Vacation Plan prohibit it from issuing time share interests or fractional ownership interests based on property that is or may become subject to a blanket lien unless:

(a) The lienholder has signed a recorded non-disturbance agreement that protects the use rights of the Club Members in that Club Vacation Plan or the developer has posted a bond or made other reasonable arrangements to protect the use rights of those Club Members from the blanket liens; and

(b) Reasonable arrangements are made to assure that the use rights of those Club Members will be protected from blanket liens that may arise in the future. This requirements is met if the time share interests or fractional ownership interests are deeded to the Club Members in the Other Club Vacation Plan.

2) **COMPLETION OF IMPROVEMENTS.** Adequate provisions exist for lien-free completion of all on-site and off-site improvements of the property included in the Other Club Vacation Plan.

3) **BALANCING USE RIGHTS.** The documents governing the Other Club Vacation Plan or the Club Operator's affiliation agreement with that Club Vacation Plan contain requirements intended to insure compliance with the one-to-one use-right to use-night requirement. This is intended to make sure that, on an annual basis, the sum of the Use Nights that all Club Members are entitled to use in a given year will not exceed the number of Use Nights available for use by the Club Members during that year.

4) **MAINTENANCE AND OPERATIONS.** The documents governing the Other Club Vacation Plan provide for (i) reasonable maintenance and operation of the property included in that Club Vacation Plan, and (ii) funding the costs of operating and maintaining that property, including reserves, if required, for replacement of capital improvements as required by the law of the place where the Resort is located; and

5) **LEGAL COMPLIANCE.** The Other Club Vacation Plan complies with the laws that apply to the sale of time share interests or fractional ownership interests in the place where the Resort is located.

**C. USE OF CLUB UNITS.** The Club Affiliation Agreement must say that the Club Operator will not issue Points or other use rights, or a Club Membership, to anyone who (i) is not an Owner of a Vacation Ownership Interest in this Plan, (ii) is not the owner of a time share interest or fractional ownership interest in Another Club Vacation Plan, and (iii) has not deposited in the Club the right to use property that meets the requirements of Subsection 6.11B in return for the right to use a Club Unit. This rule does not prohibit the Club Operator from permitting Exchange Users to reserve the use of a Vacation Unit through an External Exchange Program arranged by or through the Club Operator so long as the Exchange User has also deposited use rights in the External Exchange Program. This rule also does not prohibit the Developer from reserving and using Use Periods as permitted by Section 8.7C, nor does it prohibit the developer of Another Vacation Plan from having and using similar rights. Likewise, this does not prohibit the Club Operator from reserving and using Use Periods as permitted by Section 8.8A.

**D. USE OF THE VACATION PROPERTY.** The Club Affiliation Agreement must say that the Club Operator cannot authorize or permit use of a Vacation Unit by anyone who is not authorized to do so by the Vacation Plan Documents. This does not prevent someone who has the right to use a Vacation Unit from renting it to someone else.

**E. TERM.**

1) The Club Affiliation Agreement may have an initial term of not more than five years from the Starting Date. "Starting Date" is defined in Section 12.5B.1).

2) The Club Affiliation Agreement may provide that after the first term and each later term ends, the Club Affiliation Agreement automatically will be renewed for five more years, unless a written notice canceling the Club Affiliation Agreement is sent by either party at least 30 days before the next renewal date.

(a) The Association cannot give this notice unless a Majority of the Owners Voting vote to do so by written ballot or at an annual or special meeting of the Association held, in either case, not more than one hundred and twenty (120) nor less than thirty (30) days before the renewal date, provided that:

(1) At least thirty percent (30%) of the Owners (not counting the Developer's Vacation Ownership Interests and votes) must be present at the meeting, in person or by proxy or must participate in the voting by ballot; and

(2) The Owners voting or casting ballots in favor of not renewing the Club Affiliation Agreement must hold at least twenty-five percent (25%) of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes); and

(3) The Developer must abstain from the vote, and the Developer's votes will not be considered when determining whether a Majority of the Owners Voting have voted or cast ballots in favor of giving the notice.

(b) A decision not to renew the Club Affiliation Agreement cannot be made by the Board alone. Neither the Board nor any officer, director, employee or agent of the Association can give the notice before a Majority of the Owners Voting cast ballots or vote not to renew the Club Affiliation Agreement in the manner required by Subsection 6.11E.2(a). Any notice sent before then will not be effective. It will be void.

**F. CANCELLATION BY THE ASSOCIATION.** The Association must have the right to cancel the Club Affiliation Agreement without paying a cancellation fee whenever the Club Operator violates a material part of it and fails to cure its violation within the time permitted by the Club Affiliation Agreement or any longer time permitted by the Board.

**G. CANCELLATION BY THE CLUB OPERATOR.** The Club Operator has the right to cancel the Club Affiliation Agreement at any time stated in the Club Affiliation Agreement. The Club Operator also has the right to cancel the Club Affiliation Agreement if any of these things happen:

1) If the Association terminates, cancels, or fails to renew the Management Contract with the Plan Manager for any reason.

2) If the Master Association terminates, cancels, or fails to renew its management contract with the managing agent of the Master Association for any reason.

3) If the Condominium Association terminates, cancels, or fails to renew its management contract with the managing agent of the Condominium Association for any reason.

4) If, in the opinion of the Club Operator, the Association, the Condominium Association, or the Master Association fails to manage, operate and maintain the Condominium, the Master Association property, or the Vacation Property in a manner consistent with a first class destination resort and any additional standards stated in the Club Affiliation Agreement.

**6.12 AMENDMENT OF THIS CHAPTER.** So long as the Plan is part of the Club, this Chapter 6 may not be changed without the written consent of the Club Operator.

## **7. EXCHANGE PROGRAMS**

**7.1 INTRODUCTION.** The Club may or may not include access to an External Exchange Program. An External Exchange Program gives Owners the opportunity to exchange their use rights for the right to use other property through the External Exchange Program. This Chapter is intended to explain the relationship among Owners, the Club, and any External Exchange Programs. It also creates rules that apply to Exchange Users (including members of Other Club Vacation Plans) when they are using the Vacation Property.

### **7.2 EXTERNAL EXCHANGE PROGRAMS.**

**A. PARTICIPATION IN EXTERNAL EXCHANGE PROGRAM.** An Owner may exchange his or her use rights through an External Exchange Program if the Owner chooses to do so. Rules and regulations of an External Exchange Program do not reduce or suspend the duties of an Owner under the Vacation Plan Documents. Any amounts charged to the Owner by the Exchange Company or relating to the External Exchange Program do not change or reduce the Owner's personal duty to pay all amounts charged to the Owner or his or her Vacation Ownership Interest as (i) Assessments or Personal Charges under the Vacation Plan Documents, or (ii) Club Fees (while the Plan is part of the Club).

**B. WHILE THE PLAN IS PART OF THE CLUB.** The Club Operator has the option to enter into a contract (an "Exchange Contract") with one or more companies operating an External Exchange Program. The Exchange Contract may allow Owners to exchange their right to use the Vacation Property for the use of property that is not included in the Club. The Club Operator can change or terminate any Exchange

Contracts at any time and without the approval or consent of the Association, the Owners, or anyone else.

1) The Club Operator may sign an Exchange Contract with the Network Operator that provides that Use Nights not reserved by a certain deadline are automatically deposited into the Network Operator's exchange system and can be reserved by any Network Member. If so, the Exchange Contract must satisfy, with respect to the Network, each of the requirements of Sections 6.11A through 6.11D that the Club Affiliation Agreement must satisfy with respect to the Club. The Exchange Contract may allow the Network Operator to use the Club Operator's easement under Section 8.8C.2) to allow Network Members to use, possess, and enjoy the Vacation Property as described in Section 8.8C.2).

**C. IF THE PLAN IS NO LONGER PART OF THE CLUB.** If the Plan is no longer part of the Club:

1) The Association may enter into an Exchange Contract with one or more Exchange Companies to provide Traditional Exchange Program services to Owners. A program will be deemed a "Traditional Exchange Program" only if:

(a) Membership is not automatic. Instead, each Owner must have the right to choose whether to continue to be a member of the Exchange Program each year.

(b) An Owner who chooses to join the Exchange Program must pay, directly to the Exchange Company, the Exchange Company's standard membership fee. The Association cannot collect these fees or pay them for the Owners.

(c) Use rights are not deposited in the Exchange Program automatically. Instead, a Use Period may be deposited in the Exchange Program only if (i) an Owner first reserves the Use Period, and (ii) the Owner deposits the Use Period directly with the Exchange Company at the time when the Owner requests an exchange to use property that is not part of the Vacation Property.

This Subsection 7.2C, and the last sentence of Subsection 7.2D., cannot be changed without the Developer's written consent.

2) The Association may collect and pay any fee required to be paid by the Plan or the Association under the Exchange Contract. That cost will be a Plan Expense.

**D. EXCHANGE TRADING POWER PROTECTION.** The Plan Operator may estimate the anticipated demand for use of any Exchange Program by the Owners. In order to further the best interests of the Owners as a whole, the Plan Operator may deposit Use Periods with the Exchange Program in advance of the Owners' requests in order to obtain exchange rights for use by the Owners. The provisions of this

Subsection may not be used to circumvent the requirements of Subsection 7.2C.

### 7.3 OWNER'S EXCHANGE RIGHTS AND DUTIES.

**A. CHARGES RESULTING FROM AN EXCHANGE.** If, through an Exchange Program, an Owner exchanges his or her use rights in the Vacation Ownership Plan for use elsewhere, the Owner must pay all amounts reasonably charged to the Owner at the other property. If the Owner does not, the Association may (but does not have to) charge the amount owed as a Personal Charge to the Owner. While the Plan is part of the Club, the Club Operator may (but does not have to) charge the amount owed as an Additional Fee. The Board may examine the charges claimed to be owed to the other property and decide which amounts, if any, will be treated as a Personal Charge. While the Plan is part of the Club the Club Operator may do likewise as to amounts that may be charged as an Additional Fee.

**B. SUSPENSION OF EXCHANGE RIGHTS.** A suspension under Section 14.3 also suspends the Owner's exchange rights. The Plan Operator will notify the Exchange Company of the suspension. A suspension will not affect the rights of an Exchange User (other than a Club Member or Network Member) whose reservation to use the suspended Owner's Use Period is confirmed by the Plan Operator or the Exchange Company before the suspension takes effect.

### 7.4 EXCHANGE USER'S DUTIES AND LIABILITIES.

**A. DUTIES.** Exchange Users have these duties:

- ❖ They must obey the Ka'anapali North Beach Documents, the Master Association Documents, the Condominium Documents and the Vacation Plan Documents and see that their Guests also do so.
- ❖ They will be responsible for (and personally liable for) their Guests just as if they were Owners (see Section 10.3).
- ❖ They must promptly pay all Personal Charges incurred during their Vacation Periods (for example, charges for extra housekeeping service or telephone calls).
- ❖ They must promptly pay all other Personal Charges or personal expenses arising from or related to their use of the Vacation Property, the Common Furnishings, the Condominium, the Master Association Amenities or the Ka'anapali North Beach Amenities (for example, charges for use of the Master Association Amenities or legal fees paid to collect Personal Charges owed by them or their Guests).
- ❖ They will be treated as if they were the Owner of the Vacation Ownership Interest for the purposes of Section 8.6. Among other things, this means they will be liable

for and must pay all sums charged to them under Subsection 8.6B just as if they were Owners.

- ❖ They will not have to pay any Regular or Special Assessments and they cannot vote in the Association.

**B. LIABILITY OF EXCHANGE USERS AND THEIR GUESTS.** Exchange Users and their Guests are jointly and severally liable to keep all promises and pay all charges described in Section 7.4A. This means that each of them may have to pay the whole amount, not just part of it or their share of it. Each person is responsible separately and together with the others.

**C. EXCHANGE USERS MAY BE REQUIRED TO SIGN A CONTRACT.** Exchange Users may be required at check-in (or later) to sign a contract in which they promise to do the things required in this Section 7.4.

## **7.5 LIABILITY.**

**A. FOR THE CLUB OPERATOR.** The Association, the Plan Manager, and the Developer (and each of their directors, officers, employees and agents) are not responsible for the acts, failure to act or conduct of the Club Operator or for the Club Operator's breach of the Club Affiliation Agreement or any other agreement.

**B. FOR AN EXCHANGE COMPANY.** The Association, the Plan Manager, the Developer, and the Club Operator (and each of their directors, officers, employees and agents) are not responsible for the acts, failure to act or conduct of an Exchange Company or for an Exchange Company's breach of the Exchange Contract or any other agreement.

**C. FOR EXCHANGE USERS.** The Association, the Plan Manager, the Developer, the Club Operator, and the Exchange Company (and each of their directors, officers, employees and agents) are not responsible for any act, failure to act or conduct of Exchange Users or their Guests. An Owner is not responsible for any act, failure to act or conduct of Exchange Users or their Guests whose use of a Vacation Unit is exchanged for that Owner's use rights through the Club or another Exchange Company.

**7.6 DUTY TO COMPLY WITH CONTRACTS.** The Association must always repair and keep the Vacation Units and the Common Furnishings in good enough condition to comply with any standards reasonably set by the Club Affiliation Agreement and/or any Exchange Contract. The Owners, the Association, and the Plan Manager must use their best efforts to comply with all other requirements of the Club Affiliation Agreement and/or any Exchange Contract. They must also cooperate fully with the Club Operator and any Exchange Company.

## **8. USE RIGHTS AND RULES**

**8.1 INTRODUCTION.** This Chapter explains the rights and duties of anyone who is using a Vacation Unit or any Common Elements of the Condominium.

**8.2 RIGHTS DURING YOUR VACATION PERIOD.** During an Owner's Vacation Period, the Owner has the exclusive right to occupy and use his or her Assigned Unit and the Common Furnishings in it. During the same Vacation Period, the Owner has the right to use: (a) the Common Elements of the Condominium and any Limited Common Elements available to the Vacation Unit, (b) the Master Association Amenities to the extent permitted under the Master Association Documents, and (c) any Ka'anapali North Beach Amenities to the extent permitted under the Ka'anapali North Beach Documents. The Developer has the same use rights during all Vacation Periods it owns or reserves. These rights are defined, limited and governed by the Vacation Plan Documents, and the Club Documents (while the Plan is part of the Club).

**A. GUEST USE.** An Owner may allow someone else to use his or her Assigned Unit during the Owner's Vacation Period for the purposes permitted by this Declaration. The Owner, however, must first notify the Association that a Guest will use his or her Assigned Unit. The Owner will be fully responsible for his or her Guests. See Chapter 8 for more details.

**B. CONSECUTIVE USE PERIODS.** Anyone who has the right to use a Vacation Unit for two or more Use Periods in a row will also have the right to remain in it during the Minor Service Period between those Use Periods. This does not mean, however, that the Association cannot enter it to perform housekeeping, maintenance and repairs, and so on, during the Minor Service Periods between Use Weeks.

**C. CLUB OPERATOR AND CLUB MEMBERS.** While the Plan is part of the Club, the Club Operator and any Club Members having a confirmed reservation to use a Vacation Unit in this Plan will have the same use rights during any Vacation Period reserved by them.

**D. EXCHANGE USERS.** Any other Exchange User having a confirmed reservation to use a Vacation Unit in this Plan will have the same use rights during his or her reserved Use Period.

## **8.3 AT OTHER TIMES.**

**A. UNITS.** Except for the Assigned Unit during his or her Vacation Period, no Owner, Other Club Member, or other Exchange User may use or occupy a Vacation Unit, its Common Furnishings, or the Common Elements unless he or she is expressly authorized by (a) the person entitled to use the Vacation Unit at that time, (b) the Plan Operator, or (c) the Association. For the purposes of 11 U.S.C. 365(h) and (i),

however, each Owner is deemed to be in constructive possession of his or her Apartment at all times.

**B. MASTER ASSOCIATION AMENITIES.** No Owner, Other Club Member, or other Exchange User may use any of the Master Association Amenities that are not open to the general public except during his or her Vacation Period or as otherwise provided by the Master Association Documents.

**C. KA'ANAPALI NORTH BEACH AMENITIES.** No Owner, Other Club Member, or other Exchange User may use any of the Ka'anapali North Beach Amenities that are not open to the general public except during his or her Vacation Period or as otherwise provided by the Ka'anapali North Beach Documents.

**D. DAY USE.** Regardless of what Sections 8.3A, 8.3B, and 8.3C say, the Plan Operator may permit Owners and their Guests to use the Common Elements of the Condominium, the Master Association Amenities, and any of the Ka'anapali North Beach Amenities at times other than their Vacation Periods. Such use is called "Day Use". The Plan Operator has no duty to permit Day Use. If the Plan Operator permits Day Use, then Owners and their Guests will have the right to use the Common Elements of the Condominium, including but not limited to any unassigned parking stalls, any Master Association Amenities, and any Ka'anapali North Beach Amenities upon the terms and conditions set by the Plan Operator. Day Use will be subject to any further limitations contained in the Condominium Documents, the Master Association Documents and/or the Ka'anapali North Beach Documents. The Plan Operator must limit Day Use to the extent reasonably necessary to assure that it does not unreasonably burden or interfere with the use of the Condominium, the Master Association Amenities, or the Ka'anapali North Beach Amenities. For example, if the pool is overburdened by Day Use, then the Plan Operator must take reasonable steps to limit such use to a level that does not overburden the pool.

#### **8.4 GENERAL USE RESTRICTIONS AND DUTIES.**

##### **A. LIMITS ON OCCUPANTS AND COMMERCIAL USE.**

1) The number of people allowed in any Vacation Unit is limited to the maximum number permitted by law, the Condominium Documents and the Association Rules. No business or profession may be conducted in any Vacation Unit or on the Common Elements. This does not apply, however, to the Developer's rights under Sections 8.7 and 8.9 or to the Club Operator's rights under Section 8.8.

2) Owners and Exchange Users may only use Vacation Units to provide vacation lodgings for themselves and their Guests. They may not use a Vacation Unit for any commercial purpose. Also, they may not, without first getting the Developer's written consent, lease, rent or otherwise contribute their Vacation Ownership Interest, use rights,

Points, or Vacation Period to (i) any other vacation ownership or time share plan or program, (ii) any fractional ownership plan or program, or (iii) a Competitor of the Developer (but this does not prevent an Owner from participating in a Traditional Exchange Program pursuant to Section 7.2C.1) or any Exchange Program available through the Club Operator.) The Developer may withhold its consent in its sole discretion. "Competitor" is defined in Section 12.3L.7). The Rules in this Subsection 8.4A.2) do not apply to the Developer's rights under Sections 8.7 and 8.9, or to the Club Operator's rights under Section 8.8.

**B. ANIMALS.** Persons with handicaps or disabilities may keep specially trained animals in their Assigned Unit or elsewhere on the Condominium as provided in the Condominium Documents, the Master Association Documents, or by law. No other pets or other animals of any kind may be allowed or kept in any Vacation Unit or elsewhere on the Condominium except as explicitly provided in the Association Rules.

**C. USE OF KA'ANAPALI NORTH BEACH AMENITIES.** This Declaration gives the Owners and Occupants no greater rights than they otherwise have under the Ka'anapali North Beach Documents. For example, Owners and Occupants have no right to use any private areas of other Ka'anapali North Beach properties just because they are members of the Ka'anapali North Beach Association or own a Vacation Ownership Interest or have the right to occupy a Vacation Unit.

**D. USE OF MASTER ASSOCIATION AMENITIES.** Use of the Master Association Amenities is available only to the persons and on the terms and conditions set by the Master Association. The Master Association may change the terms and conditions from time to time. Except as otherwise provided in the Master Association Documents, Master Association Amenities available at one time may not continue to be available, or available to Owners and Occupants, in the future. Also, the Master Association may charge for the use of some of the Master Association Amenities. For example, the Master Association may charge for use of the spa, for personal trainers, for scuba lessons, or for other things. This Declaration gives the Owners and Occupants no greater rights than they otherwise have under the Master Association Documents.

**E. RENTALS.** Owners may rent their Vacation Periods in this Plan. The Reservation Rules may limit or prohibit Owners from renting Use Periods reserved in Resorts other than this one. Each Owner promises not to enter into a "rental pool" or similar arrangement where the Owner's Vacation Period is placed together in a pool with other Owners' Vacation Periods and rented, or where rental income and/or expenses are shared in some other way. Only the Developer can enforce this restriction. The Developer can enforce this restriction until the earlier of (1) December 31,

2025, or (2) the date the Developer sells all Vacation Ownership Interests and any other Apartments it owns in the Condominium and in any "Adjacent Projects" as that term is defined in the Condominium Documents. The Developer makes no representation or warranty that any rental pool arrangement will become available, or as to the potential rental value of a Vacation Ownership Interest, or that an Owner may expect to make a profit by buying or renting a Vacation Ownership Interest.

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

**G. DUTY OF CARE; MAINTENANCE AND REPAIR.** All Occupants must keep their Assigned Unit and its Common Furnishings neat and in good condition during their Vacation Period and must take good care of all property available for their use. This includes, among other things, the common areas of the Condominium. The Owners, acting through the Association, will conduct and pay for the costs of normal maintenance and repair of the Vacation Units, their Limited Common Elements, if any, and the Common Furnishings. The Master Association maintains the Master Association Amenities and the Condominium Association maintains the general Common Elements.

**H. OBEY THE KA'ANAPALI NORTH BEACH ASSOCIATION, MASTER ASSOCIATION, CONDOMINIUM AND VACATION PLAN DOCUMENTS.** Each Owner and each Occupant must obey the Condominium Documents, the Master Association Documents, the Ka'anapali North Beach Documents, and the Vacation Plan Documents and see that all his or her Guests also do so.

## 8.5 DUTIES AT CHECK-OUT TIME.

**A. CHECK-OUT.** Except as provided in Section 8.2B, Occupants must leave their Assigned Unit by Check-Out Time on the last day of their Vacation Period.

**B. PERSONAL BELONGINGS.** At the end of their Vacation Period, Occupants must remove from their Assigned Unit all clothing, food, liquor, luggage and other personal effects brought into the Vacation Unit. Nobody (including the Association, the Plan Manager and any later Occupants of the Vacation Unit) will be liable or responsible in any way at all for any personal effects left in a Vacation Unit at the end of a Use Period. Personal effects left in a Vacation Unit at the end

of a Use Period will be considered abandoned. The Plan Manager may throw away, sell, or give them away except as otherwise provided by law or by the Association Rules.

**C. UNIT CONDITION.** Occupants must leave their Assigned Unit and its Common Furnishings neat and in good and sanitary condition (except for reasonable and ordinary wear and tear or destruction by an unavoidable casualty or accident).

## 8.6 INTERFERENCE WITH ANOTHER'S USE.

**A. SPECIAL DEFINITIONS.** The following definitions apply to this Section 8.6:

1) **"Injured Person"** means anyone who has the right to occupy a Vacation Unit but who cannot do so because of the acts (or failure to act) of an Offender. There may be several Injured Persons. For instance, a Vacation Unit may be damaged so that it cannot be used for many Use Periods. If so, each person who has the right to use the Vacation Unit during those Use Periods is an "Injured Person."

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

(a) Uses or occupies a Vacation Unit during another's Vacation Period without permission or during a Service Period (such as by failing to leave by Check-Out Time), or

(b) Purposely or negligently prevents an Injured Person from using or occupying a Vacation Unit. This can happen, for example, if someone damages a Vacation Unit or its Common Furnishings so that as a practical matter it cannot be occupied during the following Use Period.

3) **"Liquidated Damages"** are damages agreed to in advance when actual damages would be difficult to measure. Actual damages caused by an Offender may be uncertain in nature or amount, or difficult, expensive and time-consuming to determine. To avoid these problems, each Occupant agrees that the amount of Liquidated Damages in this Section 8.6 will compensate an Injured Person fairly.

4) **"Fair Rental Value"** means the value of a Vacation Unit based on the cost of renting one like it in the Condominium or elsewhere in the area on a daily basis. If a Vacation Unit was to be used on a Lock-Off basis, then the term "*Fair Rental Value*" will mean the value of the Deluxe Side or the value of the Guest Side, whichever was reserved, based on the cost of renting a Unit like it in the Condominium or elsewhere in the area on a daily basis. The Association determines Fair Rental Value; its decision is final.

**B. WHAT HAPPENS TO AN OFFENDER.** An Offender:

1) May be evicted from the Vacation Unit immediately; and

2) "*Waives*" (gives up his or her right to) any notice required in a lawsuit to evict him or her (to the extent Hawaii law allows this); and

3) Must pay all costs and expenses to the Injured Person, the Association and the Plan Operator resulting from the Offender's conduct. This includes, for example, the Injured Person's travel costs and the costs of renting another place for the Injured Person to stay. This amount is a Personal Charge; and

4) Must pay the Injured Person Liquidated Damages equal to twice the daily Fair Rental Value of the Injured Person's Assigned Unit for each full or partial day the Injured Person cannot occupy the Assigned Unit. This amount also is a Personal Charge.

If there is more than one Injured Person for a single Use Period, they must share the Liquidated Damages; the Offender does not have to pay each one twice the daily Fair Rental Value. This does not limit, however, the Offender's obligation to compensate the Injured Persons for each Use Period when more than one Use Period is affected. If the Vacation Unit was to be used on a lock-off basis and use of both Lock-Off Units is affected, both the person entitled to use the Deluxe Side and the person entitled to use the Guest Side will be Injured Persons and each will be entitled to Liquidated Damages based on the Fair Rental Value of the side that they reserved.

**C. THE ASSOCIATION'S DUTIES.** The Association must take reasonable steps to evict the Offender. It also must find and pay for other lodgings for the Injured Person. These should be as near in value to Injured Person's Assigned Unit as possible. The cost of these lodgings will be charged to the Offender as a Personal Charge. The Association may decide that it has to rent these lodgings for longer than use of the Vacation Unit is prevented. If so, the Offender must pay the rental cost of the entire period as a Personal Charge. The Association's decision on this will be final.

**D. APPLICATION TO EXCHANGE USERS.** Sections 8.6A through C also apply to Exchange Users.

**8.7 SPECIAL RIGHTS OF THE DEVELOPER.** No matter what else the Vacation Plan Documents provide, the Developer has and will have the following special rights and privileges:

**A. DEVELOPER'S VACATION OWNERSHIP INTERESTS.** The Developer has the right to reserve a Use Week or the equivalent for each Vacation Ownership Interest it owns on the same basis as any other Owner.

**B. FIFTY-THIRD USE WEEK.** In certain Use Years, there will be 53 Use Weeks instead of 52. The Developer expressly reserves the right and an exclusive easement to reserve and then use the Vacation Units for one Use Week in

each Use Year that contains a 53rd Use Week. For this purpose, the Developer will have the reservation and use rights of an Owner of a Vacation Ownership Interest having a Floating Vacation Period and a Floating Unit Use Right. If the Developer uses its rights under this Subsection 8.7B, then the Developer must pay to the Association an amount equal to (i) the actual expense to the Association in maintaining and providing services (such as housekeeping) to the Vacation Unit and its Occupants during the Use Periods reserved and used by the Developer under this Section 8.7B, and (ii) a reasonable amount, to be set by the Board, for reserve expenses allocable to such use. The Developer must pay these amounts promptly after it receives a bill itemizing these charges.

**C. UNRESERVED AND UNUSED USE PERIODS.** The Developer has the right to reserve any Use Periods that, for any reason, are not reserved as of sixty (60) days before the Check-In Day. This right of the Developer is in addition to the reservation rights it has for any Vacation Ownership Interests it owns. The Developer's rights under this Subsection are subject to the rights of the Club Operator under Subsection 8.8.

**D. DEVELOPER'S USE.** The Developer may use its Vacation Periods for any purpose, no matter what else the Vacation Plan Documents provide. This includes, among other things, use for rental, sales and other commercial purposes permitted by law. The Developer and its Guests will have the right to use the Assigned Unit, its Limited Common Elements, the Master Association Amenities, and the Common Elements of the Condominium during the Use Period reserved. If the Developer rents these Use Periods, it has the right to keep the rent. The Developer may but does not have to assign its right to reserve and rent any unreserved Use Periods to the Association or to the Plan Manager by signing and recording a document that says so.

**E. USE OF VACATION UNITS.** The Developer may: (i) use one or more Vacation Units as model apartments; (ii) use one or more of the Vacation Units for customer relations, sales, marketing, and/or administrative offices, and (iii) show the Vacation Units to potential buyers. However the Developer cannot do this in a way that violates the one-to-one use-right to use-night requirement of the Act.

**F. USE OF COMMON ELEMENTS AND AMENITIES.** So long as the Developer owns any Vacation Ownership Interest or Apartment, it may use:

1) The Common Elements of the Condominium for any purpose permitted by law and by the Condominium Documents, free from the restrictions imposed by the Vacation Plan Documents, and

2) The Master Association Amenities for any purpose permitted by law and by the Master Association

Documents, free from the restrictions imposed by the Vacation Plan Documents.

This does not relieve the Developer of any restrictions on the use of the Developer's Reserved Rights contained in the Condominium Documents or the Master Association Documents.

**G. DEVELOPER'S EASEMENT.** The Developer has an easement to use the rights reserved by the Developer in this Section 8.7. The Developer's rights under Subsection 8.7E must be used so as to minimize, when reasonably possible, any unreasonable interference with the rights of Owners or others to use and occupy the Vacation Units (but this does not change the Developer's Reserved Rights in the Condominium Documents). In no case may these rights be used in a way that prevents an Owner or other person having a confirmed reservation from using their Assigned Unit during their Vacation Period. The term "easement" is defined in the Glossary (Section 19.5). The Developer's agents, employees, contractors, and other authorized persons may use the Developer's easement rights to the extent authorized by the Developer.

**H. NAME CHANGE.** The Developer may change the name of the Vacation Ownership Plan at any time. The Developer may record any documents that it deems necessary or helpful to change the name. The Association and each Owner gives the Developer a special power of attorney to do this.

**8.8 SPECIAL RIGHTS OF THE CLUB OPERATOR.** No matter what else the Vacation Plan Documents provide, the Club Operator has the following special rights and privileges:

**A. RESERVATION RIGHTS.** Except as limited by law, the Club Operator has the right to reserve any Use Periods that, for any reason, are not reserved as of sixty (60) days before the Check-In Day. The Club Operator has this right in addition to any reservation rights it has if, for any reason, it owns any Vacation Ownership Interests.

**B. USE RIGHTS.** The Club Operator may use its Vacation Periods for any legal purpose, no matter what else the Vacation Plan Documents provide. This includes, among other things, use for rental, sales and other commercial purposes permitted by law. The Club Operator and its Guests will have the right to use the Assigned Unit, its Limited Common Elements, the Master Association Amenities, and the Common Elements of the Condominium during the Use Period reserved. If the Club Operator rents these Use Periods, it has the right to keep the rent.

**C. CLUB OPERATOR'S EASEMENT.**

1) The Club Operator has an easement to use the Vacation Property and (to the extent permitted by the

Condominium Documents) the Common Elements when using its rights in this Section 8.8. The Club Operator may not use its rights in this Section 8.8 in a way that prevents an Owner or other person having a confirmed reservation from using their Assigned Unit during their Vacation Period (including but not limited to an Owner having an Event Vacation Period, or an Ultra Premium Vacation Period). The Club Operator's agents, employees, contractors, and other authorized persons may use its easement rights to the extent authorized by the Club Operator.

2) The Club Operator also has the right and an easement to permit Other Club Members to use, possess and enjoy the Vacation Property on these terms and conditions. If the Club Operator confirms a Club Member's reservation request pursuant to Section 6.6C, then, during his or her Vacation Period, the Club Member and his or her Guests will have the same rights to use the Assigned Unit and Common Elements that an Owner has under Section 8.2. The Club Operator has an easement and the right to allow Other Club Members who make a reservation during the Club Reservation Periods to use, possess and enjoy the Vacation Property in these circumstances. But the Other Club Members do not have an easement of their own. Other Club Members may only use the Vacation Property through the easement rights of the Club Operator.

(a) The Club Operator cannot use these rights in a way that violates the one-to-one use-right to use-right requirement of the Act.

(b) The Club Operator may only make this easement available to: (i) Club Members of Other Club Vacation Plans, and (ii) persons who have deposited in the Club the right to use property that meets the requirements of Subsection 6.11B in return for the right to use a Club Unit. This rule does not prohibit the Club Operator from permitting Exchange Users to reserve the use of a Vacation Unit through an External Exchange Program arranged by or through the Club Operator so long as the Exchange User has also deposited use rights in the External Exchange Program.

**D. LIFE OF THE CLUB OPERATOR'S EASEMENTS.** The Club Operator's rights and easements under Section 8.8C will remain in effect so long as the Plan is part of the Club. The Club Operator's easements will end automatically (i) when the Plan is no longer participating in the Club, and (ii) all reservations made by the Club Operator under Section 8.8A, and all reservations confirmed by the Club Operator under Section 6.6C, have been used, have expired, or have been canceled. If the Plan decides to rejoin the Club, then the Club Operator will once again have the rights and easements contained in Section 8.8C.

## 8.9 SPECIAL RULES ABOUT DEVELOPER RENTALS.

**A. RENTAL USING THE DEVELOPER'S VACATION OWNERSHIP INTERESTS.** The Developer's right to rent Use Periods reserved by the Developer in its capacity as an Owner of a Vacation Ownership Interest pursuant to Section 8.7A is unrestricted. Likewise, the Developer's right to rent Use Periods reserved by the Developer pursuant to Section 8.7B is unrestricted. No matter what the Vacation Plan Documents say, the Developer, and the Developer alone, gets to keep the rent from these kinds of rentals.

**B. RESTRICTIONS ON DEVELOPER RENTALS.** The Developer also has the right under Section 8.7C to rent any unreserved Use Periods and to keep that money, too. The Developer can only make reservations for those kinds of rentals if and for so long as the Developer, or an entity owned or controlled by the Developer, or under common management and control with the Developer, is the Plan Manager for the Plan. These Rules apply:

1) The Developer may not use its rights under Section 8.7C to reserve any Use Period more than forty-five (45) days before the Check-In Day of that Use Period if the Developer intends to rent it to the public.

2) An Owner's late request to reserve a Use Period must be confirmed unless, for all Vacation Units of the Unit Type requested, the Use Period requested has been reserved by persons other than the Developer or unless the Use Period was already rented to a member of the general public before the reservation request was received.

3) The Developer must reimburse the Association for expenses incurred by or allocated to the Vacation Ownership Plan in connection with renting a Vacation Unit under Section 8.7C. This includes the cost of any maintenance, repair or replacement incurred by reason of damage or destruction to a Vacation Unit when rented under Section 8.7C.

4) The Developer must submit to the Association not less than thirty (30) days before the scheduled mailing of the annual report referred to in Section 13.11A.2), a report for the prior Fiscal Year. The report must state the amount of revenues derived by the Developer from the commercial rental of any Use Periods reserved by the Developer under Section 8.7C, and the amount paid by the Developer to the Association for expenses incurred by or allocated to the Vacation Ownership Plan in connection with the Developer's commercial rental of Vacation Units.

### C. ASSOCIATION'S RENTAL RIGHTS.

1) Despite Subsection 8.7C, if the Developer is more than sixty (60) days late in paying any Personal Charge, assessment or Subsidy Contract payment, and does not pay it within ten (10) business days after receiving from the

Association a written demand for payment, then the Association may use the Developer's rights to reserve the Developer's Vacation Periods and any unreserved Use Periods. The Association may then rent those Vacation Periods to the public. The renter and his or her Guests will have the right to use the Assigned Unit, its Limited Common Elements, the Master Association Amenities, and the Common Elements of the Condominium during the Use Period reserved. The Association may not reserve or rent more Use Periods than necessary to pay all sums due in full (plus the reasonable costs of renting the Vacation Period). The Association will apply the rent money first to pay the cost of arranging the rental and then to pay all overdue amounts owed.

2) The Association may not reserve or rent a Use Period that has already been reserved by:

(a) Another Owner whose reservation has been confirmed; or

(b) An Exchange User whose exchange reservation has been confirmed by the Plan Operator or by an external Exchange Company.

3) If the Developer has already rented a Vacation Period, the renter will be permitted to use that Vacation Period. The Association will have the right to collect any unpaid rent from the renter until all amounts due are paid in full.

4) The Association's agents, employees, contractors, and other authorized persons have an easement for the purpose of conducting rental activities under this Section 8.9C to the extent authorized by the Association.

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

## 9. OWNERSHIP RIGHTS AND RULES

**9.1 INTRODUCTION.** One of the many benefits of owning a Vacation Ownership Interest is that the Owner can transfer it to his or her children, a friend, or just about anyone else. Because it is a real estate interest, an Owner may also mortgage his or her Vacation Ownership Interest. This Chapter explains how to transfer or mortgage a Vacation Ownership Interest and discusses the restrictions that apply. It also explains when a transfer will take effect and creates rules about making a transfer. It concludes with a discussion of certain other real estate rights of the Owners and the Developer's right to repurchase the Vacation Ownership Interest if an Owner decides to sell it.

## 9.2 DEFINITIONS.

A. **"PRIOR OWNER"** means an Owner who is transferring a Vacation Ownership Interest to someone else.

B. **"NEW OWNER"** means the person to whom a Prior Owner is transferring his or her Vacation Ownership Interest.

## 9.3 TRANSFERS OF VACATION OWNERSHIP INTERESTS.

A. **PERMITTED TRANSFERS.** An Owner may transfer his or her Vacation Ownership Interest or Vacation Ownership Interests. A person who owns more than one Vacation Ownership Interest may treat each one separately. The Owner is not required to do with all the Owner's Vacation Ownership Interests what he or she does with any one.

B. **LIMITS ON TRANSFERS.** Without the Developer's written consent, an Owner may not lease, rent, or otherwise contribute his or her Vacation Ownership Interest or its reservation or use rights to (i) another vacation ownership or time share plan or program, (ii) a fractional ownership plan, or (iii) a Competitor of the Developer (as defined in Section 12.3L.7). Any attempt to do so will not be effective; it will be void. Also, Competitors are not allowed to own any interest in any Vacation Ownership Interest. If a Competitor acquires any interest in a Vacation Ownership Interest without the Developer's consent, or if anyone who has any interest in a Vacation Ownership Interest becomes a Competitor without the Developer's written consent, that interest will return to the Developer automatically. In legal terms, the Developer has a "possibility of reverter". The Developer will transfer the Vacation Ownership Interest back to the Prior Owner (the person who transferred it to a Competitor) if the Prior Owner pays all of the Developer's costs and expenses arising out of the Owner's violation of this Subsection. This includes, among other things, the cost of taking title back, including any court costs and legal fees, and the cost to transfer it back to the Prior Owner. The Developer does not have to transfer title back to a Prior Owner who is a Competitor. However, the Developer is willing to transfer it someone else who is not a Competitor if the Prior Owner pays all of the Developer's costs and expenses arising out of the Owner's violation of this Subsection.

C. **OWNERS MAY NOT TRANSFER LESS THAN AN ENTIRE VACATION OWNERSHIP INTEREST.** No Owner may transfer less than an Entire Vacation Ownership Interest. "Entire Vacation Ownership Interest" means (i) everything transferred in the First Deed for the Vacation Ownership Interest (subject to Section 9.3A when the First Deed transferred more than one Vacation Ownership Interest), and (ii) his or her membership in the Club (while the Plan is part of the Club). Any attempt to transfer anything less than an Entire Vacation Ownership Interest will be void. There are two exceptions:

1) An Owner may pledge or transfer voting rights to a Lender having a mortgage on his or her Vacation Ownership Interest (including but not limited to a Lender who has a nominee – such as Mortgage Electronic Registration Systems, Inc. – hold a mortgage for it); and

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

D. **REQUIREMENTS FOR TRANSFER DOCUMENTS.** Every deed and every Agreement of Sale must meet these requirements:

- ❖ It must be recorded.
- ❖ It must state the identification number of the Vacation Ownership Interest.
- ❖ It must state whether the Vacation Ownership Interest is an Every-Year Vacation Ownership Interest, an Even-Year Vacation Ownership Interest, or an Odd-Year Vacation Ownership Interest.
- ❖ It must state whether the Vacation Ownership Interest has a Floating Vacation Period, a Fixed Vacation Period, an Event Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period. If it has a Fixed Vacation Period, an Ultra Vacation Period, or an Ultra Premium Vacation Period, then the Deed or Agreement of Sale must identify the Owner's Use Week by Use Week number or Use Week name. If it has an Event Vacation Period, then the First Deed must identify the Event Week by name.

E. **NOTICE OF TRANSFERS.** Written notice must be given to the Association within ten (10) days after any Vacation Ownership Interest is transferred. The notice may be given by either the Prior Owner or the New Owner. The notice must include each of these things:

- ❖ The name and address of both the Prior Owner and the New Owner.
- ❖ The date of the transfer.
- ❖ The Apartment number for the Vacation Ownership Interest.
- ❖ The identification number of the Vacation Ownership Interest.
- ❖ A copy of the recorded document used to make the transfer. It must include the recording information for the document.

**F. REGISTRATION OF TRANSFER.** The Association may collect a reasonable service charge for changing its records to reflect the transfer in an amount fixed from time to time by the Board. While the Plan is part of the Club, the Plan Operator may also collect a reasonable service charge for registering the change on its records. When the Association receives a proper notice of a transfer and receives the service charges owed to the Association and to the Plan Operator, then the Association will register the change on the Association's list of Owners and notify the Plan Operator.

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

- 1) Neither the Association nor the Plan Operator has to recognize the New Owner for any purpose.
- 2) The Association and the Plan Operator may continue to treat the Prior Owner as the Owner.
- 3) The Prior Owner will remain fully liable as an Owner along with the New Owner.
- 4) The Association and the Plan Manager may deal exclusively with the Prior Owner, the New Owner, or both. All notices from the Association or the Plan Operator to the "Owner" may be sent to the New Owner, the Prior Owner or both, as the Association or Plan Operator choose.

**H. RIGHTS AUTOMATICALLY TRANSFERRED.** The transfer of a Vacation Ownership Interest automatically transfers these things to the New Owner:

- ❖ The interest of the Prior Owner in all funds held by the Association.
- ❖ The membership of the Prior Owner in the Association.
- ❖ While the Plan is part of the Club, the membership of the Prior Owner in the Club.

This happens whether or not the document transferring the Vacation Ownership Interest expressly says so.

**I. FUNDS HELD BY THE ASSOCIATION, THE CLUB OPERATOR, OR AN EXCHANGE COMPANY.** No share of any Owner in funds held by the Association, the Club Operator or an Exchange Company can be withdrawn or separately transferred. An Owner who wants this money must get it from the New Owner. Neither the Association nor the Club Operator nor any Exchange Company is required to refund it.

**J. EXISTING RESERVATIONS.** If the Prior Owner made a reservation before the transfer took effect, the Plan Operator can assume that the Prior Owner, and not the New Owner, will use the reserved Use Period unless the Prior Owner tells it otherwise in the notice of the transfer. The New Owner cannot cancel the Prior Owner's reservation.

#### **9.4 RELEASE OF AN OWNER'S DUTIES UNDER THIS DECLARATION.**

A person's liability as an Owner under the Vacation Plan Documents and the Club Documents ends when:

- ❖ He or she no longer owns that Vacation Ownership Interest, and
- ❖ He or she or the New Owner notifies the Association of the transfer, and
- ❖ He or she has paid all sums and performed all his or her other duties under the Vacation Plan Documents up to the time his or her ownership ends and the notice of the transfer is sent. This includes Assessments, Personal Charges, and Club Fees (while the Plan is part of the Club).

#### **9.5 MORTGAGES.**

**A. PERMITTED MORTGAGES.** An Owner may mortgage his or her Vacation Ownership Interest or Vacation Ownership Interests. The Owner must, however, mortgage all his or her rights in the Vacation Ownership Interest; any attempt to mortgage anything less will be void. Anyone who owns more than one Vacation Ownership Interest may mortgage each one separately.

**B. PROHIBITED ACTS.** No Owner can mortgage or otherwise encumber all or any part of:

- ❖ Another Owner's Vacation Ownership Interest.
- ❖ The whole Vacation Unit.
- ❖ The Common Furnishings.

Any attempt to do so will not be effective. It will be void. NOTE: "Encumber" is defined in the glossary (Section I9.5).

**C. ENFORCEMENT OF MORTGAGES.** Any mortgage on a Vacation Ownership Interest will be subordinate to (will be governed by and will not affect) this Declaration or the other Vacation Plan Documents. Likewise, while the Plan is part of the Club, any mortgage will also be subordinate to the Club Documents. If a mortgage is properly recorded and given in good faith and for value, then no violation of the Vacation Plan Documents or enforcement of the Association's Secured Lien will defeat or make the lien of the mortgage invalid. This does not guarantee, however, that the Lender will be fully paid or paid first.

#### **9.6 DUTY TO OTHERS.**

**A. PROTECTING OTHER'S VACATION OWNERSHIP INTERESTS.** No Owner may cause or permit his or her Vacation Ownership Interest or Vacation Unit or the Common

Furnishings to be subject to any claim or lien which (1) could result in the sale of a Vacation Unit, its Common Furnishings, or the Vacation Ownership Interest of any other Owner, or (2) could interfere with another Owner's use or enjoyment of his or her Vacation Ownership Interest.

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

**B. ASSOCIATION OR CLUB OPERATOR'S FUNDS.** No Owner may permit his or her interest in any funds held by the Association or the Club Operator to become subject to any attachment, lien or claim or other legal process. Each Owner must promptly restore any funds held by the Association or the Club Operator with respect to the Owner's Vacation Ownership Interest if they are taken because of any such attachment, lien, claim or other legal process. The Owner must also repay the Association and the Club Operator for all reasonable attorneys' fees and any other costs they incur to have the funds restored. Amounts incurred by the Association may be charged to the Owner as a Personal Charge. Amounts incurred by the Club Operator may be charged to the Owner as an Additional Fee.

#### 9.7 WAIVER OF RIGHTS.

**A. TENANTS IN COMMON.** Each Owner owns a share of his or her Vacation Unit as tenants in common. Under the law, each Owner, as a tenant in common, has certain rights, privileges and duties. These rights, privileges and duties are and will remain subordinate to (subject to and restricted by) the Vacation Plan Documents. In case of any conflict, the Vacation Plan Documents will control for so long as this Declaration stays in effect. "Tenants in common" is defined in the glossary (Section 19.5).

**B. PARTITION.** "Partition" is the right of co-owners to ask a court to divide commonly owned property into separate parts for each co-owner. If the property cannot legally be divided, a court may order the property sold and divide the money from the sale among the co-owners. While this Declaration is in effect, nobody may ask for or obtain partition of a Vacation Ownership Interest or a Vacation Unit or its Common Furnishings. If, however, any Vacation Ownership Interest is owned by two or more persons together, any of them may ask a court to sell their Vacation Ownership Interest and divide the money between them. When this Declaration ends any Owner may ask a court to sell his or her

Vacation Unit and divide the money between the co-owners of that Apartment.

**9.8 RIGHT OF FIRST REFUSAL.** If an Owner receives an Offer to Buy (the "Offer to Buy") the Owner's Vacation Ownership Interest and if the Owner wishes to accept the Offer to Buy, the Owner must first notify the Developer before accepting the offer. The Owner must provide to the Developer a complete copy of the Offer to Buy. The Developer will then have the right and an option to buy the Owner's Vacation Ownership Interest at the same price and on the same terms contained in the Offer to Buy. If the Developer decides to buy the Vacation Ownership Interest, then the Developer will send the Owner written notice of that decision within ten (10) business days after the Developer receives the Owner's notice of the Offer to Buy. The Developer's notice will create a binding contract between the Owner and the Developer to buy the Owner's Vacation Ownership Interest on the terms stated in the Offer to Buy (subject, however, to a reasonable extension of the closing date). If the Developer does not send notice of its decision to buy the Vacation Ownership Interest within the ten (10) business day period, then the Owner may sell the Vacation Ownership Interest to the person who submitted the Offer to Buy. If the Offer to Buy is changed in any way (for example, a reduction in the price, a change in the buyer or an assignment of the buyer's rights to someone else), or if the sale does not close within ninety days, then the Offer to Buy will be considered a new Offer to Buy and the Owner must re-submit it to the Developer and the requirements of this Section will apply again. If the Developer chooses not to buy the Vacation Ownership Interest, this will not constitute consent by the Developer of a sale or other transfer of the Vacation Ownership Interest to a Competitor in violation of Section 9.3B, or a waiver of the Developer's rights under that Section.

#### 10. OWNER'S RESPONSIBILITY FOR OTHERS

**10.1 INTRODUCTION.** An Owner may wish to reserve a Vacation Unit so that his or her children, parents, relatives, a friend, or just about anyone else can use it. The Plan allows a member to do this. But each Owner has certain responsibilities for his or her Guests. This Chapter explains those responsibilities. It also explains the responsibilities as between two Owners of a single Vacation Ownership Interest.

##### 10.2 CO-OWNERS OF A SINGLE VACATION OWNERSHIP INTEREST.

If there is more than one Owner of a single Vacation Ownership Interest, each co-Owner is jointly and severally liable to pay all Assessments, Personal Charges, and Club Fees. This means that each person may be held responsible to pay the whole amount of the Personal Charge, Assessment, or Club Fee, not just part of it or his or her share of it. It does

not matter that only one co-Owner uses the Vacation Property during the Vacation Period or that Personal Charges were caused by only one of the co-Owners and not the others. For example, when one co-Owner damages the furniture or makes a long distance call, each of the co-Owners are fully responsible to pay for it, not just the one who did it. "Joint and several liability" is defined in the glossary.

### 10.3 OWNER'S RESPONSIBILITY FOR GUESTS.

An Owner is personally responsible to see that his or her Guests:

- 1) Obey the Condominium Documents, the Master Association Documents, the Ka'anapali North Beach Documents, and the Vacation Plan Documents.
- 2) Promptly pay all Personal Charges incurred during the Owner's Vacation Period (for example, charges for extra housekeeping service or telephone calls).
- 3) Promptly pay all other Personal Charges arising from or related to use by the Owner's Guests of the Vacation Property, the Condominium, the Ka'anapali North Beach Amenities, or the Master Association Amenities (for example, charges for use of the spa).

### 10.4 OWNER'S LIABILITY FOR GUESTS.

By permitting his or her Guest to come onto the Condominium (whether or not the Guest is expressly invited), the Owner agrees to be fully responsible for:

- ❖ Any loss, damage or destruction caused by the Guest's act or failure to act;
- ❖ Any violation by the Guest of the Ka'anapali North Beach Documents, the Master Association Documents, the Condominium Documents or the Vacation Plan Documents; and
- ❖ Any Personal Charges or other charges incurred by the Guest.

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

**10.5 AN OWNER AND HIS OR HER GUESTS ARE LIABLE SEPARATELY AND TOGETHER.** Each Owner and his or her Guests are jointly and severally liable to pay all Personal Charges and all other charges arising from or related to the

Guest's use of the Assigned Unit, the Common Furnishings, the Condominium, the Master Association Amenities or the Ka'anapali North Beach Amenities. This means that the Owner, the Owner's Guest, or both may be required to pay the whole amount, not just part of it or some share of it.

## 11. THE ASSOCIATION

**11.1 THE ASSOCIATION.** The name of the Association is "Ocean Resort Villas Vacation Owners Association". It is a Hawaii non-profit corporation. The Association is intended to continue as a corporation for the life of the Plan. But the state can terminate or "dissolve" a corporation in certain circumstances such as if the officers fail to file yearly reports required by law. If the corporation is ever dissolved, whether on purpose or not, then it will be replaced automatically by an unincorporated association having the same name and same Members, officers and directors. In that event, all property, powers and obligations of the incorporated Association just before it dissolved automatically will be held by the unincorporated Association. To the greatest extent possible, any replacement unincorporated Association will be governed by the Vacation Plan Documents as if they were the governing documents of the unincorporated Association. The Act requires that the Association of Owners be a nonprofit corporation. Any officers or directors of the unincorporated Association may either revive the old corporation or create a new one to be the Association. The name of the new corporation should be the same as or similar to the old name if possible.

**11.2 ASSOCIATION MEMBERSHIP.** Each Owner is a Member of the Association and only Owners can be Members. If more than one person is the "Owner" of a Vacation Ownership Interest, each of them is a Member. A person's Membership ends automatically when he or she is no longer the "Owner" of a Vacation Ownership Interest, such as when an Owner Deeds it to someone else. An Owner cannot separate his or her Association Membership from his or her Vacation Ownership Interest. He or she cannot sell, transfer, mortgage or otherwise deal with it separately from the Vacation Ownership Interest. Any attempt to do so is void. Anyone who transfers a Vacation Ownership Interest also automatically transfers the Membership for that Vacation Ownership Interest to its New Owner.

**11.3 VOTING RIGHTS OF OWNERS.** Each Every-Year Vacation Ownership Interest has two votes. Each Every-Other-Year Vacation Ownership Interest has one vote. An Owner who owns more than one Every-Year Vacation Ownership Interest has two votes for each of them. Likewise, an Owner who owns more than one Every-Other-Year Vacation Ownership Interest has one vote for each of them. If a Vacation Ownership Interest is owned by more than one person, they will have to agree among themselves on how to vote. The Association need not settle disputes among co-

Owners as to voting. If they cannot agree, they lose their right to vote on the matter in question. If a Vacation Ownership Interest is owned by more than one person, the vote or votes for that Vacation Ownership Interest may be cast by any of its co-Owners, unless (i) another co-Owner files a written objection with the secretary or the chairperson of the meeting, or (ii) another co-Owner casts an inconsistent vote.

**11.4 BOARD OF DIRECTORS.** The business and affairs of the Association are controlled by the Board. Except as limited by law or by the Vacation Plan Documents, the Board may exercise all powers of the Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Vacation Plan Documents, must be taken, authorized or approved by the Owners, or by some part or percentage of them. The Board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the Plan Manager. This authority is subject to any limits contained in this Declaration or the Bylaws. The first Board will consist of persons named in the Articles or otherwise appointed by the Developer. At the Association's first annual meeting, the Owners will elect a new Board.

## **12. MANAGING THE PLAN**

**12.1 THE ASSOCIATION MANAGES THE PLAN.** While the Plan is part of the Club, the Club Operator administers and manages the reservation system and all related aspects of the Plan. This is discussed in Section 6. Administration and management of the Vacation Property and all other aspects of the Vacation Ownership Plan is vested in the Association. Owners participate only through the Association.

**12.2 ASSOCIATION DUTIES AND POWERS.** Except as limited by the Articles, this Declaration, the Club Affiliation Agreement, or by law, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

A. The powers, duties and obligations granted to or imposed on the Association in this Declaration or the Bylaws;

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

C. The powers, duties and obligations of an Association of time share owners as provided in the Act and the Rules; and

D. Any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Association under this Declaration, the Bylaws, or the Club Affiliation Agreement, or that otherwise promote the general benefit of the Owners.

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

A. **PAYMENT OF EXPENSES.** The Association, acting as the agent of the Owners, must pay all expenses of the Plan. The Association may delegate this duty to the Plan Manager. The Association need not do anything it cannot pay for; it may just wait until it has the money.

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

C. **CLEANING AND HOUSEKEEPING SERVICE.** The Association must provide cleaning, housekeeping service, maintenance and repairs to each Vacation Unit at the end of each Vacation Period, during Service Periods and at any other times required by the Reservation Rules. In addition to the normal service, the Association may set up a program to provide, for an extra charge, additional cleaning and housekeeping service when asked by an Occupant.

D. **RIGHT OF ENTRY.** Except as provided in Section 8.2B, the Association has an easement and the right to exclusive possession of each Vacation Unit during the Service Periods in order to perform its duties under this Declaration. It also has the right and an easement to enter any Vacation Unit at any reasonable time, after giving reasonable notice to anyone in it, to provide cleaning, housekeeping service, maintenance and repair or as otherwise may be necessary to manage or operate the Plan. The Association has the right and power, and an easement, to enter any Vacation Unit:

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

2) At reasonable times to do maintenance and repair work that the Association or Plan Manager decides should not be delayed until the Major Service Periods.

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

E. **TAXES AND ASSESSMENTS.** The Association must pay all taxes and assessments on the Vacation Property. This includes, for example, assessments by the Condominium Association or the Ka'anapali North Beach Association. It also includes all governmental assessments. The Association

may decide whether it should collect and pay amounts that are separately assessed to each Owner or whether it should permit the Owners to pay those sums directly. The Association must also pay all fees, charges and assessments charged to the Vacation Units or Owners by the Master Association in accordance with the Master Association Documents. The Association will pay these taxes and assessments as the agent of the Owners, and only if it has the money to do so.

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

**G. UTILITIES.** Unless the Condominium Association already provides these services: (1) the Association must obtain and pay for water, electricity, sewage, garbage disposal, and any other necessary utility services for each Vacation Unit; and (2) the Association will decide whether to obtain or cancel telephone, cable television, and similar services.

**H. ASSOCIATION RULES.** The Plan Manager may adopt, publish and enforce fair and reasonable rules and regulations relating to the Vacation Units, the Common Furnishings, and use by Occupants of the Common Elements. The Plan Manager may change the rules from time to time with the approval of the Board. The Board may not withhold its approval unreasonably. The Association Rules must be consistent with this Declaration, the Articles and the Bylaws. At any meeting of the Association, a Majority of the Owners may change the Association Rules so long as the notice of meeting stated that the change would be considered at the meeting. So long as the Developer owns, or holds mortgages on, at least fifty Vacation Ownership Interests, no change to the Association Rules will be effective without the Developer's written consent. So long as the Plan is part of the Club, no change to the Association Rules will be effective without the written consent of the Club Operator.

**I. LEGAL AND ACCOUNTING SERVICES.** The Association may obtain and pay for any legal and accounting services necessary or helpful to manage the Plan or the Vacation Property or to enforce the Ka'anapali North Beach Documents, the Master Association Documents, the Condominium Documents or the Vacation Plan Documents.

1) Even so, the Board may not incur or commit the Association to incur legal fees and costs of more than \$10,000 in a dispute with the Developer, or any company related to the Developer, or in a dispute with the Club Operator, or any company related to the Club Operator, unless it first meets each of these requirements:

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

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

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

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

(4) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on.

In a trial or arbitration of the Association's claims, the Developer cannot use the opinions of the law firms as evidence that the Master Association's claims are not valid.

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

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

(d) At the special meeting, a Majority of the Owners (not counting the Vacation Ownership Interests and votes of the Developer) must authorize the Board to start and prosecute the lawsuit or any other arbitration or other legal proceeding.

2) The rule in Section 12.31.1) does not apply to suits against the Developer or any company related to it if the suit is filed solely to collect Assessments, Personal Charges, or Subsidy Contract payments that are past due or for breach of any contract to provide goods or services to the Association (for example, the Management Agreement or the Club Affiliation Agreement).

3) The \$10,000 ceiling contained in Section 12.31.1) will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. Index. The amount of the increase or decrease will be equal to the percentage change between (i) the C.P.I. Index published for December of 2003, and (ii) the most recent December C.P.I. Index figure.

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

**J. FINANCIAL STATEMENTS.** The Association must prepare and send financial reports to each Owner as required by Section 13.11A of this Declaration.

**K. VOTING IN THE CONDOMINIUM ASSOCIATION.** In Condominium Association meetings or votes, the Association must cast the vote of each Vacation Unit unless Owners of a majority of the votes for Vacation Ownership Interests in that Vacation Unit elect to cast the vote for their Apartment themselves.

At least 30 days before the annual meeting and 15 days before any special meeting of the Condominium Association, the Board will obtain the agenda and any other information that is reasonably available on the matters to be voted upon at that meeting. The Board will mail this material to each Owner together with a ballot to be returned to the Association. The ballot will ask the Owners to vote on each question. The Board will appoint an agent to cast the vote of each Vacation Unit. For each Vacation Unit the agent will vote as the Owners of a majority of the votes for that Vacation Unit voted in their ballot; provided that if no ballots are returned or if there is no majority for the Vacation Unit, then the Board, through its agent, may cast the Apartment's vote in the manner it considers to be in the best interests of the Owners.

If, for reasons beyond its control, the Association does not have time to send out ballots, the Board, through its agent, may cast the vote of the Vacation Units in the manner it considers to be in the best interests of the Owners. This rule also applies to matters properly before the Condominium Association that were not on the agenda and not reasonably expected to arise.

Except as provided in the first sentence of this Subsection 12.3K, each Owner will be considered to have authorized the Association, and its agent, to act for him or her at any meeting or vote of the Condominium Association. For this purpose, by taking title to a Vacation Ownership Interest, each Owner irrevocably (permanently) gives the Board a special power of attorney (see Section 19.4) and proxy to represent him, or to appoint an agent to do so, at all meetings and in all votes of the Condominium Association. No further authorization or proxy is or will be needed for the Board or its agent to act for that Owner at any meeting or in any vote of the Condominium Association. But, if the Board asks, each Owner must: (i) sign and deliver any documents (including but not limited to a proxy form prepared by either the Association or the Condominium Association); and (ii) do everything else the Board reasonably requests to enable it or its agent to cast the vote of the Vacation Units at any meeting or in any vote of the Condominium Association or to carry out its other duties under this Declaration.

#### **L. LIST OF MEMBERS.**

**1) THE ASSOCIATION MUST KEEP A LIST.** The Association must at all times keep a current list of the names and addresses of all Owners.

(a) The Association will furnish a copy of the list within a reasonable time after any Owner asks for it in writing, pays a reasonable fee (to be determined by the Board), and complies with any other requirements of this Declaration or the Bylaws, including those contained in Section 12.3L.3).

(b) The Association will furnish a copy of the list to the Club Operator (while the Plan is part of the Club) or the Developer within a reasonable time after either of them requests it. The conditions stated in Section 12.3L.3) do not apply to the Developer or the Club Operator.

**2) THE DEVELOPER'S RIGHTS.** The Developer has certain important reasons for wanting to protect the list of Owners. For example, the list of Members is also the list of the Developer's customers. In addition, the Condominium Property Act contains certain provisions intended to protect the list of Members. The Developer wants to insure that these requirements are not circumvented, especially for commercial reasons by a Competitor of the Developer. For these and other reasons, the Developer is expressly declared to be an intended third party beneficiary of this Section 12.3L. This means that this Section 12.3L is intended to protect the Developer and that the Developer can enforce it.

**3) RELEASE OF THE LIST.** Despite anything else stated in the Vacation Plan Documents, the Association will not furnish the list of Owners or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the list or any other documents from which a list may be compiled, until after each of these conditions is satisfied:

(a) The person requesting the list or inspection:

(1) Provides a written statement explaining his or her purpose for obtaining the list. The Board may request that the person requesting the list furnish copies of all documents and materials that he or she intends to distribute using the list. The Board will then decide whether the list is being requested for a proper purpose based on its review of the Owner's statement and documents and materials, and any other information made known to the Board;

(2) Provides an affidavit stating that the list (i) will be used by such Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (ii) shall not be used by that Owner or furnished to anyone else for any other purpose; and

(3) Satisfies any other conditions to obtaining the list contained in Chapter 415B, Hawaii Revised Statutes.

(b) The Association gives notice of the request to the Developer. The notice must include (i) the name and address of the person requesting the list or inspection; and (ii) copies of the written statement, documents and materials, and affidavit submitted pursuant to Section 12.3L.3)(a);

(c) At least ten days have passed since the Developer received the Association's notice and the Developer has not given the Association a written notice objecting to the release because the affidavit is improper or the person is not requesting the list or inspection for a proper purpose or that the requirements of law or this Section 12.3L.3) have not been fully satisfied.

(1) If the Developer objects and if the Association or the Owner contests the Developer's objection, then the matter will be decided by appropriate legal proceedings. In such a case, the Association will not release the list until the appropriate legal authorities order it to do so.

(d) All other lawful conditions adopted by the Board pursuant to Section 12.3L.8) have been fully satisfied.

**4) RELEASE TO OWNERS OTHER THAN COMPETITORS.** If the person requesting the list or inspection is not a Competitor then the Association will furnish the list or permit the inspection after each of the requirements of this Declaration and the Bylaws are met.

**5) RELEASE TO A COMPETITOR.** If the person requesting the list is a Competitor and each of the requirements of this Declaration and the Bylaws are met, then unless the law requires something else, the Association will furnish the list in this way (and only in this way): The Association will provide the list in the form of mailing labels directly to a company providing mailing services chosen by the person requesting the list. The company providing mailing services: (a) cannot be a Competitor; and (b) must provide to the Developer the company's written promise to the Developer that it will not:

(a) Use the list for any purpose except for the mailing;

(b) Provide a copy of the list to anyone else, including but not limited to the Competitor; and

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

**6) INSPECTION BY A COMPETITOR.** If the person requesting the inspection is a Competitor and each of the requirements of this Declaration and the Bylaws are met, then unless the law requires something else, the Association will

permit the person to inspect copies of the records requested. However, the copies will first be modified so as to obliterate entirely the address and any other biographical information from which the person requesting the list could compile a list containing the addresses, email addresses, fax numbers, or phone numbers of the Owners, or any other means of soliciting the Owners.

**7) WHO IS A COMPETITOR.** A "Competitor" is a person who is:

(a) The developer of another time share plan or fractional ownership plan;

(b) Any marketer or sales agent of another time share plan or fractional ownership plan (including but not limited to any OPC);

(c) The manager of another time share plan or fractional ownership plan;

(d) An Exchange Company other than the Club or the Network;

(e) Any officer, director, agent, employee, independent contractor, partner, co-venturer, attorney, or affiliate of (i) a developer, marketer, sales agent, or manager of another time share plan or fractional ownership plan, or (ii) an Exchange Company other than the Club or the Network; or

(f) A person who is collaborating with anyone listed in Subsections (a) through (e).

**8) OTHER CONDITIONS.** The Board may impose other reasonable conditions intended to assure the confidentiality of the list of Owners and that the list is not used (i) for commercial purposes by anyone other than the Developer or any company related to the Developer, or (ii) for any other improper purpose.

**M. ASSOCIATION REAL PROPERTY.** The Association must accept title to any real or personal property transferred to it by the Developer. The Association may buy, lease, or otherwise acquire one or more Apartments or other real property for use by the Association for Association purposes, including among other things, for use as a manager's apartment. The Board may mortgage, lease or rent the Association's real property from time to time as it deems necessary or appropriate, consistent with the purposes permitted above. All costs, expenses, and liabilities incurred in connection with the Association's real property will be Plan Expenses. The Association must buy and at all times have insurance on the Association's real property and any Common Furnishings in it; the requirements of Chapter 15 apply to the Association's real property. The Association's real property is considered to be part of the "Common Furnishings".

**N. OTHER POWERS.** The Association may do anything else it deems necessary, desirable or useful to run the Vacation Ownership Plan or to maintain, repair, preserve or protect the Vacation Property. These powers are subject to any rights of the Club Operator under the Club Documents.

**O. DELEGATION OF ASSOCIATION POWER AND DUTIES.** The Association may delegate its power and duties under this Declaration to one or more agents, including, among others, the Plan Manager. The Board must supervise the agents.

**12.4 THE PLAN MANAGER.** The Association must hire a Plan Manager. The first Plan Manager will be appointed by the Developer and may be the Developer or a company related to the Developer. If the first Plan Manager must be replaced for any reason, the Association must use its best efforts to hire and maintain a reputable firm as the Plan Manager for the Vacation Ownership Plan.

**12.5 THE MANAGEMENT CONTRACT.** The Plan Manager must sign a written contract (the "*Management Contract*") containing the following provisions:

**A. PLAN MANAGER'S DUTIES.** The Management Contract must require the Plan Manager to perform the duties and obligations of the Association except those that cannot be delegated by law or under the Vacation Plan Documents. It may permit the Plan Manager, if the Board approves, to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper.

**B. TERM.** The Management Contract:

1) May provide for an initial term of not more than five (5) years from the Starting Date. The "*Starting Date*" is the first date on which a First Deed is recorded.

2) May provide that after the first term and each later term ends, the contract automatically will be renewed for three more years, unless a written notice canceling the Management Contract is sent by either party at least 90 days before the next renewal date. The Management Contract may also provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(a) If the Plan Manager is affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice; and

(b) A decision to cancel or not to renew the Management Contract cannot be made by the Board alone; and

(c) Neither the Board nor any officer, director, employee or agent of the Association can give the notice before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will not be effective. It will be void.

**C. CANCELLATION BY THE ASSOCIATION.** The Association must have the right to cancel the Management Contract without paying a cancellation fee whenever the Plan Manager violates a material part of it and fails to cure its violation within the time permitted by the Management Contract or any longer time permitted by the Board. If the Plan Manager disputes the cancellation, the matter will be decided by arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Board will represent the Association in the arbitration.

**D. RESIGNATION.** The Management Contract must provide that the Plan Manager can resign only if it gives written notice to the Board at least ninety (90) days in advance and it turns over all books and records of the Association relating to the management and operation of the Vacation Property and the Vacation Ownership Plan to the Board. This does not require that the Plan Manager turn over internal or confidential or other records of the Manager.

**E. FEES.** The Management Contract must specifically state the fees to be paid to the Plan Manager by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Plan Expenses or to costs plus a percentage profit. The fees must not be more than customary charges for similar services provided in Hawaii. The fee, however, may be higher if:

1) The Board reasonably decides that the Association is unable to hire a competent, reputable and experienced management firm to act as Plan Manager without increasing the fees, and

2) The Board notifies the Owners of that finding. The notice must also state that the increase in the management fees will be considered approved unless a Majority of the Owners Voting object to the increase in writing within thirty (30) days after the notice is mailed. The Developer's Vacation Ownership Interests and votes as Owner will not be counted here.

**F. PLAN MANAGER'S INSURANCE.** The Management Contract must require that the Plan Manager obtain errors and omissions insurance. The Policy must name the Association, as agent for each of the Owners, as an insured. An "*insured*" is someone who is paid if there is a loss is covered by

insurance. The Association will pay for the insurance. The Board will decide what policy limits are appropriate. The Board will buy this insurance only if it is available at a reasonable price. The Board will decide what is reasonable, and its decision will be final. The Management Contract may also provide that the Association must obtain a fidelity bond or buy fidelity insurance that covers the Plan Manager as an employee of the Association with respect to its handling of the Association's funds.

**G. ENTRY INTO VACATION UNITS.** The Management Contract must state the authority of the Plan Manager or others authorized by the Plan Manager to enter into a Vacation Unit for the purposes of cleaning, housekeeping, maintenance and repair including emergency repairs and for the purpose of stopping or fixing a nuisance or dangerous, unlawful or prohibited activity being conducted in a Vacation Unit.

**H. EXCHANGE SERVICES.** The Management Contract must state the authority of the Plan Manager with respect to the administration of any External Exchange Programs.

**I. RECORDS AND REPORTS.** The Management Contract must identify the records to be kept by the Plan Manager and the periodic reports and other information to be communicated to the Association and the Owners.

**12.6 LIMITS ON CONTRACTS.** The Plan Manager may not enter into a contract with a person to furnish goods or services for the Vacation Ownership Plan for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners (not counting the Developer's votes and Vacation Ownership Interests). This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term that the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.
- ❖ A lease of laundry room fixtures and equipment for five years or less but only if neither the Developer nor the Plan Manager owns, directly or indirectly, 10 percent or more of the company leasing the fixtures and equipment.
- ❖ Agreements for cable television, satellite television, and/or internet services and equipment for five years or less but only if neither the Developer nor the Plan Manager owns, directly or indirectly, 10 percent or more of the supplier.

- ❖ Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services for five years or less but only if neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.
- ❖ Any other contract for three years or less so long as the Association can cancel it after no more than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

## **12.7 LEGAL REPRESENTATION OF OWNERS.**

**A. REPRESENTING THE ASSOCIATION OR OWNERS.** By accepting a Vacation Ownership Interest, each Owner agrees that the president of the Association or, if authorized by the Board, the Plan Manager may represent the Association or any two or more Owners similarly situated as a class in any proceeding concerning the Association, the Ka'anapali North Beach Association, the Condominium Association, the Condominium, the Master Association, the Vacation Ownership Plan, or the Vacation Property. The president or the Plan Manager may begin, defend, intervene in, prosecute and settle any such proceedings. This does not, however, limit the rights of any Owner to appear, sue or be sued separately or to decide not to participate. The president or the Plan Manager will be supervised by the Board in any representation.

**B. POWER OF ATTORNEY.** By accepting a Vacation Ownership Interest, each Owner gives a special power of attorney (see Section 19.4) to the president of the Association and the Plan Manager, with full power to do anything needed or helpful to represent the Owner as provided in Section 12.7A.

**C. SERVICE OF PROCESS.** Process (such as papers for a lawsuit) for the Association may be served on any member of the Board.

**D. LIMITATIONS.** The authority of the president of the Association and Plan Manager under this Section is subject to the limitations contained in Section 12.3I.

## **12.8 LIMITS ON LIABILITY.**

**A. LIABILITY FOR OWNERS AND GUESTS.** The Association, the Developer, the Club Operator, other companies related to the Developer, and the Plan Manager (and each of their directors, officers, employees and agents) cannot be held responsible for the acts, failure to act or conduct of any Owner or an Owner's Guests.

**B. SECURITY.** The Association, the Developer, or the Plan Manager may, but need not, take steps to make the Vacation Property or the Condominium safer than it otherwise might be. The Association, the Developer, the Club Operator, companies related to the Developer, and the Plan Manager are

not insuring or guaranteeing the safety or security of people or property in the Vacation Property or the Condominium. *The Association, the Developer, the Club Operator, other companies related to the Developer, and the Plan Manager (and each of their directors, officers, employees and agents) cannot be held responsible for any loss or damage for failing to provide adequate or effective safety or security measures. No representation or warranty is made that any fire protection, burglar alarm or other safety or security system or measures will:*

- 1) *be effective in all cases;*
- 2) *prevent all losses;*
- 3) *limit access to the Vacation Property or the Condominium; or*
- 4) *provide the detection or protection that it is designed or intended to provide.*

C. **WARRANTIES.** The Developer is also the Condominium Developer but the Developer is not the general contractor or related to the general contractor. The Condominium Documents disclaim any warranties by the Developer. Those provisions are made a part of this Declaration, just as if they were fully restated right here. This means, among other things, that *everything is being sold "as is"* and that the Developer does not have to correct or fix, or pay to have someone else correct or fix, any defect no matter what causes it or when it is discovered.

### 13. ASSESSMENTS AND PERSONAL CHARGES

#### 13.1 DEFINITIONS.

A. **"PLAN EXPENSES"** are the costs of operating the Vacation Ownership Plan and maintaining the Vacation Property. The Plan Expenses are shared by the Owners. Plan Expenses may include among other things, any or all of the following:

- ❖ The cost of utility services such as water, electricity, garbage disposal, telephone and cable television.
- ❖ The cost of repairing, rebuilding, replacing, remodeling, or making improvements to the Vacation Property.
- ❖ The cost of buying insurance required or permitted by the Vacation Plan Documents.
- ❖ Wages, accounting and legal fees, management fees, start-up fees, housekeeping and cleaning fees, and other expenses necessary to maintain, repair, manage and operate the Vacation Property.

- ❖ All amounts charged to the Vacation Units by the Master Association, the Condominium Association or the Ka'anapali North Beach Association (except amounts separately charged to individual Owners). This includes, for example, the expenses of operating and maintaining the Condominium or the Master Association Amenities.

- ❖ Any amount charged by the Master Association, the Condominium Association or the Ka'anapali North Beach Association due to an intentional or negligent act by an Occupant of a Vacation Unit. The Association will pay the charge but will then pass on the charge, and any taxes on it, to the responsible person as a Personal Charge.

- ❖ Any taxes or other governmental charges upon or charged to the Vacation Property or the use of it or on any other interest of the Owners (except taxes separately charged to individual Owners). Examples of this type of expense include real property taxes, transient occupancy taxes, hotel or bed taxes, and any charges imposed in place of a hotel or bed tax.

- ❖ Any liability for loss or damage relating to the Vacation Property or the use of it.

- ❖ Any money owed by any Owner to the Association to the extent the Board decides that it is uncollectible or too expensive to collect, as a practical matter.

- ❖ Amounts needed to make up any shortfall in funds needed to pay the Plan Expenses for any prior year.

- ❖ Amounts needed for the Reserve Accounts. These are savings accounts of the Association. The money is used to pay for Capital Improvements. "Capital Improvements" are things like replacing the carpeting or appliances, other major repairs and remodeling, or replacing the Vacation Units or Common Furnishings. (Day to day maintenance and repairs are not Capital Improvements.)

- ❖ Any amounts due from the Association under the Club Affiliation Agreement, including but not limited to the Annual Club Dues for each Owner (unless separately charged to the individual Owners).

- ❖ Any amounts needed by the Board to buy one or more Vacation Ownership Interests in a foreclosure sale.

B. **"RELATIVE VALUATION"** means the number assigned to each Unit Type for comparison purposes. Relative Valuation refers to the idea that each Vacation Unit's share of the Plan Expenses should be based on a comparison of that Vacation Unit to other Vacation Units included in the Plan. While some time share plans compare the size of apartments to determine their share of the plan's expenses, this does not necessarily result in a fair division of

maintenance fees among the apartments. For example, the cost of sending a newsletter or notice of an Association meeting to an Owner is the same whether the owner's unit is a one-bedroom unit or a much larger two-bedroom unit.

As a result, the Developer has adopted a plan for dividing Plan Expenses among the Vacation Units based on their "Relative Valuation". The Developer determines a Relative Valuation for each Unit Type based on the size of the Vacation Unit, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. The Relative Valuation for Vacation Units currently included in the Plan is listed by Unit Type in Exhibit "B".

Note that Relative Valuation is not intended to reflect the fair market value of (i) Vacation Units that are a particular Unit Type, or (ii) Vacation Ownership Interests in Vacation Units of a particular Unit Type. The Relative Valuation for a Unit Type will not change based on changes in market conditions.

C. "FAIR SHARE" means a share based on a comparison of the Relative Valuation of one Vacation Unit to the total of the Relative Valuations for all of the Vacation Units, as follows:

1) The Fair Share for each Every-Year Vacation Ownership Interest in a Vacation Unit is 1/52 of the following fraction:

The Relative Valuation of that Vacation Unit  
The Sum of the Relative Valuations  
For All Vacation Units For Which  
Assessments Have Begun Under Section 13.3

2) The Fair Share for each Every-Other-Year Vacation Ownership Interest in a Vacation Unit is 1/104th of the following fraction:

The Relative Valuation of that Vacation Unit  
The Sum of the Relative Valuations  
For All Vacation Units For Which  
Assessments Have Begun Under Section 13.3

D. "FISCAL YEAR" means tax year.

E. "ASSESSMENTS" means Regular Assessments, Special Assessments, or both.

### 13.2 THE BUDGET.

A. ANNUAL BUDGET. At least sixty (60) days before the end of each Fiscal Year, the Plan Manager will prepare and give to the Board an estimate of the Plan Expenses for the following year. The estimate will cover all Apartments paying Assessments or expected to be paying Assessments by the start of the Fiscal Year. This estimate must include, among other things, the information required by H.R.S.

Section 514E-10.3, and any other information required by the law of the State of Hawaii. The estimate must also include:

- ❖ The estimated revenue and operating expenses of the Association on an accrual basis;
- ❖ The amount of the total cash reserves of the Association available to replace or repair common facilities or to cover contingencies;
- ❖ An itemized estimate of the remaining life of, and the methods of paying the cost to repair, replace or add to, major components of any property for which the Association is responsible;
- ❖ A general statement of the procedures used to calculate and establish reserves to pay the cost to repair, replace or add to the major components of the property for which the Association is responsible; and
- ❖ The information required by the law of any place where the Plan is registered for sale.

Upon review and approval by the Board, this estimate (with any changes the Board makes) will become the "Budget" for that year. The Budget must specifically state which Apartments it covers or attach a list of them.

B. BUDGETING FOR RESERVE ACCOUNTS. When it reviews and approves the Budget, the Board must consider what specific Capital Improvements may be needed within any period of time up to twenty (20) years. The Board must then estimate: (i) the cost for each capital improvement; and (ii) the amount of money that should be saved each year to be able to pay for it when it is needed. In making these decisions, the Board may consider interest earned on any savings accounts. The Board must include these amounts in the Budget. The Board must budget for as many Reserve Accounts as it deems necessary or useful. Its decision will be final. Each of these accounts must be earmarked for Capital Improvements.

C. LIMITS ON ASSESSMENTS. The Board may not adopt a budget that increases the Regular Assessment of any Vacation Ownership Interest by more than 20% over the Regular Assessment for the previous year unless approved by the Developer and by vote or written consent of a Majority of the Owners Voting (not counting Vacation Ownership Interests owned by the Developer). No vote or written consent is required in these circumstances:

1) It is not required if the Regular Assessment for a Vacation Ownership Interest would not have exceeded the limit except for an increase in taxes or other governmental assessments (for example real property taxes) or utility expenses.

2) It is not required if the funds are needed to pay the cost to comply with a court order or the requirements of the Condominium Documents, the Master Association Documents, or the Ka'anapali North Beach Documents.

3) It is not required if the funds are necessary for an emergency situation such as repairs or maintenance necessary for personal or public safety.

4) It is not required if the funds are necessary for repairs or maintenance that could not reasonably be foreseen by the Board in preparing its Budget.

The rule limiting increases does not apply to Vacation Ownership Interests not covered by the prior year's Budget. This happens when a Vacation Unit is added to the Plan after the Fiscal Year begins.

**13.3 WHEN ASSESSMENTS BEGIN.** For any Vacation Unit, Assessments begin on the later of (i) the first day of the month after a First Deed transferring a Vacation Ownership Interest in that Vacation Unit is recorded, or (ii) the date when the County of Maui issues a temporary or permanent certificate of occupancy for that Vacation Unit. From then on, the Owner of each Vacation Ownership Interest in that Vacation Unit, whether it is the Developer or someone else, must pay a Fair Share of the Plan Expenses.

**13.4 REGULAR ASSESSMENTS.** The Owner of each Vacation Ownership Interest will pay a share of the Plan Expenses, called the "*Regular Assessment*." The Regular Assessment for each Vacation Ownership Interest is set as follows:

A. For Vacation Units covered by the Budget, the Regular Assessment will be a Fair Share of the Budget.

B. For a Vacation Unit not covered by the Budget (such as an Apartment added to the Plan at mid-year), the Regular Assessment will equal the Fair Share for a Vacation Unit of that Unit Type (as calculated under Subsection A., above). For example, if the Fair Share for an Every-Year Vacation Ownership Interest in a two-bedroom deluxe unit covered by the Budget is \$600, then the Fair Share for an Every-Year Vacation Ownership Interest in a different two-bedroom deluxe unit that is not covered by the Budget will also be \$600.

### 13.5 SPECIAL ASSESSMENTS.

A. **HANDLING SHORTFALLS.** If for any reason the Regular Assessments for the Plan Expenses are, or will be, inadequate to pay all Plan Expenses on time, the Board must estimate the shortfall. The Board must then (i) increase the next year's Budget to make up the shortfall, or (ii) charge a Special Assessment.

B. **SHORTFALL'S RELATING TO DAMAGE OR DESTRUCTION.** If a Vacation Unit or its Common

Furnishings are damaged or destroyed and the costs to repair or replace it cannot be fully paid by using available insurance proceeds and the money from any appropriate Reserve Account, the Board has the same two choices. It may charge a Special Assessment or add the amount needed to next year's Budget. The Special Assessment must be charged against all Vacation Ownership Interests regardless of where or how the damage occurred or whether the Association is entitled to be repaid by an Occupant.

C. **HOW SPECIAL ASSESSMENTS ARE CHARGED.** To charge a Special Assessment, the Board must prepare and send to each Owner a Special Budget showing the amount of the shortfall. The Board will charge to each Vacation Ownership Interest a Fair Share of the total shortfall shown on the Special Budget.

D. **LIMITS ON SPECIAL ASSESSMENTS.** The total of all Special Assessments charged to a Vacation Ownership Interest in a Fiscal Year may not exceed 5% of the Regular Assessment for that Fiscal Year. The limit, however, is 10% for Special Assessments to pay the costs to repair or rebuild a damaged or destroyed Vacation Unit or its Common Furnishings. The Board may exceed the limit if approved by the Developer, and by the vote or written consent of a Majority of the Owners Voting (not counting Vacation Ownership Interests owned by the Developer). No vote or written consent is required, however, in these circumstances:

1) It is not required if the Special Assessment for a Vacation Ownership Interest would not have exceeded the limit except for an increase in taxes or other governmental assessments (for example real property taxes) or utility expenses.

2) It is not required if the funds are needed to pay the cost to comply with a court order or the requirements of the Condominium Documents, the Master Association Documents, or the Ka'anapali North Beach Documents.

3) It is not required if the funds are necessary for an emergency situation such as repairs or maintenance necessary for personal or public safety.

4) It is not required if the funds are necessary for repairs or maintenance that could not reasonably be foreseen by the Board in preparing its Budget.

**13.6 PERSONAL CHARGES.** A "*Personal Charge*" is an expense not covered by Assessments. This includes expenses that result from the act, failure to act, or other conduct of an Owner or Occupant, or the Guest of an Owner or Occupant. It also includes charges for extra services requested or used by the Owners or Occupants or by their Guests. Personal Charges should not be confused with Regular and Special Assessments. The following expenses are examples of Personal Charges:

- ❖ The cost of food, beverages, telephone charges, optional housekeeping service and other special services or supplies resulting from or related to the occupancy of the Vacation Unit during a person's Vacation Period.
- ❖ Charges arising from or related to the use of the Common Furnishings, the Condominium, the Master Association Amenities, or the Ka'anapali North Beach Amenities (for example, rentals of sports supplies or other recreational equipment, use of a spa, and so on).
- ❖ The cost to repair any Vacation Unit or to repair or replace any Common Furnishings in it because of loss or damage occurring during a person's Vacation Period (unless caused by ordinary wear and tear or by an unavoidable accident or other casualty).
- ❖ Expenses to any other Owner or the Association due to a person's intentional or negligent act or failure to act.
- ❖ Expenses resulting from any intentional or negligent violation of the Ka'anapali North Beach Documents, the Master Association Documents, the Condominium Documents, or the Vacation Plan Documents.
- ❖ The cost to collect any Assessments or other Personal Charges, including court costs and reasonable attorneys' fees.
- ❖ Any late charges and interest on overdue payments.
- ❖ So long as the Plan is part of the Club, any Club Fees charged to the Association or to an Owner by the Club Operator (except for Club Fees that are Plan Expenses).

### **13.7 DUTY TO PAY ASSESSMENTS AND PERSONAL CHARGES.**

**A. PROMISE TO PAY.** By acquiring a Vacation Ownership Interest, an Owner promises to pay all Assessments on the Owner's Vacation Ownership Interest and all Personal Charges charged to the Owner. Each Owner makes this promise whether or not he or she signs any document that expressly says so.

**B. THE DEVELOPER'S DUTY TO PAY; SUBSIDY CONTRACT.** The Developer also promises to pay the Assessments and Personal Charges for each Vacation Ownership Interest while the Developer is the Owner of it. Instead of doing so, however, the Developer may enter into a "Subsidy Contract" with the Association in which the Developer agrees to pay to the Association the difference between the actual cost incurred by the Association and the Assessments charged to other Owners.

**C. PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay on time all Assessments charged to the Owner's Vacation Ownership Interest and all Personal

Charges charged to the Owner. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. An Owner cannot avoid liability for the Assessments and Personal Charges by not using his or her Vacation Ownership Interest or by abandoning it. Even if the Owner transfers his or her Vacation Ownership Interest to someone else, the Owner is still personally obligated to pay all Assessments and Personal Charges due before the transfer takes effect.

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

**E. HOW PAYMENTS WILL BE APPLIED.** Payments will be applied as the Board provides in the Association Rules. If the Association Rules do not say how payments will be applied, then they will be applied (in equal shares for each Vacation Ownership Interest if the Owner owns more than one) first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment or Personal Charge.

### **13.8 COLLECTING ASSESSMENTS.**

**A. TIME AND METHOD OF PAYMENT.** An Owner must pay his or her Assessments and Personal Charges to the Association. An Owner must pay his or her Regular Assessments yearly in advance unless the Board adopts a different payment schedule. The Board may not adopt a schedule in which payments are due more often than monthly. The Board may require Owners of Every-Other-Year Vacation Ownership Interests to pay Assessments:

- 1) Every year, in which case the Owner must pay a Fair Share every year (see Section 13.1C.2)), or
- 2) Every other year. In that case, every other year, the Owner must pay an amount equal to the Fair Share for an Every-Year Vacation Ownership Interest for that year. See Section 13.1C.1).

**B. BILLS FOR ASSESSMENTS.** The Association or Plan Manager will mail to each Owner, at the address shown on the records of the Association, a bill stating the due date and amount of the Assessment for the Owner's Vacation Ownership Interest. If a single Vacation Ownership Interest is owned by more than one person, the bill may be sent to any of its co-Owners. No matter when the bill is sent, however, for the purpose of fixing the amount of any Secured Lien based on the Assessment, the Assessment will be considered due on the date stated in the bill.

1) **JOINT BILLINGS.** The Association or Plan Manager may join with the Condominium Association, the Master Association, the Ka'anapali North Beach Association, the Club Operator, or any of them to send out single bill covering Assessments due under the Condominium Documents, the Master Association Documents, Ka'anapali North Beach Documents, the Club Documents, and the Vacation Plan Documents. The Association may permit the Condominium Association, the Master Association, the Ka'anapali North Beach Association, or the Club Operator to collect the Assessments and turn them over to the Association or Plan Manager provided that they have adequate fidelity insurance and bonds. The Association may also agree with the Condominium Association, the Master Association, the Ka'anapali North Beach Association, or the Club Operator to act as their agent in collecting amounts due under the Condominium Documents, the Master Association Documents, Ka'anapali North Beach Documents, or the Club Documents.

#### **C. PAYMENT OF PERSONAL CHARGES.**

1) **TIME FOR PAYMENT.** Personal Charges (other than Club Fees) will be paid as follows:

(a) Each Occupant must pick up and pay all bills for Personal Charges that are ready at Check-Out Time. Examples include food or beverage charges, optional housekeeping service, and telephone charges.

(b) Personal Charges not paid at Check-Out Time must be paid within thirty (30) days after a bill for the Personal Charges is mailed.

2) **CLUB FEES.** While the Plan is part of the Club, Owners must pay the Club Fees at the times provided in the Club Documents. If the Club Documents do not state a time for payment, then they must be paid when the Club Operator requests payment.

3) **PERSONAL CHARGE DEPOSIT.** At any time before or during a person's Vacation Period, the Association or the Plan Manager may require an advance payment or deposit, or a credit card imprint, from an Occupant if they decide that it is appropriate. The Association or Plan Manager may (but are not required to) use these funds to pay any Personal Charges of that person. The Association may keep the money (or any unspent part of it) until all charges relating to that person's occupancy have been paid. Neither the Association nor the Plan Manager will be liable for not asking for or not keeping advance payments or deposits. The request or failure to request and keep them does not excuse an Occupant's duty to pay the Personal Charges.

**D. COLLECTION POLICIES.** The Board may establish collection policies and procedures and may delegate the authority to implement those policies and procedures to the Plan Manager. The Board may also compromise and settle

disputed amounts and may delegate the authority to do so to the Plan Manager.

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

- ❖ To pay Plan Expenses,
- ❖ To promote the recreation, health, safety and welfare of the Owners,
- ❖ To improve, operate, maintain, repair and replace the Vacation Property,
- ❖ To pay amounts due under the Condominium Documents, the Master Association Documents, the Ka'anapali North Beach Documents, or the Club Documents, or
- ❖ To operate and manage the Vacation Ownership Plan and to pay any expenses incurred by the Association in performing its duties.

#### **13.10 DEPOSIT AND USE OF FUNDS.**

**A. MANAGEMENT OF ACCOUNTS.** All amounts received by the Association or Plan Manager will be deposited in the General Account promptly after the Association receives it. Money received for payment of Club Fees must be paid to the Club Operator immediately. Money received for any Reserve Accounts will be transferred to those accounts promptly. All accounts must be established with a safe and responsible depository (such as a bank, savings and loan Association, or trust company) in Hawaii or, upon approval by the Director on the Hawaii Department of Commerce and Consumer Affairs, another state. This money may be put in a savings or checking account. It also may be invested in treasury bills or certificates of deposit or other obligations of an agency of the United States of America (such as U.S. savings bonds) or obligations that are fully guaranteed as to principal by an agency of the United States of America. It may also be invested in any other investments authorized by the Act or by the Condominium Property Act. All interest will belong to the Association.

**B. THE GENERAL ACCOUNT.** The Board may spend the money in the General Account to pay Plan Expenses as permitted by the Vacation Plan Documents. Any extra money in the General Account at the end of any Fiscal Year must be used to pay Plan Expenses in the following year. At the annual meeting each year, the Association must adopt a resolution requiring this. For this purpose, each Owner gives the president of the Association a proxy and a special power of attorney to adopt such a resolution.

**C. THE RESERVE ACCOUNT.** Any part of the Regular Assessment that is intended for a Reserve Account must be put in a separate account. The Board will authorize payments

from the Reserve Accounts as needed. The money may be used only to pay for Capital Improvements.

Money in these accounts will be considered conclusively to be savings of the Owners of the Vacation Units held for their benefit to pay for Capital Improvements. Any part of an Owner's Assessments used or to be used by the Association for Capital Improvements or any other capital expense will be treated as a capital contribution by the Owner. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or to the Owners.

### 13.11 FINANCIAL REPORTS.

**A. FINANCIAL STATEMENTS.** The Association must prepare and send the following statements to each Owner:

1) **THE BUDGET.** At least 45 and not more than 60 days before the Fiscal Year starts the Association must send to the Owners the approved Budget for that year.

2) **THE ANNUAL REPORT.** The Association must send an annual report to each Owner within 120 days after the end of each Fiscal Year. It must include:

(a) A balance sheet showing the assets, liabilities and net worth of the Association at 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 Association for the Fiscal Year;

(d) The name, mailing address and phone number of each Board member; and

(e) Any other information required by the law of any place (for example, another state) where the Vacation Ownership Plan is registered for public sale.

3) **YEARLY AUDIT.** Each year, the Plan Manager, or the Board if there is no Plan Manager, must arrange for an independent audit of the Association's financial accounts. The audit must be conducted by a certified public accountant in accordance with generally accepted accounting principles.

4) **ANNUAL STATEMENT.** Not more than 60 days before the start of each Fiscal Year, the Association must send to the Owners a statement describing the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of regular and Special Assessments of Plan Expenses, including the recording and foreclosing of liens against Owners' Vacation Ownership Interests. This statement may be mailed with the budget information required in Subsection 13.11A.1).

### 13.12 DEVELOPER'S DUTIES.

**A. DEVELOPER'S LETTER.** Within thirty (30) days after the end of each quarter of the Fiscal Year, the Developer must send to each member of the Board at his or her residence address a letter containing the information described in Section B. The Developer must do this only for so long as:

1) The Developer is constructing improvements which are a part of the Vacation Property and either (a) that construction is not complete, or (b) any bond or other security put up by Developer to guaranty that the construction of those improvements will be completed is still in effect and has not been released or canceled; or

2) The Developer and the Association have signed a subsidy agreement and it is still in effect; or

3) The Developer owns more than twenty percent (20%) of all the Vacation Ownership Interests.

**B. CONTENTS OF DEVELOPER'S LETTER.** The Developer's letter must state:

1) The current status of each improvement that was to be completed during the current quarter.

2) The current status of each improvement that was to be completed during a prior quarter but that still is not complete.

3) The number of Vacation Ownership Interests owned by the Developer as of the first and last day of the quarter.

4) The total Regular and Special Assessments that the Developer was obligated to pay during the quarter as an Owner.

5) The total Regular or Special Assessments paid by the Developer to the Association during the quarter.

6) The amount of any Regular and Special Assessment due from the Developer that remains unpaid as of the date of the report to the Board.

7) An itemized list of funds, goods and services furnished, or caused to be furnished by the Developer to the Association under any Subsidy Contract, including contributions to the Reserve Accounts, and the dollar value of any goods and services furnished.

**C. SPECIAL BOARD MEETING.** The Board will hold a special meeting to consider and to vote on whether to arbitrate with the Developer, or the company that issued a bond insuring that the Developer would perform its unfulfilled obligations, or both, if:

1) The Board members do not receive the Developer's letter within forty-five (45) days after the end of a quarter, or

2) The letter reflects that the Developer has not fulfilled any of its obligations to the Association.

**D. ENFORCEMENT.** The special director elected solely by the votes of members of the Association other than the Developer has the power to start an arbitration or file a lawsuit in the name of the Association and at the Association's expense. He or she may only do so if:

1) The Board is required to meet as required by Section 13.12C; and

2) Within seventy-five (75) days after the end of the calendar quarter when the Developer's letter was due or received either:

(a) the Board does not meet; or

(b) the Board decides not to enforce the Developer's unfulfilled obligations.

If the special director starts an arbitration or files a lawsuit in the name of the Association, the Board must take the steps necessary and appropriate to pursue the arbitration or lawsuit. The Association must promptly reimburse the special director for any reasonable fees and costs he or she pays or must pay to start the arbitration or file the lawsuit.

## **14. ENFORCEMENT**

**14.1 ENFORCING THE VACATION PLAN DOCUMENTS.** If anyone violates the Vacation Plan Documents, the Board or the Plan Manager (acting on behalf of the Association) has full power and the right to enforce compliance in any manner permitted in the Vacation Plan Documents. The Developer and the Club Operator each have the right to enforce any rights they have under the Vacation Plan Documents in any manner permitted by law, by the Vacation Plan Documents or, in the case of the Club Operator, by the Club Documents. The enforcement powers contained in the Club Documents, the Vacation Plan Documents, or provided by law are "cumulative". This means they may be used one at a time or all at once. By acquiring a Vacation Ownership Interest, each Owner promises and agrees that the Association, the Plan Manager, the Developer, and the Club Operator, have all the rights, powers and remedies provided in the Vacation Plan Documents or by law.

**A. PRIOR FAILURE TO ENFORCE.** Failure to enforce any provision of the Vacation Plan Documents does not mean that the provision cannot be enforced later.

**B. ATTORNEYS' FEES AND COSTS.** The Association (and the Plan Manager if authorized by the Association) may employ an attorney to enforce the Vacation Plan Documents against any Owner or Occupant. If so, the Owner or Occupant must pay, in addition to any other amounts due, all reasonable attorneys' fees and costs incurred by the Association or Plan Manager. Likewise, the Developer and the Club Operator may employ attorneys to enforce their rights under the Club Documents or the Vacation Plan Documents and may recover their reasonable attorneys' fees and costs.

**14.2 RIGHT OF ENTRY.** The Association and the Plan Manager have the right and power to enter any Vacation Unit, whether or not during a Service Period and whether or not the Occupant is present, to stop any activity or condition or to remove anything that:

A. Violates the law, the Condominium Documents, the Master Association Documents, the Ka'anapali North Beach Documents, or the Vacation Plan Documents,

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

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

## **14.3 SUSPENSION OF PRIVILEGES; FINES.**

A. If any Owner or the Owner's Guests violate the Vacation Plan Documents, the Association may charge the Owner a money penalty and/or suspend the Owner's rights under the Vacation Plan Documents. For example, the Association may do any of these things:

1) It may suspend the Owner's rights to reserve a Unit, to use a Unit during the Owner's Vacation Period, or to participate in any vote under the Vacation Plan Documents.

2) It may suspend utility and other services to the Owner's Assigned Unit during the Owner's Vacation Period.

3) It may cancel the Owner's existing reservation.

4) It may keep the Owner's existing reservation but rent the Vacation Period to someone else for the account of the Association.

**B. HEARING.** The Board must meet and permit the Owner to present his or her case before it fines the Owner or suspends the Owner's privileges and services. This rule does not apply, however, when an Owner is fined or suspended for failing to pay any Assessment or Personal Charge on time. The Board must give the Owner written notice of the meeting at least 15 days in advance. The notice must state the purpose of the meeting and the reason for seeking the suspension or fine. The Owner has the right to appear and to explain why the penalty should not be imposed. The Board will decide

whether the Owner's defense will be oral or written. A majority of the directors present will decide whether to fine the Owner or to suspend the Owner's privileges. The directors, however, cannot act unless a quorum is present and the meeting is held as provided in the Bylaws.

**C. WHEN THE FINE OR SUSPENSION TAKES EFFECT.**

The Board must give the Owner written notice of any disciplinary action taken and the reasons for it. Any disciplinary action will take effect on the date that the notice is sent.

**D. EFFECT ON EXCHANGE RIGHTS.** If an Owner is suspended, the suspension also applies to any exchange rights the Owner may have. See Section 7.3B.

**E. WHEN PRIVILEGES WILL BE RESTORED.** If an Owner is suspended for failing to pay amounts due under the Vacation Plan Documents, the suspended privileges and services will be restored automatically thirty (30) days after the Owner pays to the Association, in cash or by cashier's or certified check, all amounts past due and any fine imposed. If an Owner is suspended for any other reason, the suspended privileges and services will be restored automatically at the end of the period stated in the suspension notice and after he or she pays any fine.

**F. THE PLAN OPERATOR'S AND THE PLAN MANAGER'S ROLE.** The Board may delegate to the Plan Operator or to the Plan Manager the power to carry out any disciplinary actions imposed by the Board, including the right to suspend, without a hearing, an Owner's right to reserve or occupy a Vacation Unit when the Owner has not paid all Assessments or Personal Charges due.

**14.4 ENFORCEMENT BY FILING A LAWSUIT.**

The Association, the Plan Manager, the Developer, the Club Operator, or any Owner may ask a court to enforce the Vacation Plan Documents and ask for any appropriate relief. For example, the appropriate relief could be damages or an order specifically enforcing those documents, or a combination of those things. The Association or the Plan Manager may also enforce the liens provided by this Declaration and any other lien provided by law and have the right to take the Vacation Ownership Interest of any defaulting Owner in any lawful manner.

**A. A VIOLATION IS A NUISANCE.** Each violation of the Vacation Plan Documents is declared to be a nuisance. The Association, the Plan Manager, the Developer, or the Club Operator may seek an "*injunction*" (a court order requiring someone to do or stop doing something) or any other appropriate relief to stop the nuisance.

**B. DISPUTES WITH THE DEVELOPER.** No matter what else the Vacation Plan Documents say, any dispute between the Association and the Developer with respect to whether the

Developer has satisfied its obligations (i) to complete and pay for any improvements of the Condominium, (ii) to pay any Assessments and Personal Charges due under the Vacation Plan Documents, or (iii) to pay the costs of operating the Plan and maintaining the Vacation Property under a Subsidy Contract, must, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**14.5 THE PLAN OPERATOR MAY RENT AN OWNER'S VACATION PERIOD.**

**A. THE PLAN OPERATOR'S RIGHT TO RENT.** If an Owner (other than the Developer) is more than sixty (60) days late in paying any Personal Charge or Assessment charged to the Owner under the Vacation Plan Documents, and does not make that payment within ten (10) business days after the Plan Operator sends a written demand to pay then the Plan Operator may use the Owner's use rights or Points to reserve a Unit. The Plan Operator may then rent that Vacation Period to the public. The renter and his or her Guests will have the right to use the Assigned Unit during the Vacation Period reserved. The Plan Operator may not reserve or rent more Use Periods than necessary to pay all sums due in full (plus the reasonable costs of renting the Vacation Period).

**B. USE OF THE RENT MONEY.** The Plan Operator will apply the rent money first to pay the cost of arranging the rental and then to pay all overdue Assessments and Personal Charges owed by the Owner (including penalties, late fees and so on). Any excess money may be used by the Association to pay any Plan Expenses and will not be credited to or for the account of the defaulting Owner. (The intent here is to be sure the defaulting Owner doesn't profit by his or her wrongdoing and to avoid violating any securities laws.)

**C. LIMITS ON THE PLAN OPERATOR'S RIGHT.** The Plan Operator may not reserve or rent a Use Period which is subject to an existing reservation held by:

- 1) Another Owner (including the Developer) whose reservation has been confirmed; or
- 2) An Exchange User whose exchange reservation has been confirmed by the Plan Operator or by an external Exchange Company.

**D. WHAT HAPPENS IF THE VACATION PERIOD IS ALREADY RENTED.** If the Owner has already rented his or her Vacation Period, the renter will be permitted to use the Use Period. The Plan Operator will have the right to collect any unpaid rent from the renter until all amounts due are paid in full.

**E. PLAN OPERATOR'S EASEMENT.** The Plan Operator, and its agents, employees, contractors, subcontractors and other authorized persons have an easement for the purpose of conducting rental activities under this Section 14.5.

#### 14.6 THE ASSOCIATION'S "SECURED LIEN"; FORECLOSURE.

A. LIEN. The Association has a "Secured Lien" on each Vacation Ownership Interest for all amounts charged to it or its Owner. This means that the Vacation Ownership Interest is collateral for the Owner's obligations to obey the Vacation Plan Documents and to pay all Assessments and Personal Charges, including late charges, interest, costs of collection, and reasonable attorneys' fees. If the Owner fails to do so, the Association may "foreclose" its Secured Lien. This means that the Vacation Ownership Interest will be sold and the money from the sale will be used to pay the amounts owed. The Secured Lien will cover all interests in a Vacation Ownership Interest, including, for example, (i) the seller's and the buyer's interests under any Agreement of Sale, and (ii) all Condemnation and Insurance Proceeds relating to a Vacation Ownership Interest. The recording of this Declaration is notice of the Secured Lien to each and every person who has or acquires any interest in or to any Vacation Ownership Interest or Vacation Unit, now or later.

#### B. EFFECT OF ASSOCIATION'S LIEN.

1) EFFECT ON A NEW OWNER. In this Section 14.6B.1), "Prior Owner" means the Owner who transfers a Vacation Ownership Interest, and "New Owner" means the person to whom the Vacation Ownership Interest is transferred. If a Vacation Ownership Interest is transferred, the New Owner is not personally responsible to pay Assessments or Personal Charges charged to the Prior Owner and due before the date the transfer took place. However, the Vacation Ownership Interest will still be subject to the Secured Lien for all the unpaid Assessments and Personal Charges of the Prior Owner. As a result, the Association still may foreclose the Secured Lien on the Vacation Ownership Interest. If so, the Vacation Ownership Interest would be taken from the New Owner and sold to pay the amounts due. The New Owner would get only the money that is left, if any, after all unpaid Assessments and Personal Charges have been fully paid.

(a) STATEMENT OF UNPAID AMOUNTS. A New Owner can avoid this problem by asking the Association for a statement of unpaid amounts. Any Owner, Lender, potential Lender or potential buyer may ask the Association for a letter listing all amounts unpaid with respect to the Vacation Ownership Interest. Within twenty (20) days after receiving the request, the Association or the Plan Manager must provide the letter. The letter will bind the Association in favor of anyone who relies on it in good faith (except the Prior Owner). As a result, after the transfer or mortgage is made the Association may not foreclose the Secured Lien for any Assessments or Personal Charges due before the date of the letter in excess of the amount stated in the letter except for the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-

day period immediately preceding the date of the letter. The Association and/or the Plan Manager may charge a reasonable fee for preparing the letter.

2) EFFECT ON MORTGAGES AND OTHER ENCUMBRANCES. No matter what else the Vacation Plan Documents say, the Secured Lien is subordinate to (subject to and will not affect) the rights or remedies of any Lender whose mortgage is recorded before a Notice of Lien is recorded. Unless the law says otherwise, this rule only applies if the Lender has a first mortgage on a Vacation Ownership Interest for a loan made in good faith and for value. In all other cases, the liens created by this Declaration will be prior to (superior to and controlling over) all mortgages made by an Owner and all liens or encumbrances imposed by law upon any Vacation Ownership Interest. This will be so whether the Notice of Lien is recorded before or after any such encumbrance. Of course, some liens (such as real property tax liens) may be superior to the liens in this Declaration if the law makes them so.

3) EFFECT ON AGREEMENTS OF SALE. Since the buyer is considered the Owner, only the buyer (and not the seller) under an Agreement of Sale will be personally liable. The Vacation Ownership Interest, however, has a Secured Lien on it for all unpaid Assessments and Personal Charges for which the buyer is personally liable. The Secured Lien will remain on the Vacation Ownership Interest even if the Agreement of Sale is later canceled and the seller again becomes its "Owner." As a result, the Association may foreclose the Secured Lien at any time, before or after the Agreement of Sale is canceled.

If this happens before the Agreement of Sale is canceled, the Vacation Ownership Interest will be taken from both the buyer and the seller and sold to someone else to pay the overdue amounts. The buyer and seller would get only the money that is left, if any, after all unpaid Assessments and Personal Charges have been fully paid. If this happens after the Agreement of Sale is canceled, the Vacation Ownership Interest will be taken from the seller and sold, and the seller still gets only the money left after all unpaid amounts have been paid.

4) EFFECT ON A BUYER AT A FORECLOSURE SALE. Anyone who buys a Vacation Ownership Interest at a foreclosure sale is not liable for any Assessment or Personal Charge due before the Vacation Ownership Interest is transferred to the buyer. In addition, the Vacation Ownership Interest will not be subject to the Secured Lien for any Assessments or Personal Charges which became due before the Vacation Ownership Interest is transferred to the buyer. However, the Association will have a Secured Lien on the Vacation Ownership Interest for all Assessments and Personal Charges which become due after the Vacation Ownership Interest is transferred to the buyer at the foreclosure sale.

**C. FORECLOSURE AND SALE.** The Secured Lien is like a mortgage with a private power of sale. The Association may foreclose it in any legal way and the defaulting Owner's Vacation Ownership Interest may be sold at a public auction with or without first obtaining a court order. The Association may foreclose a Secured Lien for Personal Charges, however, only by court order in a foreclosure lawsuit.

**1) NOTICE OF DEFAULT.** Before the sale, the Association must give a notice to the defaulting Owner explaining the violation. The Association must send a copy of the notice to any Lender of the defaulting Owner which has asked for a copy and furnished its name and address to the Association. The notice must state the date and nature of the violation. If the Owner's default is that he or she failed to pay money, the notice must state the total of any unpaid amounts and include a demand for payment.

**2) NOTICE OF LIEN.** If the violation is not cured within ten (10) days after the Association gives its notice to the Owner, then an officer of or attorney for the Association or the Plan Manager may sign and record a Notice of Lien ("Notice of Lien"). The Notice of Lien must include each of these things:

(a) It must state the name of the defaulting Owner.

(b) It must state the Apartment number of the defaulting Owner's Vacation Unit.

(c) It must state the identification number of the defaulting Owner's Vacation Ownership Interest.

(d) It must state the amount claimed to be due (after any proper offset).

(e) It must say that the Notice of Lien is made by the Association under the terms of the Vacation Plan Documents.

(f) It must say that a Secured Lien is claimed against the Vacation Ownership Interest for the violation and in an amount equal to the net amount due plus interest and the costs of enforcement, including attorneys' fees.

(g) It must say that the Association intends to have the Vacation Ownership Interest sold in a foreclosure sale.

Each violation will be a separate basis for a Notice of Lien. But, a single Notice of Lien may cover more than one default, and may include defaults between the date of the Notice of Lien and the date of the sale.

**3) CANCELLATION OF NOTICE OF LIEN.** The Association may provide a document canceling a Notice of Lien. It will do so if both of these conditions are met:

(a) The Board must first receive payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees).

(b) The Owner must ask for the cancellation document and pay a reasonable fee for it.

The document canceling the Notice of Lien must be signed by two (2) directors or officers of the Association or by the Plan Manager.

**4) CONDUCTING THE SALE.** The sale may be conducted in any lawful way. For example, the Association has a power of sale and may foreclose its Secured Lien in the manner provided in H.R.S. Section 514E-29 and H.R.S. Section 667-5, or in any substitute or replacement laws.

**5) POWER OF ATTORNEY.** When enforcing its rights, the Association (acting in its own name or in the name of the defaulting Owner) may sign and deliver any legal documents necessary to transfer title to that Owner's Vacation Ownership Interest to a purchaser. For this purpose, the Association is appointed the attorney-in-fact for each Owner.

**6) PERMITTED BUYERS.** The Association or anyone else except a Competitor may bid on and buy the Vacation Ownership Interest at the foreclosure sale. The Association may offset the debt against the amount bid at the sale. The Board may buy the Vacation Ownership Interest of a defaulting Owner or accept a transfer of it to the Association from the Owner in place of foreclosure.

**7) AMOUNTS OWED AFTER THE SALE.** The foreclosure sale may not produce enough money to pay all amounts owed by the defaulting Owner. If this happens, the defaulting Owner remains personally liable for the difference, and the Association can sue him or her to collect the unpaid amount.

**8) BUYER AT FORECLOSURE.** Anyone who buys the Vacation Ownership Interest at the foreclosure sale will have to obey the Vacation Plan Documents just like any other Owner.

## **15. INSURANCE**

### **15.1 INSURANCE GENERALLY.**

**A. INSURANCE REQUIRED.** The Board must see that, as a minimum, the Association and all of the Owners together are covered by the insurance required by this Chapter. The cost of insurance will be a Plan Expense. Each Policy may be separate or the Board may buy one or more commercial package policies.

**B. SOURCE OF INSURANCE.** The Association may buy the insurance itself. Or it may join with the Condominium Association or the Master Association in order to buy insurance. If the Plan Manager or any related company manages more than one owners association or real estate project, then the Plan Manager may buy one or more blanket policies that cover the Plan and any other Owners associations or real estate projects. In that case, the covered projects and time share plans will split the costs of the policies. The amount charged to the Vacation Ownership Plan for its share of the costs is subject to approval by the Board. If any part of this Chapter conflicts with the Condominium Documents regarding insurance, the Condominium Documents will control.

**C. QUALIFIED INSURANCE COMPANIES.** Each insurance company must be licensed to do business in the State of Hawaii. This does not apply to (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each insurance company must have a financial rating of Class VI or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

**D. ADDED INSURANCE.** The Board has the right and power to increase the insurance coverage or obtain better terms than those stated in this Chapter whenever the Board deems it necessary or in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Chapter. For example, the Board may buy business interruption insurance.

**E. SUBSTITUTE COVERAGE; REDUCTION IN INSURANCE.** Except for insurance required by law, the Board need not buy any insurance if it is advised that it cannot reasonably be obtained or if the Board decides that it is too expensive. In those cases, the Board must buy other insurance that it believes to be appropriate under the circumstances for apartments in condominiums similar in construction, location and use. The Board may accept any deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a Plan Expense; provided that if a loss results from the negligence or willful misconduct of an Occupant, then the Association may charge the amount to the Occupant as a Personal Charge as provided in Section 16.1B.

**F. YEARLY REVIEW OF COVERAGE.** The Board must review the insurance program at least yearly. The Plan Manager must prepare or cause to be prepared an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet

those needs. The Board will review this analysis and then make any changes in the insurance program it deems necessary or appropriate. All Board decisions are final.

**G. LIABILITY FOR INSURANCE DECISIONS.** The Board will not be liable for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, neither the Developer nor the Plan Manager will be liable either unless they were grossly negligent or guilty of intentional misconduct.

**H. INSPECTION AND COPYING.** Any Owner (and anyone having a contract to buy a Vacation Ownership Interest) may inspect copies of the Association's insurance policies at the office of the Plan Manager. If asked to do so, the Board will furnish a copy of any Policy, or a current certificate of insurance, to any Lender that has a first mortgage on a Vacation Ownership Interest. The Lender must pay a reasonable fee for the copy.

**15.2 PROPERTY INSURANCE.** The Board must buy a policy of property insurance. The insurance bought is called the "Policy" in this Section 15.2.

**A. WHO IS INSURED.** The Policy must name the Association, by the Board, as trustee for each Owner in proportion to the Owner's undivided interest in his or her Unit as the insured.

**B. REQUIRED COVERAGE.** The Policy must, if possible, cover one hundred percent (100%) of the full insurable replacement cost, without deducting for depreciation, of each Vacation Unit and its Common Furnishings.

**C. COVERAGE NOT REQUIRED.** The Policy does not have to cover (i) exterior glass if the Board decides that this is too expensive, and (ii) underground improvements, except for conduits, plumbing and wiring.

**D. FORM OF POLICY.** The Policy must cover those risks generally covered by a special form policy. A "special form policy" commonly insures against these risks: fire, lightning, windstorm and hail, smoke, explosion, civil commotion, riot, and riot attending a strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. If the Project is located in an area prone to earthquakes, the Association must also buy earthquake insurance if it is available at a reasonable cost.

**E. ADDITIONAL COVERAGE.**

1) The Policy must have an agreed amount endorsement. This protects members from co-insurance clauses. A co-insurance clause reduces benefits if the Association fails to buy enough insurance.

2) The Policy must have an inflation guard endorsement. This automatically increases the Policy limits up to a certain amount each year to keep the Policy limits current with inflation.

**F. REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

1) The Policy must not relieve the insurance company from liability because of:

(a) Any increased hazard on any part of the Condominium, whether or not within the control or knowledge of the Association, the Board, the Developer, the Plan Manager, the Club Operator, the Condominium Association, the Master Association, any Occupant, or any persons under any of them; or

(b) Any breach of warranty or condition or any other act or neglect by any of those persons.

2) The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board and the Plan Manager.

3) The Policy must provide that the insurance company gives up any right to repair, rebuild or replace a damaged or destroyed Vacation Unit if a decision is made under the Condominium Documents not to do so.

4) The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the Policy as against the Association, the Board, the Owners and any person under any of them. "Subrogation" is the right of the insurance company to try to recover its costs from the person who caused the loss.

5) The Policy must not limit or prohibit any Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance.

6) The Policy must provide that any loss with respect to any Vacation Unit or the Common Furnishings will be adjusted (settled) by the insurance company and the Board.

7) The Policy must contain a standard "Mortgagee Clause". This protects the rights of Lenders. The Mortgagee Clause must do these things:

(a) It must name as an insured any Lender whose name has been furnished to the Board and to the insurance company.

(b) It must provide that any reference to a Lender in the Policy includes all Lenders, in their order of priority, whether or not named in the Policy.

(c) It must provide that any act or neglect of the Association, the Board or any Occupant will not release the insurance company from its duties to the Lender.

(d) It must provide that the insurance company gives up these rights:

(1) Any right to deny coverage for the Lender's benefit because the Lender fails to notify the insurance company of any hazardous use or vacancy.

(2) Any requirement that the Lender pay any Policy premium. (But, the Lender may pay any premium due if the Association fails to do so on time).

(3) Any right to contribution from the Lender.

(4) Any right to be subrogated to the right of any Lender against anyone causing the loss or to require that any mortgage be transferred to the insurance company. However, the insurance company may retain the right of subrogation to the extent of insurance proceeds received and retained by the Lender, if the insurance company gives up any claims for liability against the Lender, the Association, the Board, the Plan Manager, the Club Operator, the Developer, the Owners and their Guests. This must not, however, impair the Lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

**15.3 LIABILITY INSURANCE.** The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance. In this Section 15.3, the commercial general liability insurance and commercial umbrella insurance are together called the "Policy".

**A. WHO IS INSURED.** The Policy must cover (i) the Association, the Board, the Developer, the Plan Manager, and the Club Operator (while the Plan is part of the Club), and (ii) each of their directors, officers, employees, and agents, and (iii) all Owners as a group against claims for personal injury, bodily injury, death and property damage.

**B. REQUIRED COVERAGE.** The Policy limits for each accident or occurrence may not be less than \$3,000,000 for personal injury, bodily injury, and death, and \$1,000,000 for property damage.

**C. REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

- 1) The Policy must not limit or prohibit any Owner from buying other liability insurance for the Owner's own benefit.
- 2) The Policy must not relieve the insurance company from liability because of any act or neglect of the Association, the Plan Manager, the Developer, the Board, the Club Operator, any Owner or Occupant, or any person under any of them.
- 3) The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the Policy as against the Association, the Board, the Plan Manager, the Club Operator, the Developer, the Owners and any persons under any of them.
- 4) The Policy must contain a "cross-liability" endorsement. This permits one person who is covered by the Policy to file a claim on the Policy based on the acts or failure to act of another person who is also covered by the Policy.
- 5) The Policy must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of one person who is covered by the Policy because of the negligence of another person who is covered by the Policy.
- 6) The Policy must provide that the Policy and the coverage it provides may not be canceled or substantially changed by the insurance company (whether or not asked by the Board) unless the insurance company gives a written notice of the cancellation or change at least thirty (30) days in advance. The notice must be sent to the Board, the Plan Manager, the Developer, and, if the Plan is part of the Club, the Club Operator.

**15.4 MOTOR VEHICLES.** The Board must buy and maintain a commercial automobile liability policy of insurance if the Association owns or leases any motor vehicles. This is called the "Policy" in this Section 15.3C.6). It must insure the Board, the Association, the Developer, the Plan Manager, and each of their officers, directors, agents and employees. It must cover claims for bodily injury, death and property damage arising out of the condition, use, operation, ownership or lease of any motor vehicle owned or leased by the Association. The Policy limits may not be less than \$1,000,000 for bodily injury or death or property damage arising out of a single accident or occurrence. The Policy must contain a severability of interest provision and a cross-liability endorsement.

**15.5 DIRECTORS AND OFFICERS INSURANCE.** The Board must buy and maintain a policy insuring, to the extent allowed

by law, each person who is or was a director, officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the "Policy" in this Section 15.5. The Policy must also cover anyone who serves, at the request of the Association, as a director, officer, member, employee or agent of another company or organization. The Board will choose the Policy limits.

If it can be obtained at a reasonable cost, the Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The Policy must pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

**15.6 FIDELITY BONDS.** A "fidelity bond" covers the loss of money in the care or custody of the Association or the Plan Manager. The Association must buy a fidelity bond or fidelity insurance. It must cover the Association and the Plan Manager. It must also cover each of their directors, officers, agents, and employees who handle funds belonging to or administered by the Association or the Plan Manager. The fidelity bond or insurance must name the Association as the person protected and who gets paid in case of loss (the "obligee" or the "insured"). The amount of the coverage must not be less than one-half of one year's estimated operating expenses plus all of the savings of the Association. The bond or insurance must also do these things:

A. It must meet the requirements of the Act and Rules.

B. It must provide that it may not be canceled or substantially changed without at least thirty (30) days' advance written notice to the Association, the Plan Manager, and the Club Operator (while the Plan is part of the Club).

C. It must cover anyone who serves without pay (for example, a volunteer). It must also waive (give up) any defense based on excluding such persons from the definition of the term "employee" or similar terms.

**15.7 OTHER INSURANCE.** The Association will buy all other insurance required by law. This may include, for example, temporary disability insurance and worker's compensation insurance. The Owners have the right to buy extra insurance they want for their own benefit and at their own expense.

## **16. DAMAGE, DESTRUCTION, AND CONDEMNATION**

**16.1 REPAIRING VACATION PROPERTY.** The Condominium Documents govern all matters covered in them relating to

damage or destruction to a Vacation Unit or the Common Elements. In all other cases, if a Vacation Unit or its Common Furnishings are damaged or destroyed (other than by ordinary wear and tear) the Association must immediately repair the damage and replace anything that cannot be repaired. Anything damaged by normal wear and tear, however, need not be repaired or replaced while it is still usable, reasonably attractive, safe, and in good condition. The Board will decide when such things will be repaired or replaced and its decision will be final. If the Board decides it is better to replace something instead of repairing it, the Board may do so.

**A. PAYING FOR THE REPAIRS.** The Association will use any available Insurance or Condemnation Proceeds to pay for the repair or replacement. The Association also may use any money set aside in a Reserve Account to repair or replace the damaged items. The damage may not be covered by insurance, or the available proceeds or applicable Reserve Account may not be enough to pay the total cost of repairing or replacing the damaged property. If so, the Association may charge a Special Assessment to raise the money.

1) "*Insurance Proceeds*" means any money paid by an insurance company for a loss.

2) "*Condemnation Proceeds*" means any money paid if the Vacation Property or any part of it is "taken", meaning that it is condemned or is sold to a Condemning Agency that has threatened to condemn it. The government and certain other persons have the "*power of eminent domain*". This means that they can make someone sell their property to them. This process is called "*condemnation*". Anyone having the power of eminent domain is called a "*Condemning Agency*".

**B. LIABILITY OF OWNERS AND OCCUPANTS FOR DAMAGES.** If an Owner or an Owner's Guest intentionally or negligently damages or destroys any Vacation Property or any other part of the Condominium, that person must repay the Association for all expenses related to repairing or replacing it. That amount will be a Personal Charge. If an Exchange User or his or her Guest intentionally or negligently damages or destroys any Vacation Property or any other part of the Condominium, that person must repay the Association for all expenses related to repairing or replacing it; the Owner of the Vacation Ownership Interest whose Vacation Period is used by the Exchange User, however, is not responsible to repay the Association. The Board will decide what should be repaired or replaced as a result of any damage or destruction. The Board's decision will be binding on any person responsible for repayment. This Section 16.1B does not apply to damage or destruction that the Board decides is the result of ordinary wear and tear.

#### **C. NO CLAIM FOR LOSSES PAID FOR BY INSURANCE.**

Despite what Section 16.1B says, the Association and the Owners will have no claim or cause of action against any Occupant for damage or destruction to the extent the loss is covered by insurance. An Occupant will have no claim or cause of action for any damage or destruction of his or her own property against the Association, the Board, the Plan Manager, the Developer, the Club Operator, any other company related to the Developer (or any of their officers, directors, employees or agents) or against any other Owner or Occupant to the extent that the loss is covered by insurance.

**16.2 EXCESS PROCEEDS.** Any Excess Proceeds payable to the Owners of a Vacation Unit must be divided into one hundred and four (104) shares. The Owner of an Every-Year Vacation Ownership Interest in that Vacation Unit will be paid two shares for his or her Vacation Ownership Interest, and the Owner of an Every-Other-Year Vacation Ownership Interest in that Vacation Unit will be paid one share for his or her Vacation Ownership Interest. If a Lender has a mortgage on a Vacation Ownership Interest, then the share of Excess Proceeds for that Vacation Ownership Interest will be paid to the Owner and the Lender. Likewise, if a Vacation Ownership Interest is subject to an Agreement of Sale, then the share of Excess Proceeds for that Vacation Ownership Interest will be paid to the buyer and the seller under the Agreement of Sale. "*Excess Proceeds*" are Insurance Proceeds or Condemnation Proceeds:

- ❖ from dissolving or terminating (winding up) the Condominium or the Vacation Ownership Plan for any reason;
- ❖ remaining after paying the cost of repairs and replacements;
- ❖ paid on account of a Vacation Unit that is destroyed and is not rebuilt. This could happen, for example, if the law is changed so it cannot be rebuilt or if a decision not to rebuild it is made under the Condominium Documents; or
- ❖ not required (i) to repair or replace any Vacation Unit or its Common Furnishings, or (ii) to pay any one or more Owners for personal injury or loss or damage to their property (in which case the proceeds will be distributed with due regard to the loss or damage).

### **17. ADDING AND REMOVING APARTMENTS**

**17.1 ADDING APARTMENTS TO THE PLAN.** The Developer may add more Apartments to the Vacation Ownership Plan at any time and without the consent of any Owner or anyone else. Only the Developer may add Apartments to the Vacation Ownership Plan. The Developer is not promising to add any more Apartments to the Vacation Ownership Plan. Owners who buy a Vacation Ownership Interest may enjoy

certain advantages from having Units added but will have no legal right to insist that Units be added.

## 17.2 DECLARATION OF ANNEXATION.

**A. REQUIRED CONTENT.** The Developer may add Apartments to the Plan by recording a "Declaration of Annexation." It must contain each of the following:

- 1) A legal description of the Apartment and the name of its record Owner.
- 2) A statement submitting the Apartment to this Declaration. This Declaration must be identified by title and recording data.
- 3) The Unit Type for the Apartment. If an Apartment is being added to an existing Unit Type, it must have at least as many bedrooms and bathrooms as other Vacation Units in that Unit Type.

**B. OTHER PROVISIONS:** The Declaration of Annexation may establish new Unit Types or new kinds of Vacation Ownership Interests for any or all Apartments being added. It may also contain any other provisions that the Developer may consider appropriate. If it creates a new Unit Type or new kinds of Vacation Ownership Interests, or if the Developer owns all Vacation Units of a particular Unit Type, then the Declaration of Annexation may change the Vacation Plan Documents with respect to that Unit Type. For example, the Developer could create new kinds of Vacation Ownership Interests that give the Owners of them:

- 1) The first chance to reserve certain Vacation Units.
- 2) The exclusive right to reserve certain Vacation Units.
- 3) The exclusive right or the first chance to reserve certain Vacation Units during certain holidays, such as Christmas, New Years, Presidents Day, and so on, or during times when certain events occur such as Aloha Week or the Hula Bowl.
- 4) Permanent reservations to use a certain Vacation Unit or kind of Vacation Unit for certain time periods.

**C. LIMITATIONS ON DEVELOPER'S RIGHTS.** Despite what Section 17.2B says:

- 1) The Declaration of Annexation cannot change the rights of existing Owners (other than the Developer) to reserve and use the existing Vacation Property (other than property that the Developer can remove from the Plan as described in Section 17.4A);

2) The Declaration of Annexation cannot create Vacation Ownership Interests that give certain Owners the exclusive right to reserve or use certain Vacation Units (the "Preferred Units") while also giving those Owners the right to reserve generally available Vacation Units.

(a) For example, suppose the Developer creates a new kind of Vacation Ownership Interest that gives their Owners the exclusive right to reserve a Preferred Unit. The Developer cannot also give those Owners the right to reserve Vacation Units other than the Preferred Unit. However, the Declaration of Annexation could permit an Owner to give up his or her special rights to reserve the Preferred Unit in any Use Year. In that case:

(1) The Owner could reserve a Use Week in another Vacation Unit; and

(2) Another Owner can use the special reservation or use rights given up by that Owner to reserve a Use Week in the Preferred Unit. It will be as though the Owners swapped their reservation rights.

(b) Subsection 2) does not mean, however, that the Developer cannot create Reservation Periods when only certain Owners can reserve certain Vacation Units set aside for their use. Rather, Subsection 2) applies when certain Owners are the only Owners who can ever reserve the Preferred Units. It also applies during Reservation Periods when certain Owners are the only Owners who can reserve the Preferred Units.

3) The Declaration of Annexation cannot give certain Owners the right to use a certain Vacation Unit or kind of Unit, or to use certain Use Periods every year while also giving them the right to reserve generally available Vacation Units. However, the Declaration of Annexation can give those Owners the right to give up their fixed use right in return for the right to reserve a Vacation Unit or Use Period on a floating basis similar to that stated in Section 4.4C.2).

4) The Declaration of Annexation cannot give the Owners of new kinds of Vacation Ownership Interests more than one vote for an Every-Other-Year Vacation Ownership Interest, or two votes for an Every-Year Vacation Ownership Interest, or change the rights of other Owners from one vote for an Every-Other-Year Vacation Ownership Interest or two votes for an Every-Year Vacation Ownership Interest. However, this does not mean that an amendment cannot change other voting rights. For example, if certain Owners have the exclusive right to use certain preferred property and that property is destroyed by a fire, then the Declaration of Annexation might say that only those Owners can vote on whether or how to repair or replace that property.

5) If the Declaration of Annexation creates a new Unit Type, it must state the Relative Valuation for the new Unit Type. The Relative Valuation per square foot for a new

Unit Type cannot be more than twenty percent (20%) higher or lower than the Relative Valuation per square foot for other Unit Types having the same number of bedrooms if the Unit Types have similar features (for example, size [ $\pm 150$  square fee], location, number of bathrooms, and views).

6) If the Developer has identified a Unit Type in Section 3.5 but the Plan does not include any Vacation Units of that Unit Type, then the Developer must state the Relative Valuation for that Unit Type in the Declaration of Annexation that first adds a Vacation Unit that is that Unit Type. The Relative Valuation per square foot cannot be more than twenty percent (20%) higher or lower than the Relative Valuation per square foot for other Unit Types having the same number of bedrooms if the Unit Types have similar features (for example, size [ $\pm 150$  square fee], location, number of bathrooms, and views).

**17.3 ADDED APARTMENTS ARE GOVERNED BY THE VACATION PLAN DOCUMENTS.** The Vacation Plan Documents will govern the ownership, use and transfer of any Apartment added to the Vacation Ownership Plan. Any added Apartment will be considered a Vacation Unit. Any money encumbrances or liens on the Apartment on the date it is added must be subordinated to this Declaration and to the lien rights given to the Association by this Declaration. This rule will apply unless arrangements are made so that when the Developer transfers the Vacation Ownership Interests in that Apartment, the Vacation Ownership Interests are released from the encumbrances and liens, or other reasonable arrangements are made to pay them off or to protect the Owners from them.

#### **17.4 APARTMENTS MAY BE REMOVED FROM THE PLAN.**

##### **A. THE DEVELOPER'S RIGHTS.**

###### **1) WHEN THE DEVELOPER CAN REMOVE A UNIT.**

If the Developer owns all Vacation Ownership Interests in a Vacation Unit, it may remove that Vacation Unit from the Vacation Ownership Plan.

**2) STEPS TO REMOVE A UNIT.** To remove a Vacation Unit, the Developer must sign and record a document named "*Declaration of Removal*." It must contain both of these things:

- ❖ A legal description of the Apartment being removed from the Plan.
- ❖ A statement that the Apartment is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**3) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded, the Apartments described in it will no longer be Vacation Units nor part of the Vacation Ownership Plan.

##### **B. THE OWNERS' RIGHTS.**

**1) WHEN THE OWNERS' CAN REMOVE A UNIT.** If all of the Owners of all Vacation Ownership Interests in a particular Vacation Unit decide to do so, and if their Lenders consent, they may remove that Vacation Unit from the operation of this Declaration and the Vacation Ownership Plan.

**2) STEPS TO REMOVE A UNIT.** To remove a Vacation Unit, the Owners must record a document named "*Declaration of Removal*." It must contain each of these things:

- ❖ A legal description of the Apartment being removed.
- ❖ An affidavit of the Owners saying that they own all Vacation Ownership Interests in that Vacation Unit and that they desire to remove that Apartment from the Vacation Ownership Plan.
- ❖ A letter from the Association, acting under Section 14.6B.1)(a), showing that all Assessments and Personal Charges relating to that Vacation Unit have been paid.
- ❖ The written consent of each such Owner's Lenders.
- ❖ The written consent of the Developer so long as the Developer owns, or holds mortgages on, at least fifty (50) Vacation Ownership Interests.
- ❖ The written consent of the Club Operator if the Plan is part of the Club.
- ❖ A statement that the Apartment is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**3) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded, the Apartment described in it will no longer be a Vacation Unit nor part of the Vacation Ownership Plan.

##### **C. DAMAGED OR CONDEMNED UNITS.**

**1) WHEN THE ASSOCIATION CAN REMOVE A UNIT.** The Association, through the Board, may remove a Vacation Unit from the Plan if that Vacation Unit is destroyed and a decision is made not to rebuild it, or if a Vacation Unit is condemned or is to be transferred under threat of condemnation. The Board may remove a Vacation Unit even if all Assessments and Personal Charges with respect to that Vacation Unit have not been paid.

**2) STEPS TO REMOVE A UNIT.** To remove a Vacation Unit, the Association must record a document named "*Declaration of Removal*." It must contain each of these things:

(a) A legal description of the Apartment being removed.

(b) An affidavit signed by any two officers of the Association. It must say either (i) that the Vacation Unit was destroyed and is not being rebuilt, or (ii) that the Vacation Unit was condemned or is being transferred under threat of Condemnation.

(c) A statement that the Apartment is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

3) **EFFECT OF REMOVAL.** After the Declaration of Removal is recorded:

(a) The Apartment will no longer be a Vacation Unit nor part of the Vacation Ownership Plan.

(b) The Owners of Vacation Ownership Interests in that Vacation Unit will still be personally liable for all Assessments and Personal Charges owed by them even though the Vacation Unit is no longer part of the Plan, and

(c) The Association's Secured Lien and security interest will remain on the Vacation Unit and any money received from the sale of it, until all Assessments and Personal Charges (including interest, late fees, and attorneys' fees) are paid in full. The Association may sign a document releasing its lien in connection with any sale of the Vacation Unit.

## **18. REVISING, TERMINATING, AND INTERPRETING THIS DECLARATION**

### **18.1 AMENDMENTS.**

**A. OWNERS' RIGHTS.** This Declaration may be "*amended*" (changed) from time to time by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Vacation Ownership Interest), and (ii) a Majority of the Owners Voting (not counting the Developer's Vacation Ownership Interests and votes); provided that the Owners voting for the amendment must hold at least twenty-five percent of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes). There is an exception to this rule: Some parts of the Vacation Plan Documents require the approval of more than a Majority of the Owners before taking certain actions (a "*super-majority*"). Such a provision cannot be amended unless (1) Owners casting votes equal to or exceeding the same super-majority required to take action under that provision vote in favor of that amendment, and (2) if the Developer owns, or holds a mortgage on, any Vacation Ownership Interest, the Developer signs the amendment. No amendment will take effect until it is signed by any two officers of the Association and recorded.

**B. DEVELOPER'S RIGHTS.** Without the consent or approval of any person, including any Owner and anyone having a contract to buy a Vacation Ownership Interest, the Developer may change this Declaration at any time:

1) And for any purpose before any First Deed or Agreement of Sale is recorded.

2) To comply with the laws and regulations of the State of Hawaii.

3) To comply with the real estate laws of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with (i) the registration of the Plan to permit the sale of Vacation Ownership Interests there, or (ii) so long as the Plan is part of the Club, to permit the registration of the Club, or (ii) so long as any Owner is a Network Member, to permit the registration of the Network.

4) To satisfy requests for changes made to the Developer by any institutional lender loaning money to 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.

5) In any Declaration of Annexation adding new Unit Types or creating new kinds of Vacation Ownership Interests to the extent permitted by Sections 3.5A or 17.2.

6) In any amendment creating new Event Weeks to the extent permitted by Section 3.4B.

No amendment under Subsections 18.1B.3) or 4) will be effective, however, unless:

(i) The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental authorities) having authority over the Plan as a result of the registration of it (or the Condominium, the Master Association, the Club or the Network) with that governmental authority, and

(ii) The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

An amendment made by the Developer under this Section 18.1B will take effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

### **C. LIMITS ON AMENDMENTS.**

1) Unless it is signed by the Owner and the Owner's Lender (if any), no amendment may:

(a) Take away the right of any Owner to reserve a Use Week and to use a Vacation Unit during his Vacation Period.

(b) Take away the right of an Owner having a Fixed, Event, Ultra or Ultra Premium Vacation Period to use a Vacation Unit during the Owner's Use Week.

(c) Take away the right of an Owner having the right to use a certain Vacation Unit during his or her Vacation Period.

(d) Change an Owner's undivided interest in a Vacation Unit. This rule does not apply to changes in an Owner's undivided interest in the Condominium made in connection with the rights of the Condominium Developer when using the Developer's Reserved Rights under the Condominium Documents, such as the right to create more Apartments in the Condominium.

(e) Change the right of the Owner to cast one vote for an Every-Other-Year Vacation Ownership Interest or two votes for an Every-Year Vacation Ownership Interest.

2) No amendment may change the rights and privileges of the Developer unless the Developer signs it.

3) At any time when the Plan is part of the Club, no amendment may change the rights and privileges of the Plan Operator or the Club Operator unless the Club Operator signs it.

**D. BINDING EFFECT.** If an amendment complies with these provisions, it will be binding on every Vacation Ownership Interest and everyone, including any Owners and their Lenders, who has any interest in the Vacation Ownership Interest.

**18.2 TERMINATING THIS DECLARATION.** This Declaration will remain in effect for sixty (60) years from the day it is recorded. After that, it will continue in effect for additional ten (10) year periods until an amendment canceling it is recorded. This Declaration may be terminated earlier if:

- ❖ All of the Vacation Units are removed from the Declaration under Section 17.4 above, or
- ❖ All of the Vacation Units are destroyed and a decision is made under the Condominium Documents not to repair, rebuild, or restore them, or
- ❖ All the Vacation Units are taken in condemnation proceedings or under threat of condemnation, or
- ❖ The Condominium Declaration terminates.

When this Declaration terminates, (a) the Owners of Vacation Ownership Interests will remain personally liable for all

Assessments and Personal Charges owed by them, and (b) the Association's Secured Lien and security interest will remain on each Owner's interest in the Vacation Unit and any money received from the sale of it, until all Assessments and Personal Charges (including interest, late fees, and attorneys' fees) are paid in full and the Association's affairs are finally settled. Each present and future Owner, and every other person who obtains any interest in a Vacation Ownership Interest (such as a Lender), gives the Association a special power of attorney to sell any and/or all Vacation Units when (and only when) this Declaration terminates as to any particular Vacation Unit. All money received from the sale of any Vacation Property will be distributed as provided above for Excess Proceeds.

### 18.3 THE RULE AGAINST PERPETUITIES.

**A. GENERAL NATURE OF THE RULE.** The "Rule Against Perpetuities" (the "RAP") is a legal rule. It limits the amount of time that may pass between (i) the date when an interest in real estate is created, and (ii) the date when the interest "vests" such as when the Owner of that interest becomes entitled to possession of the property. The RAP creates a deadline for this to happen. This deadline is called the "RAP Deadline" in this Declaration. In legal terms, the interest becomes "vested" in the future. For convenience, however, we will say that the transfer "takes effect in the future".

**B. CLUB OPERATOR'S OPERATOR'S EASEMENTS.** Section 8.8D provides that the Club Operator's easements under Section 8.8C will end when the Plan is no longer part of the Club and certain other conditions are met. But if the Plan decides to rejoin the Club, then Section 8.8D provides that the Club Operator will once again have these easements. If the RAP applies, however, then the Club Operator will only get these easements back if the Plan rejoins the Club before the RAP Deadline. If it rejoins after that, then the Club Operator will only have these easements if the Association grants them to the Club Operator in a separate document (and the Board is here and now specifically given the right to grant them). But if the RAP does not apply, then the Club Operator will have these easements no matter when the Plan rejoins the Club.

**C. APPLYING THE RULE.** No matter what else this Declaration says, if any part of this Declaration violates the RAP or any other limit imposed by law on the duration of the part, then that part will be effective only until the earlier of:

- ❖ the maximum period permitted by law, or
- ❖ 21 years after the death of the last survivor of the now living descendants of Joseph and Rose Kennedy of Massachusetts and George H. W. Bush of Texas.

**18.4 EFFECT OF INVALID PROVISIONS.** The provisions of this Declaration are "severable". This means that if any part of it is not legal or valid, that part can be ignored. But the rest of this Declaration will remain in effect and everyone must obey it.

**18.5 EFFECT OF FAILURE TO ENFORCE.** A violation of any part of the Vacation Plan Documents by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of the Vacation Plan Documents. Any failure to enforce any provision of the Vacation Plan Documents does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked.

**18.6 INTERPRETING THIS DECLARATION.** To make this Declaration easier to read and understand, many Chapters include an introduction. The introduction is intended to help you understand what the Chapter is about by giving you a general explanation. Likewise, captions have been added to many Sections. These are intended to help you find particular parts of this Declaration. But it is important to realize that the captions and introductions have been included as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of the provisions of this Declaration. You should read with care each and every part of this Declaration, not just the captions or the introductions.

Where this Declaration or the other Vacation Plan Documents say things like "for example", it means that there may be other examples besides the examples described in the document.

**18.7 PRONOUNS.** Pronouns (for example, "his" or "her") used in the Vacation Plan Documents include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

## **19. MISCELLANEOUS PROVISIONS AND GLOSSARY OF LEGAL TERMS**

### **19.1 TRANSFER OF DEVELOPER'S RIGHTS.**

**A.** If the Developer signs and records a document that expressly transfers some or all of its rights or duties as the Developer under the Vacation Plan Documents to someone else, then that person will become the "Developer" to the extent of the rights and duties transferred.

**B.** The Developer may transfer its rights as collateral for a loan. If so, the Lender will not have the rights or duties of the "Developer" until (i) it forecloses the loan, (ii) it holds the rights of the Developer outright, and (iii) it notifies the Association that this has happened and provides a copy of the legal documents by which it holds the rights of the Developer. Under Section 19.1A, the Developer may also transfer its rights and duties to a Lender in place of foreclosure.

**C.** A transfer of all rights of the Developer will automatically transfer the Developer's easements under this Declaration. This will happen even if the transfer document does not say so.

### **19.2 TRANSFER OF CLUB OPERATOR'S RIGHTS.**

**A.** If the Club Operator signs and records a document that expressly transfers some or all of its rights or duties as the Club Operator to someone else, then that person will become the Club Operator to the extent of the rights and duties transferred.

**B.** The Club Operator may also transfer its rights as collateral for a loan. If so, the Lender will not have the rights or duties of the "Club Operator" until (i) it forecloses the loan, (ii) it holds the rights of the Club Operator outright, and (iii) it notifies the Association that this has happened and provides a copy of the legal documents by which it holds the rights of the Club Operator. Under Section 19.2A, the Club Operator may also transfer its rights and duties to a Lender in place of foreclosure.

**C.** A transfer of all rights of the Club Operator will automatically transfer the Club Operator's easements under this Declaration. This will happen even if the transfer document does not say so.

**19.3 NOTICES.** Except as otherwise expressly provided in this Declaration or in the Bylaws, all notices must be given as follows:

**A. NOTICE TO OWNERS.** Notice to an Owner may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to his or her address as it is shown on the membership list. If more than one person is the "Owner" of a Vacation Ownership Interest, notice to all Owners of that Vacation Ownership Interest may be given by providing notice to any one of them.

**B. NOTICE TO THE ASSOCIATION.** Notice to the Association must be given to the president, vice-president, secretary, or any director. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to them at their addresses as shown on the membership list, or to any other address that they designate by notice to the Developer and to all Owners and Lenders.

**C. NOTICE TO THE PLAN MANAGER.** Notice to the Plan Manager must be mailed or delivered to the Plan Manager at its address as shown on in the Management Contract, or to any other address that the Plan Manager designates by notice to the Association from time to time.

**D. NOTICE TO THE DEVELOPER.** Notice to the Developer must be given to the president of the Developer. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to

the president of the Developer at the address shown on the membership list, or to any other address that the Developer designates by notice to the Association from time to time.

**E. NOTICE TO A LENDER.** Notice to a Lender or to an insurer or guarantor of a mortgage may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to its address as it is shown on the membership list, or to any other address that it designates by notice to the Board.

**F. CHANGE OF ADDRESS.** All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records. Regardless of the prior two sentences, notices of addresses and changes of addresses will be deemed given only when they are actually received. The addresses for purposes of this Section 19.3 may be changed by giving written notice of the change. Unless written notice of an address change is received, the last address will remain effective for all purposes.

**19.4 SPECIAL POWER OF ATTORNEY.** Whenever this Declaration provides that an Owner or other person gives a "power of attorney" or appoints someone as "attorney-in-fact", the following Rules apply:

**A.** The power of attorney appointment is permanent. In legal terms, it is *coupled with an interest*, it is *irrevocable*, it is a *durable* power of attorney, and it will not be affected by the death or disability of the person who gives it.

**B.** It includes "*full power of substitution*". This means that the person given the power of attorney can let someone else act in his or her place as a substitute attorney-in-fact.

**C.** Each Owner (or other person) gives the power of attorney whether or not it expressly says so in the deed, mortgage or other document by which he or she obtained any interest in the Vacation Ownership Plan or the Vacation Property.

**D.** It is a "*special power of attorney*." This means that the attorney-in-fact has the power to do only the things stated or intended by the Vacation Plan Documents; this includes, however, the power to do anything else necessary or convenient to accomplish the stated or intended goal. Ambiguities must be resolved in favor of giving, not denying, the attorney-in-fact the power to act.

**E.** If asked by the attorney-in-fact, the person who is giving the special power of attorney must promptly deliver a signed and notarized special power of attorney in the form requested by the attorney-in-fact.

## 19.5 GLOSSARY OF LEGAL TERMS.

**A. "ACT"** means the Hawaii Time Share Act, Chapter 514E, Hawaii Revised Statutes, or any law that replaces that law.

**B. "AGREEMENT OF SALE"** means a recorded contract which binds the seller to sell and the buyer to buy a Vacation Ownership Interest and under which the seller keeps the title to the Vacation Ownership Interest as collateral for payment of the sales price. The buyer, however, is considered the Owner of the Vacation Ownership Interest and can use a Vacation Unit during his or her Vacation Period so long as the buyer makes all payments and keeps his or her promises under the Agreement of Sale.

**C. "ATTACHMENT"** refers to the act or process of seizing property under a court order.

**D. "CONDOMINIUM PROPERTY ACT"** means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, or any law that replaces that law.

**E. "DEED"** means any document (except a recorded lease or Agreement of Sale) used to transfer ownership of a Vacation Ownership Interest.

**F. "EASEMENT"** means any right to use property possessed by someone else.

**G. "ENCUMBER"** refers to putting a legal claim or "encumbrance" on property.

**H. "ENCUMBRANCE"** means a right or interest in property held by someone other than the owner of that property.

**I. "INCUR"** means to pay or to become obligated to pay, or both.

**J. "JOINT AND SEVERAL LIABILITY"** means that two or more people are each fully responsible to keep a promise or pay a sum of money. This means that each person may be required to pay the whole amount due, not just part of it or his or her share of it.

**K. "LENDER"** means anyone who has a mortgage on a Vacation Ownership Interest.

**L. "LIEN"** means a claim against property. For example, a mortgage on a Vacation Ownership Interest is a claim on the Vacation Ownership Interest as collateral for the payment of money.

**M. "MAJORITY OF THE OWNERS"** mean Owners of more than fifty percent (50%) of the total number of votes for all Vacation Ownership Interests in the Vacation Ownership Plan. Any reference to a specific percentage of Owners

means Owners having that percentage of the total number of votes for all Vacation Ownership Interests in the Plan. When it refers to having a quorum or taking a vote, these terms mean Owners of a majority or other specific percentage of the votes for all Vacation Ownership Interests then entitled to vote. The Bylaws explain how and when an Owner's voting rights may be suspended.

N. "MAJORITY OF THE OWNERS VOTING" mean Owners of more than fifty percent (50%) of the total number of votes for all Vacation Ownership Interests held by Owners present and casting votes on the matter at hand. Any reference to a specific percentage of "Owners Voting" means Owners having that percentage of the total number of votes held by Owners present and casting votes on the matter. When it refers to having a quorum or taking a vote, only the votes of Vacation Ownership Interests then entitled to vote will be considered. The Bylaws explain how and when an Owner's voting rights may be suspended.

O. "MORTGAGE" when used as a noun means a recorded mortgage or deed of trust by which an Owner's Vacation Ownership Interest becomes collateral for the repayment of a loan. Usually, if the loan isn't repaid, the Vacation Ownership Interest will be sold and the money will be used to repay the loan. When used as a verb, "mortgage" refers to making a Vacation Ownership Interest subject to a mortgage or deed of trust.

P. "PERSON" means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity. Terms like "somebody", "nobody", "someone", "anyone", and so on refer to a "person" and, depending on the context, may refer to a person who is an "Owner."

Q. "RECORD", "RECORDED", "RECORDING", and similar terms mean recorded in the Land Court. Hawaii law may be changed to require that deeds, mortgages, notices of liens, amendments to the Vacation Plan Documents, or other documents, be recorded in the Bureau. After any such law takes effect, "record", "recorded", "recording" and similar terms will mean and refer to recording in the Bureau to the extent provided by the change in the law.

1) "BUREAU" means the Bureau of Conveyances of the State of Hawaii.

2) "LAND COURT" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

R. "RULES" means the Rules Relating to Time Sharing, Chapter 16-106, Hawaii Administrative Rules, and any other Rules adopted under the Act.

S. "SUBORDINATE TO" means governed by. For example, if a mortgage is "subordinate to" the Declaration then the mortgage will be governed by and will not affect the Declaration. If something in the mortgage does not agree with the Declaration, then the Declaration will control and must be obeyed.

T. "TENANTS IN COMMON" refers to the relationship between co-Owners of property. When the co-Owners are tenants in common, then each person owns an undivided interest or Ownership Share in the property. An Owner may mortgage or sell his or her Ownership Share. The Owner may also leave it to someone else in his or her will.

U. "TRANSFER" means any way one person may receive a Vacation Ownership Interest from another, including for example a voluntary sale, an involuntary sale (such as a foreclosure sale), a recorded lease, an inheritance or a gift.

V. "UNDIVIDED INTEREST" refers to the ownership of property by two or more persons as tenants in common. Each person owns a share in the property, sometimes called an "Ownership Share". For example, if two people own an Apartment, each person would own a one-half Ownership Share. If four people own it, each would own a one-fourth Ownership Share, also called a one-fourth undivided interest. Each Owner of an Every-Year Vacation Ownership Interest owns a one-fifty-second (1/52nd) undivided interest in a Vacation Unit as tenants in common with the other Owners of Vacation Ownership Interests in that Vacation Unit. An Owner of an Every-Other-Year Vacation Ownership Interest owns a one-one-hundred and fourth (1/104th) undivided interest in a Vacation Unit as tenants in common with the other Owners of Vacation Ownership Interests in that Vacation Unit.

The Developer signed this Declaration on September 14, 2001.

SVO PACIFIC, INC.

By:

Name:

Its:

[Signature]  
James A. McKnight  
Vice President

STATE OF FLORIDA )

) ss:

COUNTY OF ORANGE )

On this 14 day of September, 2001, before me personally appeared James A. McKnight, 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.

[Signature]  
Name: \_\_\_\_\_  
Notary Public, State of Florida  
My Commission expires: \_\_\_\_\_



Victoria H. Carter  
MY COMMISSION # CC969913 EXPIRES  
October 15, 2004  
BONDED TRULY TRUST FARM INSURANCE, INC.

## EXHIBIT "A"

### FIRST:

Those certain forty-nine (49) Apartments listed in Exhibit "B" of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, (herein with any amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with any amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

### SECOND:

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001,

and recorded as Land Court Document No. 2734237, (herein with any amendments called the "Declaration of Merger"), and/or (iii) in that certain Declaration of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association, dated September 5, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii immediately prior hereto (herein with any amendments called the "Master Declaration"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger;
2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and
3. The Master Declaration, the Bylaws of the Ocean Resort Master Association attached to the Master Declaration, (the "Master Bylaws") and any rules and regulations adopted thereunder (the "Master Rules and Regulations"), as any of the same may be amended from time to time.

**BEING A PORTION** of the premises described in Transfer Certificate of Title No. 569,700, issued to SVO Pacific, Inc., a Florida corporation, as tenant in severalty.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.
6. The "Master Association Documents" consisting of the following documents and any lawful amendments to them: (i) the Master Declaration, (ii) the Articles of Incorporation of the Ocean Resort Master Association; (iii) the Master Bylaws; and (iv) the Master Rules and Regulations.

**NOTE:** For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is one of the "Vacation Plan Documents" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

**END OF EXHIBIT "A"**

EXHIBIT B  
TO  
VACATION OWNERSHIP PLAN DECLARATION

Apartment No.	Apartment Type	Valuation	Common Interest
<b>First Floor</b>			
2108/10	Two Bedroom Ocean View	52,000.00	0.003382575
2109/11	Two Bedroom Ocean View	52,000.00	0.003382575
2112/14	Two Bedroom Ocean View	52,000.00	0.003382575
2113/15	Two Bedroom Ocean View	52,000.00	0.003382575
2116/18	Two Bedroom Ocean View	52,000.00	0.003382575
2117/19	Two Bedroom Ocean View	52,000.00	0.003382575
2120/22	Two Bedroom Ocean View	52,000.00	0.003382575
2121/23	Two Bedroom Ocean View	52,000.00	0.003382575
2124	One Bedroom Ocean View	43,873.44	0.002853946
2125	One Bedroom Ocean View	43,873.44	0.002853946
2126/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2127/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2130/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Third Floor</b>			
2300/02	Two Bedroom Ocean View	52,000.00	0.003382575
2301	One Bedroom Ocean View	43,873.44	0.002853946
2303	One Bedroom Ocean View	43,873.44	0.002853946
2304/06	Two Bedroom Ocean View	52,000.00	0.003382575
2305/07	Two Bedroom Ocean View	52,000.00	0.003382575
2308/10	Two Bedroom Ocean View	52,000.00	0.003382575
2309/11	Two Bedroom Ocean View	52,000.00	0.003382575
2312/14	Two Bedroom Ocean View	52,000.00	0.003382575
2313/15	Two Bedroom Ocean View	52,000.00	0.003382575
2316/18	Two Bedroom Ocean View	52,000.00	0.003382575
2317/19	Two Bedroom Ocean View	52,000.00	0.003382575
2320/22	Two Bedroom Ocean View	52,000.00	0.003382575
2321/23	Two Bedroom Ocean View	52,000.00	0.003382575
2324	One Bedroom Ocean View	43,873.44	0.002853946
2325	One Bedroom Ocean View	43,873.44	0.002853946
2326/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2327/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2330/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Sixth Floor</b>			
2600/02	Two Bedroom Ocean View	52,000.00	0.003382575
2601	One Bedroom Ocean View	43,873.44	0.002853946
2603	One Bedroom Ocean View	43,873.44	0.002853946
2604/06	Two Bedroom Ocean View	52,000.00	0.003382575
2605/07	Two Bedroom Ocean View	52,000.00	0.003382575
2608/10	Two Bedroom Ocean View	52,000.00	0.003382575
2609/11	Two Bedroom Ocean View	52,000.00	0.003382575
2612/14	Two Bedroom Ocean View	52,000.00	0.003382575
2613/15	Two Bedroom Ocean View	52,000.00	0.003382575
2616/18	Two Bedroom Ocean View	52,000.00	0.003382575
2617/19	Two Bedroom Ocean View	52,000.00	0.003382575
2620/22	Two Bedroom Ocean View	52,000.00	0.003382575
2621/23	Two Bedroom Ocean View	52,000.00	0.003382575
2624	One Bedroom Ocean View	43,873.44	0.002853946
2625	One Bedroom Ocean View	43,873.44	0.002853946
2626/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2627/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2630/31	Two Bedroom Ocean Front	52,000.00	0.003382575

## **Exhibit "C"**

### **Bylaws of the Ocean Resort Villas Vacation Owners Association**

**Please refer to Exhibit "2" of the First Amendment to the Declaration of  
Covenants, Conditions, Easements and Restrictions  
For Vacation Ownership  
For  
The Amended and Restated Bylaws of the  
Ocean Resort Villas  
Vacation Owners Association**

**Exhibit "D"**  
**Vacation Calendar**  
**Ocean Resort Villas Vacation Ownership Plan**

Week No.	Friday Check In		Saturday Check In		Sunday Check In	
	Start Date	End Date	Start Date	End Date	Start Date	End Date
1	04-Jan-02	11-Jan-02	05-Jan-02	12-Jan-02	06-Jan-02	13-Jan-02
2	11-Jan-02	18-Jan-02	12-Jan-02	19-Jan-02	13-Jan-02	20-Jan-02
3	18-Jan-02	25-Jan-02	19-Jan-02	26-Jan-02	20-Jan-02	27-Jan-02
4	25-Jan-02	01-Feb-02	26-Jan-02	02-Feb-02	27-Jan-02	03-Feb-02
5	01-Feb-02	08-Feb-02	02-Feb-02	09-Feb-02	03-Feb-02	10-Feb-02
6	08-Feb-02	15-Feb-02	09-Feb-02	16-Feb-02	10-Feb-02	17-Feb-02
7	15-Feb-02	22-Feb-02	16-Feb-02	23-Feb-02	17-Feb-02	24-Feb-02
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15	12-Apr-02	19-Apr-02	13-Apr-02	20-Apr-02	14-Apr-02	21-Apr-02
16	19-Apr-02	26-Apr-02	20-Apr-02	27-Apr-02	21-Apr-02	28-Apr-02
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18	03-May-02	10-May-02	04-May-02	11-May-02	05-May-02	12-May-02
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42	18-Oct-02	25-Oct-02	19-Oct-02	26-Oct-02	20-Oct-02	27-Oct-02
43	25-Oct-02	01-Nov-02	26-Oct-02	02-Nov-02	27-Oct-02	03-Nov-02
44	01-Nov-02	08-Nov-02	02-Nov-02	09-Nov-02	03-Nov-02	10-Nov-02
45	08-Nov-02	15-Nov-02	09-Nov-02	16-Nov-02	10-Nov-02	17-Nov-02
46	15-Nov-02	22-Nov-02	16-Nov-02	23-Nov-02	17-Nov-02	24-Nov-02
47	22-Nov-02	29-Nov-02	23-Nov-02	30-Nov-02	24-Nov-02	01-Dec-02
48	29-Nov-02	06-Dec-02	30-Nov-02	07-Dec-02	01-Dec-02	08-Dec-02
49	06-Dec-02	13-Dec-02	07-Dec-02	14-Dec-02	08-Dec-02	15-Dec-02
50	13-Dec-02	20-Dec-02	14-Dec-02	21-Dec-02	15-Dec-02	22-Dec-02
51	20-Dec-02	27-Dec-02	21-Dec-02	28-Dec-02	22-Dec-02	29-Dec-02
52	27-Dec-02	03-Jan-03	28-Dec-02	04-Jan-03	29-Dec-02	05-Jan-03

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. 2852617  
DATE Oct. 21, 2002 TIME 3:29

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

**SVO PACIFIC, INC.**  
1000 KALANIANAʻOHE BLVD., SUITE 400  
HONOLULU, HI 96813  
ATTN: ALAN K. KIMURA

This document contains  
10 pages

TMK No. (2) 4-4-14-3 CPR No.s: [Not yet assigned]

## Ocean Resort Villas

### DECLARATION OF ANNEXATION

THIS DECLARATION OF ANNEXATION is made on this 13<sup>th</sup> day of September, 2002, by  
SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND INFORMATION

A. The Developer filed a document called the "Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements, and Restrictions for Vacation Ownership" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737497. That document is called the "Declaration" in this document. All terms defined in the Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "Property"). The Developer desires to include the Property in the Vacation Ownership Plan.

## DEDICATION OF THE PROPERTY TO THE PROGRAM

The Developer declares that from now on:

1. The Property, and all rights of the Developer in it, is subject to the Declaration and the other Vacation Plan Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the Property to the Vacation Plan Documents).

2. The individual apartments comprising the Property are Vacation Units and are part of the Vacation Property. In legal terms, the Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Vacation Plan Documents, from now until the Vacation Ownership Plan ends. Anyone who occupies or uses any of the Vacation Property must obey the Vacation Plan Documents.

3. The Vacation Plan Documents will be binding on the Property. They will also be binding on, and are intended to benefit these persons:

A. The Developer.

B. The Association.

C. The Club Operator.

D. Anyone who owns all or any part of any Vacation Unit, or any Vacation Ownership Interest or other interest in it, now or in the future. This includes, for example, all present and future Owners and their Lenders.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Vacation Plan Documents. It does not matter how or when someone obtains an interest in a Vacation Unit or whether they ever signed the Vacation Plan Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Vacation Plan Documents in any way permitted by the Act or the Vacation Plan Documents.

In legal terms, the Vacation Plan Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.

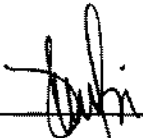
4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Condominium Documents as the Condominium Developer, and (ii) under the Master Association Documents as the Developer of the Master Association. The Developer alone may exercise the Developer's Reserved Rights under the Condominium Documents and/or under the Master Association Documents. Those rights will not be subject to the Vacation Plan Documents.

5. The Unit Type and Valuation for each Apartment is listed in Exhibit B which is attached to and part of this document.

6. Under the Declaration, a Use Period is defined to mean a Use Week, a Split Week, or a Use Night. A Use Night lasts from Check-In Time on one day until Check-Out Time the next day. A Use Week means a period of time beginning at Check-In Time on one day and ending at Check-Out Time on the same day of the following week. A Split Week is a period of less than seven consecutive Use Nights. The Reservation Rules may further define "Split Week". Accordingly, the "schedule of use periods" consists of all nights of the year. Each year, the Plan Operator prepares a Vacation Calendar. A sample Vacation Calendar is attached to this document as Exhibit "C". The Vacation Calendar divides the year into 52 (or, depending on the calendar year, 53) Use Weeks. The Use Weeks are numbered from 1 to 52 (or 53).

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

By:  \_\_\_\_\_

Name: Dale Curtin

Its: Senior Vice President, CFO,  
Treasurer and Assistant Secretary

STATE OF Florida )  
 ) ss:  
COUNTY OF Orange )

On this 13<sup>th</sup> day of September, 2002, before me personally appeared Dale Curtin, Sr. Vice Pres, CFO, Treasurer and Asst Sec of SVO Pacific, Inc., a Florida corporation 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.

Cynthia M. Keene  
Notary Public, State of Florida  
My Commission expires: 11/11/02



## **EXHIBIT "A"**

### **FIRST:**

Those certain fifty-four (54) Apartments listed in Exhibit "B" of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, (herein with any amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with any amendments called the "Condominium Map").

### **TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;

2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

**SECOND:**

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237, (herein with any amendments called the "Declaration of Merger"), and/or (iii) in that certain Declaration of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association, dated September 5, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii immediately prior hereto (herein with any amendments called the "Master Declaration"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger;

2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and

3. The Master Declaration, the Bylaws of the Ocean Resort Master Association attached to the Master Declaration, (the "Master Bylaws") and any rules and regulations adopted thereunder (the "Master Rules and Regulations"), as any of the same may be amended from time to time.

**BEING A PORTION** of the premises described in Transfer Certificate of Title No. 569,700,

issued to SVO Pacific, Inc., a Florida corporation, as tenant in severalty.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.
6. The "Master Association Documents" consisting of the following documents and any lawful amendments to them: (i) the Master Declaration, (ii) the Articles of Incorporation of the Ocean Resort Master Association; (iii) the Master Bylaws; and (iv) the Master Rules and Regulations.

**NOTE:** For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is one of the "Vacation Plan Documents" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

**END OF EXHIBIT "A"**

EXHIBIT B  
TO  
VACATION OWNERSHIP PLAN DECLARATION

Apartment No.	Unit Type	Relative Valuation	Common Interest
<b>Second Floor</b>			
2200/02	Two Bedroom Ocean View	52,000.00	0.003382575
2201	One Bedroom Ocean View	43,873.44	0.002853946
2203	One Bedroom Ocean View	43,873.44	0.002853946
2204/06	Two Bedroom Ocean View	52,000.00	0.003382575
2205/07	Two Bedroom Ocean View	52,000.00	0.003382575
2208/10	Two Bedroom Ocean View	52,000.00	0.003382575
2209/11	Two Bedroom Ocean View	52,000.00	0.003382575
2212/14	Two Bedroom Ocean View	52,000.00	0.003382575
2213/15	Two Bedroom Ocean View	52,000.00	0.003382575
2216/18	Two Bedroom Ocean View	52,000.00	0.003382575
2217/19	Two Bedroom Ocean View	52,000.00	0.003382575
2220/22	Two Bedroom Ocean View	52,000.00	0.003382575
2221/23	Two Bedroom Ocean View	52,000.00	0.003382575
2224	One Bedroom Ocean View	43,873.44	0.002853946
2225	One Bedroom Ocean View	43,873.44	0.002853946
2226/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2227/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2230/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Fourth Floor</b>			
2400/02	Two Bedroom Ocean View	52,000.00	0.003382575
2401	One Bedroom Ocean View	43,873.44	0.002853946
2403	One Bedroom Ocean View	43,873.44	0.002853946
2404/06	Two Bedroom Ocean View	52,000.00	0.003382575
2405/07	Two Bedroom Ocean View	52,000.00	0.003382575
2408/10	Two Bedroom Ocean View	52,000.00	0.003382575
2409/11	Two Bedroom Ocean View	52,000.00	0.003382575
2412/14	Two Bedroom Ocean View	52,000.00	0.003382575
2413/15	Two Bedroom Ocean View	52,000.00	0.003382575
2416/18	Two Bedroom Ocean View	52,000.00	0.003382575
2417/19	Two Bedroom Ocean View	52,000.00	0.003382575
2420/22	Two Bedroom Ocean View	52,000.00	0.003382575
2421/23	Two Bedroom Ocean View	52,000.00	0.003382575
2424	One Bedroom Ocean View	43,873.44	0.002853946
2425	One Bedroom Ocean View	43,873.44	0.002853946
2426/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2427/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2430/31	Two Bedroom Ocean Front	52,000.00	0.003382575

9/11/2002

EXHIBIT B  
TO  
VACATION OWNERSHIP PLAN DECLARATION

Apartment No.	Unit Type	Relative Valuation	Common Interest
<b>Fifth Floor</b>			
2500/02	Two Bedroom Ocean View	52,000.00	0.003382575
2501	One Bedroom Ocean View	43,873.44	0.002853946
2503	One Bedroom Ocean View	43,873.44	0.002853946
2504/06	Two Bedroom Ocean View	52,000.00	0.003382575
2505/07	Two Bedroom Ocean View	52,000.00	0.003382575
2508/10	Two Bedroom Ocean View	52,000.00	0.003382575
2509/11	Two Bedroom Ocean View	52,000.00	0.003382575
2512/14	Two Bedroom Ocean View	52,000.00	0.003382575
2513/15	Two Bedroom Ocean View	52,000.00	0.003382575
2516/18	Two Bedroom Ocean View	52,000.00	0.003382575
2517/19	Two Bedroom Ocean View	52,000.00	0.003382575
2520/22	Two Bedroom Ocean View	52,000.00	0.003382575
2521/23	Two Bedroom Ocean View	52,000.00	0.003382575
2524	One Bedroom Ocean View	43,873.44	0.002853946
2525	One Bedroom Ocean View	43,873.44	0.002853946
2526/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2527/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
2530/31	Two Bedroom Ocean Front	52,000.00	0.003382575

9/11/2002

<b>Exhibit "C"</b> <b>Vacation Calendar</b> <b>Ocean Resort Villaa Vacation Ownership Plan</b>
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Week No.	Friday Check In		Saturday Check In		Sunday Check In	
	Start Date	End Date	Start Date	End Date	Start Date	End Date
1	04-Jan-02	11-Jan-02	05-Jan-02	12-Jan-02	06-Jan-02	13-Jan-02
2	11-Jan-02	18-Jan-02	12-Jan-02	19-Jan-02	13-Jan-02	20-Jan-02
3	18-Jan-02	25-Jan-02	19-Jan-02	26-Jan-02	20-Jan-02	27-Jan-02
4	25-Jan-02	01-Feb-02	26-Jan-02	02-Feb-02	27-Jan-02	03-Feb-02
5	01-Feb-02	08-Feb-02	02-Feb-02	09-Feb-02	03-Feb-02	10-Feb-02
6	08-Feb-02	15-Feb-02	09-Feb-02	16-Feb-02	10-Feb-02	17-Feb-02
7	15-Feb-02	22-Feb-02	16-Feb-02	23-Feb-02	17-Feb-02	24-Feb-02
8	22-Feb-02	01-Mar-02	23-Feb-02	02-Mar-02	24-Feb-02	03-Mar-02
9	01-Mar-02	08-Mar-02	02-Mar-02	09-Mar-02	03-Mar-02	10-Mar-02
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11	15-Mar-02	22-Mar-02	16-Mar-02	23-Mar-02	17-Mar-02	24-Mar-02
12	22-Mar-02	29-Mar-02	23-Mar-02	30-Mar-02	24-Mar-02	31-Mar-02
13	29-Mar-02	05-Apr-02	30-Mar-02	06-Apr-02	31-Mar-02	07-Apr-02
14	05-Apr-02	12-Apr-02	06-Apr-02	13-Apr-02	07-Apr-02	14-Apr-02
15	12-Apr-02	19-Apr-02	13-Apr-02	20-Apr-02	14-Apr-02	21-Apr-02
16	19-Apr-02	26-Apr-02	20-Apr-02	27-Apr-02	21-Apr-02	28-Apr-02
17	26-Apr-02	03-May-02	27-Apr-02	04-May-02	28-Apr-02	05-May-02
18	03-May-02	10-May-02	04-May-02	11-May-02	05-May-02	12-May-02
19	10-May-02	17-May-02	11-May-02	18-May-02	12-May-02	19-May-02
20	17-May-02	24-May-02	18-May-02	25-May-02	19-May-02	26-May-02
21	24-May-02	31-May-02	25-May-02	01-Jun-02	26-May-02	02-Jun-02
22	31-May-02	07-Jun-02	01-Jun-02	08-Jun-02	02-Jun-02	09-Jun-02
23	07-Jun-02	14-Jun-02	08-Jun-02	15-Jun-02	09-Jun-02	16-Jun-02
24	14-Jun-02	21-Jun-02	15-Jun-02	22-Jun-02	16-Jun-02	23-Jun-02
25	21-Jun-02	28-Jun-02	22-Jun-02	29-Jun-02	23-Jun-02	30-Jun-02
26	28-Jun-02	05-Jul-02	29-Jun-02	06-Jul-02	30-Jun-02	07-Jul-02
27	05-Jul-02	12-Jul-02	06-Jul-02	13-Jul-02	07-Jul-02	14-Jul-02
28	12-Jul-02	19-Jul-02	13-Jul-02	20-Jul-02	14-Jul-02	21-Jul-02
29	19-Jul-02	26-Jul-02	20-Jul-02	27-Jul-02	21-Jul-02	28-Jul-02
30	26-Jul-02	02-Aug-02	27-Jul-02	03-Aug-02	28-Jul-02	04-Aug-02
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32	09-Aug-02	16-Aug-02	10-Aug-02	17-Aug-02	11-Aug-02	18-Aug-02
33	16-Aug-02	23-Aug-02	17-Aug-02	24-Aug-02	18-Aug-02	25-Aug-02
34	23-Aug-02	30-Aug-02	24-Aug-02	31-Aug-02	25-Aug-02	01-Sep-02
35	30-Aug-02	06-Sep-02	31-Aug-02	07-Sep-02	01-Sep-02	08-Sep-02
36	06-Sep-02	13-Sep-02	07-Sep-02	14-Sep-02	08-Sep-02	15-Sep-02
37	13-Sep-02	20-Sep-02	14-Sep-02	21-Sep-02	15-Sep-02	22-Sep-02
38	20-Sep-02	27-Sep-02	21-Sep-02	28-Sep-02	22-Sep-02	29-Sep-02
39	27-Sep-02	04-Oct-02	28-Sep-02	05-Oct-02	29-Sep-02	06-Oct-02
40	04-Oct-02	11-Oct-02	05-Oct-02	12-Oct-02	06-Oct-02	13-Oct-02
41	11-Oct-02	18-Oct-02	12-Oct-02	19-Oct-02	13-Oct-02	20-Oct-02
42	18-Oct-02	25-Oct-02	19-Oct-02	26-Oct-02	20-Oct-02	27-Oct-02
43	25-Oct-02	01-Nov-02	26-Oct-02	02-Nov-02	27-Oct-02	03-Nov-02
44	01-Nov-02	08-Nov-02	02-Nov-02	09-Nov-02	03-Nov-02	10-Nov-02
45	08-Nov-02	15-Nov-02	09-Nov-02	16-Nov-02	10-Nov-02	17-Nov-02
46	15-Nov-02	22-Nov-02	16-Nov-02	23-Nov-02	17-Nov-02	24-Nov-02
47	22-Nov-02	29-Nov-02	23-Nov-02	30-Nov-02	24-Nov-02	01-Dec-02
48	29-Nov-02	06-Dec-02	30-Nov-02	07-Dec-02	01-Dec-02	08-Dec-02
49	06-Dec-02	13-Dec-02	07-Dec-02	14-Dec-02	08-Dec-02	15-Dec-02
50	13-Dec-02	20-Dec-02	14-Dec-02	21-Dec-02	15-Dec-02	22-Dec-02
51	20-Dec-02	27-Dec-02	21-Dec-02	28-Dec-02	22-Dec-02	29-Dec-02
52	27-Dec-02	03-Jan-03	28-Dec-02	04-Jan-03	29-Dec-02	05-Jan-03

Certified to be a true and correct copy of the document  
on 8/8/03 at 1:00 pm;  
in the Office of the Assistant Registrar of the Land Court,

State of Hawaii, as Document No. 2974212  
Island Title Corporation

By [Signature]

Issued TGT 659079 thru 659255

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

McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
— pages

ITC 198298 4

TMK No. (2) 4-4-14-3 CPR No.s: [Not yet assigned]

## *Ocean Resort Villas Vacation Ownership Plan*

### DECLARATION OF ANNEXATION

THIS DECLARATION OF ANNEXATION is made on this 5<sup>th</sup> day of August, 2003, by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND INFORMATION

A. The Developer filed a document called the "Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements, and Restrictions for Vacation Ownership" and dated September 14, 2001, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737947. That document is called the "Declaration" in this document. All terms defined in the Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "Property"). The Developer desires to include the Property in the Vacation Ownership Plan.

## DEDICATION OF THE PROPERTY TO THE PROGRAM

The Developer declares that from now on:

1. The Property, and all rights of the Developer in it, is subject to the Declaration and the other Vacation Plan Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the Property to the Vacation Plan Documents).

2. The individual apartments comprising the Property are Vacation Units and are part of the Vacation Property. In legal terms, the Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Vacation Plan Documents, from now until the Vacation Ownership Plan ends. Anyone who occupies or uses any of the Vacation Property must obey the Vacation Plan Documents.

3. The Vacation Plan Documents will be binding on the Property. They will also be binding on, and are intended to benefit these persons:

A. The Developer.

B. The Association.

C. The Club Operator.

D. Anyone who owns all or any part of any Vacation Unit, or any Vacation Ownership Interest or other interest in it, now or in the future. This includes, for example, all present and future Owners and their Lenders.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Vacation Plan Documents. It does not matter how or when someone obtains an interest in a Vacation Unit or whether they ever signed the Vacation Plan Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Vacation Plan Documents in any way permitted by the Act or the Vacation Plan Documents.

In legal terms, the Vacation Plan Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.

4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Condominium Documents as the Condominium Developer, and (ii)

under the Master Association Documents as the Developer of the Master Association. The Developer alone may exercise the Developer's Reserved Rights under the Condominium Documents and/or under the Master Association Documents. Those rights will not be subject to the Vacation Plan Documents.

5. The Unit Type and Relative Valuation for each Apartment is listed in Exhibit "B" which is attached to and part of this document.

6. Under the Declaration, a Use Period is defined to mean a Use Week, a Split Week, or a Use Night. A Use Night lasts from Check-In Time on one day until Check-Out Time the next day. A Use Week means a period of time beginning at Check-In Time on one day and ending at Check-Out Time on the same day of the following week. A Split Week is a period of less than seven consecutive Use Nights. The Reservation Rules may further define "Split Week". Accordingly, the "schedule of use periods" consists of all nights of the year. Each year, the Plan Operator prepares a Vacation Calendar. A sample Vacation Calendar is attached to this document as Exhibit "C". The Vacation Calendar divides the year into 52 (or, depending on the calendar year, 53) Use Weeks. The Use Weeks are numbered from 1 to 52 (or 53).

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

By: 

Name: Susan Werth

Its: Senior Vice President/Law, Secretary

STATE OF Florida )  
 ) ss:  
COUNTY OF Orange )

On this 5th day of August, 2003, before me personally appeared Susan Werth, Senior Vice President/Law, Secretary of SVO Pacific, Inc., a Florida corporation 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.

Sabrina C. Churchwell  
Name: SABRINA C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006



## **EXHIBIT "A"**

### **FIRST:**

Those certain one hundred and seventy-seven (177) Apartments, as listed in the attached Exhibit "B", of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, as amended and restated by that certain Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas, dated and recorded concurrently herewith (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;

prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

**SECOND:**

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237 (herein with any amendments called the "Declaration of Merger"), and/or (iii) in that certain Declaration of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association, dated September 5, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2737946 (herein with any amendments called the "Master Declaration"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger;

2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and

3. The Master Declaration, the Bylaws of the Ocean Resort Master Association attached to the Master Declaration, (the "Master Bylaws") and any rules and regulations adopted thereunder (the "Master Rules and Regulations"), as any of the same may be amended from time to time.

**BEING THE PREMISES** described in Transfer Certificate of Title No. 569,700 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.

2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.

3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.

4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.

6. The "Master Association Documents" consisting of the following documents and any lawful amendments to them: (i) the Master Declaration; (ii) the Articles of Incorporation of the Ocean Resort Master Association; (iii) the Master Bylaws; and (iv) the Master Rules and Regulations.

NOTE: For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is one of the "Vacation Plan Documents" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

EXHIBIT "B"  
TO  
OCEAN RESORT VILLAS VACATION OWNERSHIP PLAN DECLARATION OF ANNEXATION

Apartment No.	Unit Type	Relative Valuation Per Unit	Common Interest Per Unit
<b>MAKANUKAI BUILDING (BUILDING B)</b>			
<b>First Floor</b>			
3101/03	Two Bedroom Ocean View	52,000.00	0.003382575
3102	One Bedroom Ocean View	43,873.44	0.002853948
3104/06	Two Bedroom Ocean View	52,000.00	0.003382575
3105/07	Two Bedroom Ocean View	52,000.00	0.003382575
3108/10	Two Bedroom Ocean View	52,000.00	0.003382575
3109/11	Two Bedroom Ocean View	52,000.00	0.003382575
3112/14	Two Bedroom Ocean View	52,000.00	0.003382575
3113/15	Two Bedroom Ocean View	52,000.00	0.003382575
3116/18	Two Bedroom Ocean View	52,000.00	0.003382575
3117/19	Two Bedroom Ocean View	52,000.00	0.003382575
3120/22	Two Bedroom Ocean View	52,000.00	0.003382575
3121/23	Two Bedroom Ocean View	52,000.00	0.003382575
3124	One Bedroom Ocean View	43,873.44	0.002853946
3125	One Bedroom Ocean View	43,873.44	0.002853946
3126/28	Two Bedroom Deluxe Ocean Front	71,853.10	0.004661000
3127/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
3130/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Second Floor</b>			
3200	One Bedroom Ocean View	43,873.44	0.002853946
3201/03	Two Bedroom Ocean View	52,000.00	0.003382575
3202	One Bedroom Ocean View	43,873.44	0.002853946
3204/08	Two Bedroom Ocean View	52,000.00	0.003382575
3205/07	Two Bedroom Ocean View	52,000.00	0.003382575
3208/10	Two Bedroom Ocean View	52,000.00	0.003382575
3209/11	Two Bedroom Ocean View	52,000.00	0.003382575
3212/14	Two Bedroom Ocean View	52,000.00	0.003382575
3213/15	Two Bedroom Ocean View	52,000.00	0.003382575
3216/18	Two Bedroom Ocean View	52,000.00	0.003382575
3217/19	Two Bedroom Ocean View	52,000.00	0.003382575
3220/22	Two Bedroom Ocean View	52,000.00	0.003382575
3221/23	Two Bedroom Ocean View	52,000.00	0.003382575
3224	One Bedroom Ocean View	43,873.44	0.002853946
3225	One Bedroom Ocean View	43,873.44	0.002853946
3228/28	Two Bedroom Deluxe Ocean Front	71,853.10	0.004661000
3227/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004881000
3230/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Third Floor</b>			
3300	One Bedroom Ocean View	43,873.44	0.002853948
3301/03	Two Bedroom Ocean View	52,000.00	0.003382575

Apartment No.	Unit Type	Relative Valuation Per Unit	Common Interest Per Unit
3302	One Bedroom Ocean View	43,873.44	0.002853946
3304/06	Two Bedroom Ocean View	52,000.00	0.003382575
3305/07	Two Bedroom Ocean View	52,000.00	0.003382575
3308/10	Two Bedroom Ocean View	52,000.00	0.003382575
3309/11	Two Bedroom Ocean View	52,000.00	0.003382575
3312/14	Two Bedroom Ocean View	52,000.00	0.003382575
3313/15	Two Bedroom Ocean View	52,000.00	0.003382575
3316/18	Two Bedroom Ocean View	52,000.00	0.003382575
3317/19	Two Bedroom Ocean View	52,000.00	0.003382575
3320/22	Two Bedroom Ocean View	52,000.00	0.003382575
3321/23	Two Bedroom Ocean View	52,000.00	0.003382575
3324	One Bedroom Ocean View	43,873.44	0.002853946
3325	One Bedroom Ocean View	43,873.44	0.002853948
3326/28	Two Bedroom Deluxe Ocean Front	71,853.10	0.004881000
3327/29	Two Bedroom Deluxe Ocean Front	71,853.10	0.004661000
3330/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Fourth Floor</b>			
3400	One Bedroom Ocean View	43,873.44	0.002853946
3401/3403	Two Bedroom Ocean View	52,000.00	0.003382575
3402	One Bedroom Ocean View	43,873.44	0.002853946
3404/00	Two Bedroom Ocean View	52,000.00	0.003382575
3405/07	Two Bedroom Ocean View	52,000.00	0.003382575
3408/10	Two Bedroom Ocean View	62,000.00	0.003382575
3409/11	Two Bedroom Ocean View	52,000.00	0.003382575
3412/14	Two Bedroom Ocean View	52,000.00	0.003382575
3413/15	Two Bedroom Ocean View	52,000.00	0.003382575
3416/18	Two Bedroom Ocean View	52,000.00	0.003382575
3417/19	Two Bedroom Ocean View	52,000.00	0.003382576
3420/22	Two Bedroom Ocean View	52,000.00	0.003382575
3421/23	Two Bedroom Ocean View	52,000.00	0.003382575
3424	One Bedroom Ocean View	43,873.44	0.002853946
3425	One Bedroom Ocean View	43,873.44	0.002853946
3426/28	Two Bedroom Deluxe Ocean Front	71,853.10	0.004681000
3427/29	Two Bedroom Deluxe Ocean Front	71,853.10	0.004651000
3430/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Fifth Floor</b>			
3500	One Bedroom Ocean View	43,873.44	0.002853946
3501/03	Two Bedroom Ocean View	52,000.00	0.003382575
3502	One Bedroom Ocean View	43,873.44	0.002853948
3504/05	Two Bedroom Ocean View	52,000.00	0.003382575
3505/07	Two Bedroom Ocean View	52,000.00	0.003382575
3508/10	Two Bedroom Ocean View	52,000.00	0.003382575
3509/11	Two Bedroom Ocean View	52,000.00	0.003382576
3512/14	Two Bedroom Ocean View	52,000.00	0.003382575
3513/15	Two Bedroom Ocean View	52,000.00	0.003382575
3516/18	Two Bedroom Ocean View	52,000.00	0.003382575
3517/19	Two Bedroom Ocean View	52,000.00	0.003382575
3520/22	Two Bedroom Ocean View	52,000.00	0.003382575

Apartment No.	Unit Type	Relative Valuation Per Unit	Common Interest Per Unit
3521/23	Two Bedroom Ocean View	52,000.00	0.003362575
3524	One Bedroom Ocean View	43,873.44	0.002853946
3525	One Bedroom Ocean View	43,873.44	0.002853946
3526/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
3527/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
3530/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>Sixth Floor</b>			
3600	One Bedroom Ocean View	43,873.44	0.002853946
3601/03	Two Bedroom Ocean View	52,000.00	0.003362575
3602	One Bedroom Ocean View	43,873.44	0.002853946
3604/06	Two Bedroom Ocean View	52,000.00	0.003382575
3605/07	Two Bedroom Ocean View	52,000.00	0.003382575
3608/10	Two Bedroom Ocean View	52,000.00	0.003382575
3809/11	Two Bedroom Ocean View	52,000.00	0.003382575
3812/14	Two Bedroom Ocean View	52,000.00	0.003382575
3613/15	Two Bedroom Ocean View	52,000.00	0.003382575
3616/18	Two Bedroom Ocean View	52,000.00	0.003382575
3817/19	Two Bedroom Ocean View	52,000.00	0.003382575
3620/22	Two Bedroom Ocean View	52,000.00	0.003382575
3621/23	Two Bedroom Ocean View	52,000.00	0.003382575
3624	One Bedroom Ocean View	43,873.44	0.002853946
3625	One Bedroom Ocean View	43,873.44	0.002853946
3626/28	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
3627/29	Two Bedroom Deluxe Ocean Front	71,653.10	0.004661000
3630/31	Two Bedroom Ocean Front	52,000.00	0.003382575
<b>ARECANI BUILDING BUILDING C</b>			
<b>First Floor</b>			
4100/01	Two Bedroom Island View	52,000.00	0.003382575
4102/04	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4103/05	Two Bedroom Deluxe Ocean View	71,853.10	0.004881000
4106/06	Two Bedroom Island View	52,000.00	0.003362575
4107/09	Two Bedroom Ocean View	62,000.00	0.003382575
4114/16	Two Bedroom Island View	52,000.00	0.003362575
4115/17	Two Bedroom Island View	52,000.00	0.003382575
4118/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4119/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4122/23	Two Bedroom Island View	52,000.00	0.003362575
<b>Second Floor</b>			
4200/01	Two Bedroom Island View	52,000.00	0.003382575
4202/04	Two Bedroom Deluxe Island View	71,853.10	0.004861000
4203/05	Two Bedroom Deluxe Ocean View	71,653.10	0.004681000
4206/08	Two Bedroom Island View	52,000.00	0.003382575

Apartment No.	Unit Type	Relative Valuation Per Unit	Common Interest Per Unit
4207/09	Two Bedroom Ocean View	52,000.00	0.003382575
4211	One Bedroom Ocean View	43,873.44	0.002853946
4213	One Bedroom Ocean View	43,873.44	0.002853946
4214/16	Two Bedroom Island View	52,000.00	0.003382575
4215/17	Two Bedroom Island View	52,000.00	0.003382575
4218/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4219/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4222/23	Two Bedroom Island View	52,000.00	0.003382575
<b>Third Floor</b>			
4300/01	Two Bedroom Island View	52,000.00	0.003382575
4302/04	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4303/05	Two Bedroom Deluxe Ocean View	71,653.10	0.004661000
4306/08	Two Bedroom Island View	52,000.00	0.003382575
4307/09	Two Bedroom Ocean View	52,000.00	0.003382575
4311	One Bedroom Ocean View	43,873.44	0.002853946
4313	One Bedroom Ocean View	43,873.44	0.002853946
4314/16	Two Bedroom Island View	52,000.00	0.003382575
4315/17	Two Bedroom Island View	52,000.00	0.003382575
4318/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4319/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4322/23	Two Bedroom Island View	52,000.00	0.003382575
<b>Fourth Floor</b>			
4400/01	Two Bedroom Island View	52,000.00	0.003382675
4402/04	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4403/05	Two Bedroom Deluxe Ocean View	71,653.10	0.004661000
4406/08	Two Bedroom Island View	52,000.00	0.003382575
4407/09	Two Bedroom Ocean View	52,000.00	0.003382575
4411	One Bedroom Ocean View	43,873.44	0.002853946
4413	One Bedroom Ocean View	43,873.44	0.002853946
4414/16	Two Bedroom Island View	52,000.00	0.003382575
4415/17	Two Bedroom Island View	52,000.00	0.003382675
4418/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4419/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4422/23	Two Bedroom Island View	52,000.00	0.003382575
<b>Fifth Floor</b>			
4500/01	Two Bedroom Island View	52,000.00	0.003382575
4502/04	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4503/05	Two Bedroom Deluxe Ocean View	71,653.10	0.004661000
4506/08	Two Bedroom Island View	52,000.00	0.003382575
4507/09	Two Bedroom Ocean View	52,000.00	0.003382575
4511	One Bedroom Ocean View	43,873.44	0.002853946

Apartment No.	Unit Type	Relative Valuation Per Unit	Common Interest Per Unit
4513	One Bedroom Ocean View	43,873.44	0.002853946
4514/16	Two Bedroom Island View	52,000.00	0.003382575
4515/17	Two Bedroom Island View	52,000.00	0.003382575
4518/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4519/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4522/23	Two Bedroom Island View	52,000.00	0.003382575
<b>Sixth Floor</b>			
4600/01	Two Bedroom Island View	52,000.00	0.003362575
4602/04	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4603/05	Two Bedroom Deluxe Ocean View	71,653.10	0.004661000
4606/08	Two Bedroom Island View	52,000.00	0.003382575
4607/09	Two Bedroom Ocean View	52,000.00	0.003382575
4611	One Bedroom Ocean View	43,873.44	0.002653946
4613	One Bedroom Ocean View	43,673.44	0.002653946
4614/16	Two Bedroom Island View	52,000.00	0.003362575
4615/17	Two Bedroom Island View	52,000.00	0.003362575
4618/20	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4619/21	Two Bedroom Deluxe Island View	71,653.10	0.004661000
4622/23	Two Bedroom Island View	52,000.00	0.003382575

EXHIBIT "C"  
TO  
OCEAN RESORT VILLAS VACATION OWNERSHIP PLAN DECLARATION OF ANNEXATION

Vacation Calendar  
Ocean Resort Villas Ownership Plan

Waak No.	Friday Check In		Saturday Check In		Sunday Check In	
	Start Date	End Date	Start Date	End Date	Start Date	End Date
1	02-Jan-04	09-Jan-04	03-Jan-04	10-Jan-04	04-Jan-04	11-Jan-04
2	09-Jan-04	16-Jan-04	10-Jan-04	17-Jan-04	11-Jan-04	18-Jan-04
3	18-Jan-04	23-Jan-04	17-Jan-04	24-Jan-04	18-Jan-04	25-Jan-04
4	23-Jan-04	30-Jan-04	24-Jan-04	31-Jan-04	25-Jan-04	01-Feb-04
5	30-Jan-04	08-Feb-04	31-Jan-04	07-Feb-04	01-Feb-04	08-Feb-04
8	06-Feb-04	13-Feb-04	07-Feb-04	14-Feb-04	08-Feb-04	15-Feb-04
7	13-Feb-04	20-Feb-04	14-Feb-04	21-Feb-04	15-Feb-04	22-Feb-04
8	20-Feb-04	27-Feb-04	21-Feb-04	28-Feb-04	22-Feb-04	29-Feb-04
9	27-Feb-04	05-Mar-04	28-Feb-04	06-Mar-04	29-Feb-04	07-Mar-04
10	05-Mar-04	12-Mar-04	06-Mar-04	13-Mar-04	07-Mar-04	14-Mar-04
11	12-Mar-04	19-Mar-04	13-Mar-04	20-Mar-04	14-Mar-04	21-Mar-04
12	19-Mar-04	26-Mar-04	20-Mar-04	27-Mar-04	21-Mar-04	28-Mar-04
13	26-Mar-04	02-Apr-04	27-Mar-04	03-Apr-04	28-Mar-04	04-Apr-04
14	02-Apr-04	09-Apr-04	03-Apr-04	10-Apr-04	04-Apr-04	11-Apr-04
15	09-Apr-04	16-Apr-04	10-Apr-04	17-Apr-04	11-Apr-04	18-Apr-04
18	18-Apr-04	23-Apr-04	17-Apr-04	24-Apr-04	18-Apr-04	25-Apr-04
17	23-Apr-04	30-Apr-04	24-Apr-04	01-May-04	25-Apr-04	02-May-04
18	30-Apr-04	07-May-04	01-May-04	08-May-04	02-May-04	09-May-04
19	07-May-04	14-May-04	08-May-04	15-May-04	09-May-04	16-May-04
20	14-May-04	21-May-04	15-May-04	22-May-04	18-May-04	23-May-04
21	21-May-04	28-May-04	22-May-04	29-May-04	23-May-04	30-May-04
22	28-May-04	04-Jun-04	29-May-04	05-Jun-04	30-May-04	06-Jun-04
23	04-Jun-04	11-Jun-04	05-Jun-04	12-Jun-04	06-Jun-04	13-Jun-04
24	11-Jun-04	18-Jun-04	12-Jun-04	19-Jun-04	13-Jun-04	20-Jun-04
25	18-Jun-04	25-Jun-04	19-Jun-04	26-Jun-04	20-Jun-04	27-Jun-04
28	25-Jun-04	02-Jul-04	26-Jun-04	03-Jul-04	27-Jun-04	04-Jul-04
27	02-Jul-04	09-Jul-04	03-Jul-04	10-Jul-04	04-Jul-04	11-Jul-04
28	09-Jul-04	16-Jul-04	10-Jul-04	17-Jul-04	11-Jul-04	18-Jul-04
29	16-Jul-04	23-Jul-04	17-Jul-04	24-Jul-04	18-Jul-04	25-Jul-04
30	23-Jul-04	30-Jul-04	24-Jul-04	31-Jul-04	25-Jul-04	01-Aug-04
31	30-Jul-04	08-Aug-04	31-Jul-04	07-Aug-04	01-Aug-04	08-Aug-04
32	06-Aug-04	13-Aug-04	07-Aug-04	14-Aug-04	08-Aug-04	15-Aug-04
33	13-Aug-04	20-Aug-04	14-Aug-04	21-Aug-04	15-Aug-04	22-Aug-04
34	20-Aug-04	27-Aug-04	21-Aug-04	28-Aug-04	22-Aug-04	29-Aug-04
35	27-Aug-04	03-Sep-04	28-Aug-04	04-Sep-04	29-Aug-04	05-Sep-04
38	03-Sep-04	10-Sep-04	04-Sep-04	11-Sep-04	05-Sep-04	12-Sep-04
37	10-Sep-04	17-Sep-04	11-Sep-04	18-Sep-04	12-Sep-04	19-Sep-04
38	17-Sep-04	24-Sep-04	18-Sep-04	25-Sep-04	19-Sep-04	28-Sep-04
39	24-Sep-04	01-Oct-04	25-Sep-04	02-Oct-04	28-Sep-04	03-Oct-04
40	01-Oct-04	08-Oct-04	02-Oct-04	09-Oct-04	03-Oct-04	10-Oct-04
41	08-Oct-04	15-Oct-04	09-Oct-04	16-Oct-04	10-Oct-04	17-Oct-04

42	15-Oct-04	22-Oct-04	16-Oct-04	23-Oct-04	17-Oct-04	24-Oct-04
43	22-Oct-04	29-Oct-04	23-Oct-04	30-Oct-04	24-Oct-04	31-Oct-04
44	29-Oct-04	05-Nov-04	30-Oct-04	06-Nov-04	31-Oct-04	07-Nov-04
45	05-Nov-04	12-Nov-04	06-Nov-04	13-Nov-04	07-Nov-04	14-Nov-04
46	12-Nov-04	19-Nov-04	13-Nov-04	20-Nov-04	14-Nov-04	21-Nov-04
47	19-Nov-04	28-Nov-04	20-Nov-04	27-Nov-04	21-Nov-04	28-Nov-04
48	26-Nov-04	03-Dec-04	27-Nov-04	04-Dec-04	28-Nov-04	05-Dec-04
49	03-Dec-04	10-Dec-04	04-Dec-04	11-Dec-04	05-Dec-04	12-Dec-04
50	10-Dec-04	17-Dec-04	11-Dec-04	18-Dec-04	12-Dec-04	19-Dec-04
51	17-Dec-04	24-Dec-04	18-Dec-04	25-Dec-04	19-Dec-04	26-Dec-04
52	24-Dec-04	31-Dec-04	25-Dec-04	01-Jan-05	26-Dec-04	02-Jan-05
53	31-Dec-04	07-Jan-05				

Certified to be a true and correct copy of the document  
recorded on 8-26-03 at 8:02 am  
in the Office of the Assistant Registrar of the Land Court,  
State of Hawaii, as Document No. 2982411.

Island Title Corporation

By [Signature]

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ☒ ]

PICK-UP ☐ ]

McCorriston Miller Mukai MacKinnon LLP (CEP)  
Five Waterfront Plaza, Suite 400  
500 Ala Moana Blvd.  
Honolulu, Hawaii 96813

ITC: 198298

This Document Contains 50 Pages

(2)

TMK No. (2) 4-4-14-3  
CPR Nos.: [Not assigned yet]  
TCT No.s [See Exhibit "1"]

## ***Ocean Resort Villas Vacation Ownership Plan***

### **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VACATION OWNERSHIP**

THIS FIRST AMENDMENT TO OCEAN RESORT VILLAS VACATION OWNERSHIP PLAN DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VACATION OWNERSHIP (this "Amendment") is made this 21 day of August, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### **BACKGROUND**

The Developer is the developer of Ocean Resort Villas Vacation Ownership Plan (the "Plan"). The Plan is subject to that certain "Ocean Resort Villas Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership, dated September 14, 2001, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2 737 947 (the "Declaration"). The Declaration has been noted on the Transfer Certificates of Title listed in Exhibit "1". All terms defined in the Declaration will have the same meaning in this Amendment.

The Developer has filed an application to register the Plan in the State of California. The California Department of Real Estate has required that the Developer make certain changes to the Declaration as a condition to the registration of the Plan. The Declaration authorizes the Developer to change the Declaration in connection with the registration of the Plan in California.

#### AMENDMENT

THE DEVELOPER HERE AND NOW AMENDS THE DECLARATION as follows:

1. Section 5.1E 1) of the Declaration is amended to add a new subsection (c), to read as follows:

**(c) LENGTH OF HOME RESORT RESERVATION PERIOD.**

The Home Resort Reservation Periods must last a total of at least ninety (90) days.

2. Section 5.2 J. of the Declaration is amended to read as follows:

**J. TRANSACTION FEES.** The Reservation Rules may require that the Owners pay Transaction Fees. "*Transaction Fees*" are reasonable fees charged to an Owner by the Plan Operator and that relate to the manner in which an Owner uses his or her reservation or use rights. For example, the Plan Operator may charge Transaction Fees (i) for making multiple reservations, (ii) for Banking or Borrowing, (iii) for canceling or changing reservations, (iv) for bonus week reservations and other special reservation or use requests, or (v) to cover the added housekeeping and reservation costs of permitting an Owner to use a Vacation Unit on a lock-off basis or for a Split Week Use Period. To the extent that Transaction Fees are charged to pay for costs incurred by the Association (for example, additional housekeeping expenses), the Plan Operator will collect the Transaction Fees as an agent of the Association and must pay them to the Association promptly after the Plan Operator receives them.

3. Section 6.9 C. of the Declaration is amended to add the following additional sentence at the end of the paragraph.

**C. EXTERNAL EXCHANGE PROGRAMS.**

1) The Club Operator has the option but no duty to enter into one or more agreements, including "corporate" membership agreements, to affiliate the Club with one or more External Exchange Programs, including but not limited to the

Network, vacation networks, vacation clubs, or multi-site vacation ownership plans, on such terms and conditions as are acceptable to the Club Operator. The Club Operator may do so without the consent or approval of the Owners, the Association, or anyone else. The Club Operator shall have no obligation to make any such program available to Owners, and the Plan and the Owners will have no right or obligation to participate in any such program, unless the Board consents; provided that Board consent is not required for the Plan and the Owners to participate in the Network.

2) The Club Operator has the option, from time to time, to enter into or otherwise arrange for one or more special exchange relationships with any entity other than an Exchange Company pursuant to which Club Members will have access to selected non-Club Resorts and non-Club owners will have access to Club Units after one or more of the Home Resort Reservation Periods have expired. The Club Operator may do so without the consent or approval of the Owners, the Association, or anyone else. The Club Operator shall have no obligation to make any such program available to Owners, and the Plan and the Owners will have no right or obligation to participate in any such program, unless the Board consents.

3) If the Club Operator enters into an agreement pursuant to Subsections 6.9C.1) or 2), and if any necessary consent of the Board is given, then the Association, the Plan Manager, and the Owners must cooperate fully with the Club Operator and must comply with the terms and conditions of any such contract or agreement. Any special exchange relationship, and any arrangement with any vacation network, vacation club, or multi-site vacation ownership plan, must not violate the one-to-one use-right to use-night requirement of the Act.

4. Section 8.4 D. of the Declaration is amended to read as follows:

**D. USE OF MASTER ASSOCIATION AMENITIES.** Use of the Master Association Amenities is available only to the persons and on the terms and conditions set by the Master Association. The Master Association may change the terms and conditions from time to time. Except as otherwise provided in the Master Association Documents, Master Association Amenities available at one time may not continue to be available, or available to Owners and Occupants, in the future. Also, the Master Association may charge the user for the use of any of any facilities, products or services made available through the Master Association including, for example, a fee for a massage, surfing lessons, sports equipment

rentals, use of a cabana, amounts charged by a concession operator, and so on. This Declaration gives the Owners and Occupants no greater rights than they otherwise have under the Master Association Documents.

5. Section 8.7 of the Declaration is amended as follows:

A. Section 8.7 C. of the Declaration is amended to read as follows:

**C. UNRESERVED AND UNUSED USE PERIODS.** The Developer has the right to reserve any Use Periods that, for any reason, are not reserved as of sixty (60) days before the Check-In Day. This right of the Developer is in addition to the reservation rights it has for any Vacation Ownership Interests it owns. If the Developer uses its rights under this Subsection 8.7C., then the Developer must pay to the Association an amount equal to (i) the actual expense to the Association in maintaining and providing services (such as housekeeping) to the Vacation Unit and its Occupants during the Use Periods reserved and used by the Developer under this Subsection 8.7C., and (ii) a reasonable amount, to be set by the Board, for reserve expenses allocable to such use. The Developer must pay these amounts promptly after it receives a bill itemizing these charges.

B. Section 8.7 E. of the Declaration is amended to read as follows:

**E. USE OF VACATION UNITS.** The Developer may: (i) use one or more Vacation Units as model apartments; (ii) use one or more of the Vacation Units for customer relations, sales, marketing, and/or administrative offices, and (iii) show the Vacation Units to potential buyers. The rights of the Developer under this Subsection 8.7 E. apply only to Vacation Units for which no First Deed or Agreement of Sale has been recorded.

6. Section 8.8 of the Declaration is amended to read as follows:

**8.8. SPECIAL RIGHTS OF THE CLUB OPERATOR.** No matter what else the Vacation Plan Documents provide, the Club Operator has the following special rights and privileges:

**A. CLUB OPERATOR'S EASEMENT.** The Club Operator has the right and an easement to permit Other Club Members to use, possess and enjoy the Vacation Property on these terms and conditions. If the Club Operator confirms a Club Member's reservation request pursuant to Section 6.6C, then, during his or her Vacation Period, the Club Member and his or her Guests will

have the same rights to use the Assigned Unit and Common Elements that an Owner has under Section 8.2. The Club Operator has an easement and the right to allow Other Club Members who make a reservation during the Club Reservation Periods to use, possess and enjoy the Vacation Property in these circumstances. But the Other Club Members do not have an easement of their own. Other Club Members may only use the Vacation Property through the easement rights of the Club Operator.

1) The Club Operator cannot use these rights in a way that violates the one-to-one use-right to use-night requirement of the Act.

2) The Club Operator may only make this easement available to: (i) Club Members of Other Club Vacation Plans, and (ii) persons who have deposited in the Club the right to use property that meets the requirements of Subsection 6.11B in return for the right to use a Club Unit. This rule does not prohibit the Club Operator from permitting Exchange Users to reserve the use of a Vacation Unit through an External Exchange Program arranged by or through the Club Operator so long as the Exchange User has also deposited use rights in the External Exchange Program.

**B. LIFE OF THE CLUB OPERATOR'S EASEMENT.** The Club Operator's rights and easements under Section 8.8A will remain in effect so long as the Plan is part of the Club. The Club Operator's easements will end automatically (i) when the Plan is no longer participating in the Club, and (ii) all reservations confirmed by the Club Operator under Section 6.6C, have been used, have expired, or have been canceled. If the Plan decides to rejoin the Club, then the Club Operator will once again have the rights and easements contained in Section 8.8A.

7. Section 8.9 B. of the Declaration is amended to add a new subsection 5), to read as follows:

5) The Developer's right to rent unreserved Use Periods under this Section 9.9B will end if a Majority of the Owners Voting (not counting the Developer's votes and Vacation Ownership Interests) vote to terminate this right of the Developer.

(a) The first such vote will be conducted at the earlier of:

(1) The first annual meeting of the Association that is held after the Developer has sold, and closed

the sale, of at least two-thirds (2/3<sup>rd</sup>s) of the total number of Vacation Ownership Interests in the Plan, or

(2) The annual meeting that occurs just before the expiration date of the Management Contract.

(b) The Association will vote on the matter at each later annual meeting for so long as the Developer right to rent unreserved Use Periods under this Section 8.9B continues.

(c) Instead of conducting the vote at a meeting, the vote may be conducted by ballot if and when the Hawaii Non-Profit Corporations Law is amended to permit the use of ballots.

8. Section 12.5 B. 2) of the Declaration is amended to read as follows:

2) May provide that after the first term and each later term ends, the contract automatically will be renewed for three more years, unless a written notice canceling the Management Contract is sent by either party at least 90 days before the next renewal date. The Management Contract shall provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(a) If the Plan Manager is affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice; and

(b) A decision to cancel or not to renew the Management Contract cannot be made by the Board alone; and

(c) Neither the Board nor any officer, director, employee or agent of the Association can give the notice before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will not be effective. It will be void.

9. Section 12.8 C. of the Declaration is entirely deleted.

10. Section 14.5 of the Declaration is amended to read as follows:

#### **14.5 THE ASSOCIATION MAY RENT AN OWNER'S VACATION PERIOD.**

**A. THE ASSOCIATION'S RIGHT TO RENT.** If an Owner (other than the Developer) is more than sixty (60) days late in paying any Personal Charge or Assessment charged to the Owner under the Vacation Plan Documents, and does not make that payment within ten (10) business days after the Association sends a written demand to pay then the Association may use the Owner's use rights or Points to reserve a Unit. The Association may then rent that Vacation Period to the public. The renter and his or her Guests will have the right to use the Assigned Unit during the Vacation Period reserved. The Association may not reserve or rent more Use Periods than necessary to pay all sums due in full (plus the reasonable costs of renting the Vacation Period).

**B. USE OF THE RENT MONEY.** The Association will apply the rent money first to pay the cost of arranging the rental and then to pay all overdue Assessments and Personal Charges owed by the Owner (including penalties, late fees and so on). Any excess money may be used by the Association to pay any Plan Expenses and will not be credited to or for the account of the defaulting Owner. (The intent here is to be sure the defaulting Owner doesn't profit by his or her wrongdoing and to avoid violating any securities laws.)

**C. LIMITS ON THE ASSOCIATION'S RIGHT.** The Association may not reserve or rent a Use Period which is subject to an existing reservation held by:

- 1) Another Owner (including the Developer) whose reservation has been confirmed; or
- 2) An Exchange User whose exchange reservation has been confirmed by the Association or by an external Exchange Company.

**D. WHAT HAPPENS IF THE VACATION PERIOD IS ALREADY RENTED.** If the Owner has already rented his or her Vacation Period, the renter will be permitted to use the Use Period. The Association will have the right to collect any unpaid rent from the renter until all amounts due are paid in full.

**E. ASSOCIATION'S EASEMENT.** The Association, and its agents, employees, contractors, subcontractors and other

authorized persons have an easement for the purpose of conducting rental activities under this Section 14.5.

11. Section 18.1 B. 4) of the Declaration is entirely deleted.

12. The Bylaws attached as Exhibit "C" to the Declaration are entirely deleted and the Amended and Restated Bylaws of the Ocean Resort Villas Vacation Owners Association attached to this Amendment as Exhibit "2" are substituted in their place.

### CERTIFICATE OF ADOPTION

The Developer certifies that it has given notice of this Amendment, and a copy of it, to each governmental authority (other than Hawaii governmental authorities) having authority over the Plan as a result of the registration of it (or the Condominium, the Club, or SVN).

Attached as Exhibit "3" is an affidavit signed by the Developer and stating that approval or acceptance of this Amendment by any such governmental authority is not necessary.

The Declaration and Bylaws, as amended by this Amendment, are here and now ratified and confirmed and remain in full force and effect. The Developer signed this Amendment effective as of the date stated on page one.

Developer:

SVO PACIFIC, INC.,  
a Florida corporation

By: 

Name: Raymond L. Gellein, Sr.

Its: Chairman

STATE OF FLORIDA       )  
                                  ) ss:  
COUNTY OF ORANGE    )

On this 21 day of August, 2003, before me personally appeared Raymond L. Gellein, Sr., 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.



Name: Sabrina C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006

45195\_6.DOC





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

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

This document contains \_\_\_\_ pages.

Tax Map Key: 2<sup>nd</sup> Div. 4-4-14.3

AMENDED AND RESTATED BYLAWS  
OF THE  
*Ocean Resort Villas*  
*Vacation Owners Association*

Copyright © 1983, 1996, 2000-2003 Charles E. Pear, Jr. &  
Starwood Vacation Ownership, Inc.

Exhibit 2

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## **1. GENERAL PROVISIONS.**

**1.1 THE ASSOCIATION; ITS NAME AND ADDRESS.** The "Association" is a non-profit Hawaii corporation. Its name is "*Ocean Resort Villas Vacation Owners Association*." Its principal office is at the Ocean Resort Villas condominium located at Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761. From time to time, the Board of Directors may choose a new principal office elsewhere in Hawaii.

**1.2 DEFINITIONS.** This Section defines certain words or phrases having special meanings in these Bylaws. Other terms are defined elsewhere in these Bylaws in order to put them in context. Defined terms will have these special meanings except where the context clearly requires otherwise. In addition to the terms defined in these Bylaws, the Declaration also defines a number of key words and phrases. Terms defined in the Declaration have the same meaning in these Bylaws unless the context clearly indicates otherwise.

A. "DECLARATION" means the "Ocean Resort Villas Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership", and all changes and additions properly made to it from time to time. It was recorded with these Bylaws.

B. "ARTICLES" means the "Ocean Resort Villas Vacation Owners Association Articles of Incorporation". It also includes all changes and additions properly made to them from time to time.

C. "MEMBER" and "OWNER" mean the same thing.

**1.3 POWERS AND DUTIES OF THE ASSOCIATION.** Except as limited by the Declaration, these Bylaws, the Club Affiliation Agreement, or by law, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

- ❖ It has the powers, duties and obligations granted to or imposed on the Association in the Declaration or these Bylaws.
- ❖ It has the powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.
- ❖ It has the powers, duties and obligations of an association of time share owners as provided in the Act and the Rules.
- ❖ It has any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Association under the

Declaration, these Bylaws, or the Club Affiliation Agreement, or that otherwise promote the general benefit of the Owners.

**1.4 WHO MUST OBEY THESE BYLAWS.** These Bylaws apply to anyone who has any rights or interests in a Vacation Unit or who uses a Vacation Unit. This includes, among others (i) all present and future Owners, Lenders, Exchange Users, Occupants, and Guests, and (ii) all of their officers, Directors, employees and agents. Anyone who has or acquires any interest in a Vacation Ownership Interest or Vacation Unit, or who uses a Vacation Unit, automatically accepts, approves and agrees to obey the Vacation Plan Documents.

**1.5 CONFLICTS AMONG THE DOCUMENTS.** The Declaration controls over any inconsistent provision in the Articles. The Declaration and the Articles control over any inconsistent Bylaw. If any part of the Vacation Plan Documents is inconsistent with any law that applies, the law will control.

## **2. MEMBERSHIP**

**2.1 QUALIFICATIONS FOR MEMBERSHIP.** "Owner" is defined in the Declaration. Anyone (including the Developer) who is the Owner of a Vacation Ownership Interest automatically is a Member of the Association. If more than one person is the Owner of a Vacation Ownership Interest, each of them is a Member. An Owner will be a Member for so long as he or she is the Owner of a Vacation Ownership Interest. A person's Membership ends automatically when he or she is no longer the Owner of a Vacation Ownership Interest, such as when an Owner deeds it to someone else. Being the Owner of a Vacation Ownership Interest is the sole qualification for Membership.

**2.2 MEMBERSHIP GOES WITH THE VACATION OWNERSHIP INTEREST.** Anyone who transfers a Vacation Ownership Interest also automatically transfers the Membership for that Vacation Ownership Interest to its new Owner. An Owner cannot separate his or her Association Membership from his or her Vacation Ownership Interest. He or she cannot sell, transfer, mortgage or otherwise deal with it separately from the Vacation Ownership Interest. Any attempt to do so will not be effective. It will be void. There are two exceptions:

A. An Owner may Pledge or transfer voting rights to a Lender having a mortgage on his or her Vacation Ownership Interest; and

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

### **3. ASSESSMENTS AND PERSONAL CHARGES**

**3.1 MEMBERSHIP ASSESSMENTS AND PERSONAL CHARGES.** Each Member must pay Assessments, Personal Charges, and Club Fees as provided in the Declaration. The Board will set, levy, collect and enforce the Assessments and Personal Charges as provided in the Declaration. The Club Fees will be set, levied, collected and enforced as provided in the Declaration and/or in the Club Documents. The Club Operator may require that the Association collect and enforce the Club Fees.

**3.2 ENFORCEMENT; LIEN RIGHTS.** The Association has the lien rights described in the Declaration to enforce and collect Assessments, Personal Charges, and Club Fees. The Board can enforce those rights in the manner described in the Declaration. The Club Operator has the rights described in the Declaration and/or the Club Documents to enforce and collect Club Fees. The Board and the Club Operator also have and may use all other rights and remedies available under the Declaration or by law or in equity.

**3.3 FISCAL YEAR.** The Association's fiscal year ends on December 31st of each year unless the Board chooses a different date.

### **4. MEMBERSHIP RIGHTS AND PRIVILEGES**

**4.1 MEMBERS' RIGHT AND DUTIES.** Each Member has the rights, duties and obligations described in the Vacation Plan Documents.

**4.2 AUTHORITY OF MEMBERS.** Unless the Board approves it, no Member can exercise any powers or perform any acts delegated by the Vacation Plan Documents to the Association, the Board, or the Club Operator.

**4.3 ASSOCIATION RULES.** From time to time, the Board may adopt, publish and enforce such rules and regulations as it may deem advisable relating to the Vacation Units, the Common Furnishings, and use by Occupants of the common elements of the Condominium. These are called the "Association Rules". The Developer adopted the initial rules. At any meeting of the Association, a Majority of the Owners may change the Association Rules so long as the notice of meeting stated that the change would be considered at the meeting.

**4.4 SUSPENSION OF PRIVILEGES; FINES.** If any Member or the Member's Guest violates the Vacation Plan Documents (including but not limited to the failure of the Member to pay any Assessment, Personal Charge, or Club Fee on time), the Association may charge him or her a money penalty and/or suspend his or her rights under the Vacation Plan Documents. For example, the Board may suspend a Member's right to participate in any vote under the Vacation Plan Documents. The Declaration contains detailed requirements that must be satisfied in order for the Association to do these things. Each of those requirements is made a part of these Bylaws, just as if they were repeated here. The Board may delegate to the Plan Operator or to the Plan Manager the power to carry out any disciplinary actions imposed by the Board. The Board may also delegate to the Plan Operator or to the Plan Manager the authority to perform the Board's disciplinary duties. This includes the right to conduct hearings and to fine a Member and/or to suspend a Member's right to reserve or occupy a Vacation Unit when the Member has not paid all Assessments or Personal Charges due, and temporarily for gross misconduct or similar reasons.

### **5. MEETINGS OF MEMBERS**

**5.1 MEETING OF THE ASSOCIATION.** Subject to Section 5.14, and unless otherwise expressly authorized by the Vacation Plan Documents:

A. All action required or permitted to be taken by the Members may only be taken at a meeting of the Association;

B. The Association must give proper notice of the meeting; and

C. Enough Members must attend to have a quorum.

**5.2 ANNUAL MEETINGS.** The Association must hold the first annual meeting of the Association within twelve (12) months from the Starting Date. In the years after that, the Association will hold an annual meeting each year on a day that the Board chooses. If the Board does not choose a meeting date by the first day of September of each year, then the meeting will be held at the Condominium at 11:00 a.m. on the third Wednesday in October. The Developer may set the date and time for the first annual meeting. At each annual meeting the Members:

A. Will elect, by written ballot, Directors as provided in these Bylaws; and

B. May transact any other Association business that properly comes before them.

**5.3 SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one or more purposes. It may be called by: (i) the Association President; (ii) a majority of the Directors; (iii) the Developer; or (iv) a petition signed by Members holding at least five percent (5%) of the total voting power of all Members (not counting the Developer's votes). The Members may transact only that business the general nature of which is described in the notice of the special meeting.

**5.4 MEETING PLACE.** The Association will hold its meetings at the Condominium unless the Board chooses another place.

**5.5 NOTICE OF MEETINGS AND OTHER NOTICES.**

**A. NOTICE REQUIRED.** Notice must be given for each meeting of the Association, whether it is an annual or special meeting.

**B. CONTENTS.** The notice must meet these requirements:

- ❖ It must be in writing.
- ❖ It must state the authority for calling the meeting.
- ❖ It must state the place, date and time of the meeting.
- ❖ It must state whether it is an annual or special meeting. If it is a special meeting, it must state the matter or matters for which the meeting was called.
- ❖ It must include the name, address, and a brief biographical sketch of each Member who has announced his or her intention to stand for election to the Board (but only if Directors are to be elected at the meeting).
- ❖ It must list the items on the agenda. The agenda must include anything that, as of the day when the notice is prepared: (i) the Board expects to present; or (ii) a Member expects to present, but only if the Member has given written notice of it to the Board. Note: A Member may still present any other proper business at any annual meeting unless notice of that business is specifically and expressly required by another part of the Vacation Plan Documents.

**C. STANDARD PROXY FORM.** The Board may include with the notice a standard proxy form authorized by the Association. It may also include any other necessary or helpful information.

**D. WHEN NOTICE MUST BE SENT.** Notice of each annual and special meeting must be given at least thirty (30) days but not more than sixty (60) days before the meeting date; provided that if Chapter 414D, Hawaii Revised Statutes, permits it and if the Board adopts a resolution permitting it, the notice may be given up to ninety (90) days before the date of the meeting.

**E. WHO MUST SEND THE NOTICE.** The Secretary will give the notice except when these Bylaws provide otherwise. The Secretary may delegate this task to the Plan Manager. If neither the Secretary nor the Plan Manager sends the notice within thirty (30) days after an officer of the Association receives a proper demand for a special meeting, a person or persons signing the demand may set the time and place of the meeting and give notice in the manner required by law and these Bylaws.

**F. WHO IS ENTITLED TO NOTICE.** Notice must be sent to each person entitled to vote as of the Record Date. Notice must also be sent to each holder, insurer or guarantor of a mortgage on a Vacation Ownership Interest if, as of the Record Date, it has made a proper request for copies of such notices.

**G. DELIVERY.** The notice must be given: (a) by delivering it personally; or (b) by mailing it by first-class mail, postage prepaid or, (c) if the Act or the Hawaii Nonprofit Corporations Act explicitly permits it, by posting notice on a world wide web site or by sending it by email. Any notice given by mail or email must be sent to the address listed in the Association's record of ownership.

**1) CHANGE IN ADDRESS.** Each Member and anyone who holds, insures or guarantees a mortgage must inform the Association of any change in address at once.

**2) MULTIPLE OWNERS.** If more than one person is the Owner of a Vacation Ownership Interest, notice to all Owners of that Vacation Ownership Interest may be given by providing notice to any one of them.

**H. NOTICE DOES NOT HAVE TO BE RECEIVED.** If notice is given in the manner required by this Section 5.5, (i) nobody entitled to notice can object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid.

**I. WAIVER OF NOTICE.**

1) **ATTENDANCE.** Anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

2) **WRITTEN WAIVER.** A Member may waive notice of any Association meeting by signing a document (i) that waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

3) **WAIVER BY INACTION.** A Member automatically waives notice of any Association meeting if he or she does not file a written objection with the Secretary or the Plan Manager within fifteen (15) days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

4) **EFFECT OF WAIVER.** If a Member waives notice under this Section 5.5I, the fact that notice was not given to that Member will not, by itself, make the meeting or any proceedings at the meeting invalid.

**J. WHO MAY OBJECT TO NOTICE.** A person entitled to receive notice may object if notice was not sent to him or her. A person cannot object that notice was not sent to someone else.

## 5.6 RECORD DATE FOR NOTICES AND VOTING.

**A. PURPOSE OF THE RECORD DATE.** The "Record Date" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The Record Date is also used to determine who may object to and waive lack of notice and exercise other such rights for or as a Member.

**B. SETTING THE RECORD DATE.** The Board may choose the Record Date. The Record Date for a meeting may not be more than seventy (70) days before the meeting date. The Record Date for action without a meeting may not be more than thirty (30) days before the ballot or request for consent or approval is sent. Unless the Board chooses another date, the Record Date will be the date and time when the mailing list is prepared, or, if notice is waived, the last business day before the day of the meeting. If a meeting is adjourned and a new notice must be given, then a new Record Date must be set.

**C. EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only the Members of Record on that date (or someone authorized to act for them) have the

right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of a Membership in the records of the Association after the Record Date. A person holding a Membership as of the Record Date is considered to be the "Member of Record". A person who becomes a Member after the Record Date can, of course, act for the Member of Record by simply obtaining a proxy from the Member of Record. When these Bylaws refer to the "Owner" or "Member" with respect to notice (including waivers of notice) and voting, it means the Member of Record or someone authorized to act for the Member of Record.

**5.7 QUORUM.** The term "quorum" refers to the number or percentage of Owners who must be present at a meeting to conduct business. For all meetings of the Association, fifteen percent (15%) of the Owners (not counting the votes and Vacation Ownership Interests of the Developer) must be present to have a quorum unless a different number is required or allowed by law, the Declaration or another part of these Bylaws.

**A. WHEN A MEMBER IS "PRESENT".** Members are "present" at a meeting if: (i) they attend it in person, or (ii) their Proxy Holder attends it for them, or (iii) someone else permitted by the Declaration or these Bylaws attends it for them.

**5.8 ASSOCIATION ACTION.** At any Association meeting at which a quorum is present, the acts and decisions of a Majority of the Owners Voting will be regarded as the acts and decisions of the Association, and will be binding on all Members for all purposes, unless a different percentage is required or allowed by law or by the Declaration or these Bylaws. If Owners of less than one-third of the votes are present, however, the Association may vote on only those matters of business, the general nature of which was described in the notice of meeting.

**5.9 RULES FOR CONDUCTING MEETINGS.** All meetings must be conducted in accordance with the latest available edition of Roberts Rules of Order.

**5.10 ADJOURNING ASSOCIATION MEETINGS.** Any meeting of the Association may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a Majority of the Owners Voting, whether or not a quorum is present. If no quorum is present, then the meeting must be adjourned *sine die*, which means that it cannot be resumed at a later date. If a meeting is adjourned for thirty (30) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 5.4. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is

resumed, and if a quorum is present, the Association may do anything that it could have done at the meeting as originally called.

#### 5.11 INSPECTORS FOR VOTING AND PROXIES.

A. **APPOINTMENT.** At least ten (10) days before any meeting of the Association or before any ballot is sent to the Members pursuant to Section 5.14, the Board will appoint inspectors of the voting at the meeting, including voting for the election of Directors. The Board may appoint either one or three inspectors of voting. If the Board fails or chooses not to do so, then the Plan Manager will be the inspector of the voting.

B. **DUTIES.** The voting inspectors will have these duties:

1) They will determine the authenticity, validity and effect of proxies, Pledges, and other documents purporting to give any person the right to represent, act and vote for a Member.

2) They will receive votes, ballots and consents.

3) They will hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes.

4) They will count and tabulate all votes and consents.

5) They will decide when the polls will close.

6) They will determine the results of all votes and elections.

7) They may do anything else appropriate to conduct the vote or election fairly as to all Members.

If there is more than one inspector, the decision, act or certificate of a majority of them will be effective. Any facts stated in any effective report or certificate are presumed to be accurate.

#### 5.12 VOTING.

A. **NUMBER OF VOTES.** Except as provided in Section 4.4, the Owner of each Every-Year Vacation Ownership Interest has two (2) votes and the Owner of each Every-Other-Year Vacation Ownership Interest has one (1) vote. When a Vacation Ownership Interest is owned by more than one person, its co-Owners do not each receive one or two votes. Instead, the co-Owners of that Vacation Ownership Interest must share the one or two votes for that Vacation Ownership Interest. Only one vote may be cast for each Every-Other-Year Vacation

Ownership Interest, and only two votes may be cast for each Every-Year Vacation Ownership Interest.

Where the Vacation Plan Documents refer to a certain number or percentage of Members entitled to vote, this Section 5 and Section 4.4 govern the total number of available votes, the number of votes an Owner is entitled to cast, and how to cast the vote of each Vacation Ownership Interest having more than one Owner.

#### B. WHO MAY VOTE.

1) **GENERALLY.** Votes may be cast in person or by proxy by an Owner listed in the Association's records of ownership or by anyone lawfully acting for or on behalf of the Owner.

2) **LEGAL REPRESENTATIVES.** Sometimes a Vacation Ownership Interest may be owned or controlled by a person acting as a personal representative, guardian, or trustee. At any meeting of the Association, that person may cast the vote of each Vacation Ownership Interest held by him or her in this capacity. He or she may vote in person or by proxy. It does not matter whether the Association's record of ownership shows that the personal representative, guardian, or trustee owns or controls the Vacation Ownership Interest so long as that person presents evidence satisfactory to the Secretary that he or she owns or controls it in that capacity.

3) **AGREEMENT OF SALE.** A person buying a Vacation Ownership Interest under a recorded Agreement of Sale has the rights of an Owner. This includes the right to vote except on matters where, under the Agreement of Sale and as permitted by law, the seller expressly retains the right to vote.

4) **PLEDGES.** Except as otherwise limited by law, an Owner may transfer or pledge the Owner's voting rights to someone else in a mortgage or in any other lawful document. Or a court order may transfer an Owner's voting rights to someone else. For simplicity, these arrangements are called a "Pledge" in this paragraph, and the person to whom the voting rights are transferred is called the "Proxy Holder". If a true copy of a document containing a Pledge is filed with the Secretary before the Record Date for a meeting, only the Proxy Holder may vote in person or by proxy at that meeting. The Proxy Holder may, however, substitute someone else to vote for it as the Proxy Holder. The Proxy Holder will have the right to vote at all later meetings until someone files with the Secretary satisfactory evidence that the Pledge has ended or has been released.

C. **CO-OWNER DISPUTES.** If a Vacation Ownership Interest is owned by more than one person and they cannot agree on how to cast the vote or votes of that Vacation Ownership Interest, they lose their right to vote

on the matter in question. Fractional (split) votes are not allowed. When one or more co-Owners of a Vacation Ownership Interest casts its vote, it is conclusively presumed for all purposes that he or she acted with the authority and consent of all its co-Owners unless (i) another co-Owner files a written objection with the Secretary or the chairperson of the meeting, or (ii) another co-Owner casts an inconsistent vote.

**5.13 PROXIES.** An Owner may appoint someone else to represent the Owner at meetings of the Association.

**A. PROXY REQUIREMENTS.** To be effective, the appointment must be stated in a document (a "proxy") signed by the Member and filed as required by Section 5.13B. Any proxy distributed by the Association to the Members must be in the form and contain any information required by law. It must also meet these requirements:

1) It must state the name of the person picked to represent the Owner (the "Proxy Holder").

2) It must provide a way for the Member to indicate whether he or she approves or disapproves each matter or group of matters of business proposed to be considered.

3) It must provide that if the Member makes a choice, the vote of the Member will be cast according to the choice(s) made.

**B. FILING OF PROXY.** A proxy, to be valid, must be filed with the Secretary or the Plan Manager at the time required by law. If the law does not specify a time, then it must be filed no later than 4:30 p.m. on the fifth business day before the date of the meeting.

**C. USE OF DUPLICATES OF PROXIES.** A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction must be a complete reproduction of the entire original proxy.

**D. DURATION.** Unless otherwise provided in the proxy, no proxy will be valid after eleven months from the date it is signed.

**E. PROXY COUPLED WITH AN INTEREST.** The requirements of Sections 5.13A through 5.13D do not apply to voting rights transferred by an Agreement of Sale under 5.12B.3) or a Pledge under Section 5.12B.4).

**5.14 ACTION WITHOUT A MEETING.** Except as otherwise limited by law, any action that may be taken at a meeting of the Members (such as, for example, electing

Directors) also may be taken without a meeting and without advance notice if the action is taken in the manner permitted by Section 414D-104, Hawaii Revised Statutes, or if each of these requirements are met:

**A.** A written ballot must be sent to each Member entitled to vote. The ballot must be sent as though it were a notice of meeting and the rules of Section 5.5F will apply.

**B.** The ballot form must meet each of these requirements:

- ❖ It must state the proposed action and provide a way for the Member to indicate whether he or she approves or disapproves the proposal.
- ❖ It must state the deadline by which the ballot must be returned to count.
- ❖ It must provide a reasonable time for the ballot to be returned.

**C.** The number of ballots cast within the time period specified must equal or exceed the quorum required to be present at a meeting authorizing the action.

**D.** The number of approvals must equal or exceed the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots cast.

An Owner may cancel or change his or her ballot by sending a letter or other document to the Association. It will take effect when the Secretary receives it, and only if it is received before the deadline for returning ballots.

## **6. BOARD OF DIRECTORS**

**6.1 NUMBER OF DIRECTORS.** The Board of Directors will consist of five (5) persons.

**A.** The Association may increase or decrease the number of Directors from time to time by amending these Bylaws.

**B.** The number of Directors for the Condominium Association may increase or decrease. This might happen if the Condominium Developer builds more Apartments. It might also happen if the Condominium is merged for administrative purposes with another Condominium as permitted under the Declaration of Merger. If this happens, the Board may amend these Bylaws so that the Association has the same number of Directors as the Condominium Association. The Board may do this without a vote by the Owners. So long as the Developer owns, or holds mortgages on, at least 50 Vacation

Ownership Interests, the Board must have the consent of the Developer before it changes the number of Directors under this Subsection 6.1B.

C. In no case may the number of Director positions be less than three (3) nor more than five (5).

**6.2 POWERS AND DUTIES OF THE BOARD.** Except as limited by law or by the Vacation Plan Documents, the Board may exercise all powers of the Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Vacation Plan Documents, must be taken, authorized or approved by the Members of the Association, or by some part or percentage of them. The Board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the Plan Manager or the Plan Operator. This authority is subject to any limits contained in the Declaration or these Bylaws. The Board may not act on behalf of the Association to amend the Declaration or to terminate the Vacation Ownership Plan.

### **6.3 QUALIFICATIONS OF DIRECTORS.**

A. All Directors, except for Directors appointed by the Developer, must be Owners, co-Owners, or an officer of any corporate Owner, or in the case of fiduciary Owners, the fiduciary or officers of corporate fiduciaries. For purposes of this Section:

- ❖ The partners in a general partnership and the general partners of a limited partnership are considered to be the Owners of a Vacation Ownership Interest owned by their partnership.
- ❖ The general partners of a limited liability partnership are considered to be the Owners of a Vacation Ownership Interest owned by their partnership.
- ❖ The managers of a manager-managed limited liability company are considered to be the Owners of a Vacation Ownership Interest owned by such a company.
- ❖ The members of a member-managed limited liability company are considered to be the Owners of a Vacation Ownership Interest owned by such a company.

B. No person may serve as a Director for more than six (6) years in a row. No person may be elected or appointed as a Director if serving out his or her full term as a Director would result in a violation of the rule against serving more than six years in a row. This Subsection 6.3B does not apply to Representatives of the Developer who serve as Directors.

### **6.4 ELECTION OF DIRECTORS.**

A. **ELECTION.** The first Directors will be any persons appointed by the Developer. They will serve until their replacements are elected at the first meeting of the Association and qualified. At each annual meeting of the Association after the first meeting, and at any special meeting called for that purpose, the Members will elect a new Director to replace each Director whose term has expired or to fill any vacancy caused by any increase in the number of Directors. Directors will be elected by secret ballot.

B. **CUMULATIVE VOTING.** When electing Directors, an Owner may cumulate his or her votes. This means the Owner can give to one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors being elected multiplied by the number of votes which that Owner has the right to cast. The candidates who receive the highest number of votes, up to the number of available positions, are elected.

C. **INDEPENDENT DIRECTOR.** So long as the Developer holds a majority of the voting power of the Association, at least one Director will be elected solely by the votes of the Members other than the Developer. At the first annual meeting of the Association, one Director will be elected solely by Members other than the Developer. At each later election of Directors, one Director will be elected solely by Members other than the Developer if there is then no such Director remaining on the Board. The election of this Director will be handled according to the following special election procedures:

1) The notice of the meeting must state that one Director will be elected by Members other than the Developer.

2) Members other than the Developer will then elect that Director by written ballot before the regular election of the remaining Directors. The rest of the Directors will then be elected by all Members according to the regular election procedures set forth in these Bylaws.

### **6.5 NOMINATIONS.**

A. **BY THE BOARD.** Each year, the Board will will nominate people for election to the Board at the annual meeting. The Board must do so before the Secretary gives notice of the annual meeting. The Secretary will send to each Member, with the notice of meeting required by Section 5.4, a list of the people nominated.

B. **FLOOR NOMINATIONS.** Any Member may nominate one or more candidates during an Association meeting.

## **6.6 TERM OF OFFICE OF ELECTED DIRECTORS.**

A. Five (5) Directors will be elected at the first meeting of the Association. The term of office of the three (3) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining two (2) Directors will end when the next annual meeting ends.

B. After the term of office of each of the initial elected Directors expires, each replacement Director will hold office until the end of the third annual meeting after his or her election. This should be a term of about three (3) years.

C. Each Director will continue to have the powers and duties of the office until someone else is elected or appointed to replace him or her.

## **6.7 REMOVING DIRECTORS.**

### **A. BY VOTE OF THE OWNERS.**

1) The Association may remove any one or more Directors from office, with or without cause, at any annual meeting or at any special meeting called for that purpose. Any Director whose removal is proposed must have an opportunity to be heard at the meeting. A Director will be removed if a Majority of the Owners Voting vote to remove him or her; provided that:

(a) Unless the entire Board is removed, no individual Director may be removed if the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect a Director if voted cumulatively (see Section 6.4B) at an election at which the same number of votes were cast and the entire number of Directors authorized to be elected at the most recent election of the Directors were then being elected.

(b) A Director who was elected solely by the votes of Members other than the Developer according to the special election procedure set forth in Section 6.4C, may be removed only by the vote of Members other than the Developer.

2) If a Director is removed, the Association must then and there elect a replacement Director. The replacement will hold office for the rest of the term of the person replaced.

B. **BY VOTE OF THE DIRECTORS.** If any Director misses three (3) regular Board meetings in a row, the Board, by a vote of a majority of the other Directors, may remove him or her. The Board may do this at the third or any later meeting. But if the Director attends a Board meeting before being removed, the Director must miss at

least three (3) more regular meetings in a row before the Board can remove him or her.

## **6.8 VACANCIES.**

A. **FILLING VACANCIES.** Vacancies in the Board caused by any reason other than removal of a Director by the Association may be filled by the vote of a majority of the remaining Directors, even if there are not enough Directors remaining to have a quorum. A vacancy exists when any authorized position of Director is not filled. For example, a vacancy exists when:

- ❖ A Director dies or resigns. Unless required by its terms, a resignation does not have to be accepted by the Board to be effective. Instead, it will take effect as of the time stated. If no time is stated, it will take effect when the Board receives it. If a resignation will take effect at a later date, a majority of the remaining Directors can elect a replacement to take office when the resignation takes effect.
- ❖ A Director is removed by the other Directors. See Section 6.7B.
- ❖ A Director is no longer qualified to serve as a Director. See Section 6.3.
- ❖ The Members increase the authorized number of Directors but the Members fail to fill the new positions at the same meeting.
- ❖ An authorized position is not filled for any other reason by a properly elected Director.

B. **TERM OF OFFICE OF APPOINTED DIRECTORS.** Except as otherwise required by law, a replacement Director will hold office for the rest of the term of the person replaced. A Director appointed because the Members fail to elect a Director will hold office for the term that he or she would have held it if he or she had been elected by the Members.

**6.9 PLACE OF BOARD MEETINGS.** Board meetings will be held at or near the Condominium unless the Board decides that meeting elsewhere would significantly reduce the costs to the Association and/or any inconvenience to the Directors.

**6.10 ANNUAL MEETING OF THE BOARD.** Immediately after each annual meeting of the Association, the Board must hold a regular meeting at the same place. This meeting will be held to organize the Board. The Board must also elect any required officers. The Board may transact any other business. Except as otherwise required by law, no call or notice of this meeting is necessary.

## **6.11 OTHER REGULAR MEETINGS.**

**A. MEETING REQUIREMENTS.** In addition to the annual meeting, the Board must hold other regular meetings. The number of meetings and the time and place of these meetings will be set from time to time by a majority of the Directors.

**B. NOTICE.** Notice of regular Board meetings must be given to each Director. The notice may be given personally or by mail, email, telephone, fax, or messenger service. It must be given at least thirty (30) days before the date of the meeting. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records.

**C. WHEN NOTICE MUST BE RECEIVED.** If notice is not given in writing, then it must actually be received to be effective. In all other cases, if notice is given in the manner required by this Section, (i) Directors cannot object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid.

#### **6.12 SPECIAL MEETINGS.**

**A. HOW CALLED.** The President or any two Directors may call a special Board meeting for any purpose and at any reasonable time.

**B. NOTICE.** Except in an emergency, as determined by the President, notice of special meetings of the Board must be given in the same manner as notice of a regular meeting except that: (i) it must be given at least fifteen (15) days, instead of thirty days, before the meeting date, and (ii) the notice must state the nature of the special business to be considered. The provisions of Subsection 6.11C will also apply to notices of special meetings.

#### **6.13 WAIVER OF NOTICE.**

**A. ATTENDANCE.** Any Director who attends a meeting, in person or by proxy, gives up (in legal terms "waives") any right to claim that notice was not given properly unless, when the meeting begins, that Director objects to holding it because notice was not given properly.

**B. IN WRITING.** A Director may waive notice of any Board meeting by signing a document that (i) waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. If this happens, the fact that notice was not given to that Director will not, by itself, make the meeting or any proceedings at the meeting invalid. All such

documents must be filed with the Association records and made a part of the minutes of the meeting.

**6.14 QUORUM.** When referring to the Board, "*quorum*" means the number or percentage of Directors who must be present at a meeting for the Board to conduct business. A majority of all Directors will be a quorum of the Board. "All Directors" means all the authorized number of Directors, even if a position is not filled.

**A. WHEN A DIRECTOR IS "PRESENT".** Directors are "present" at a Board meeting if they attend it in person or by telephone or other similar equipment as provided in Section 6.18.

**6.15 DECISIONS OF THE BOARD.** At any Board meeting at which a quorum is present, the acts and decisions of a majority of the Directors present will be regarded as the acts and decisions of the Board unless a different percentage is required or allowed by law or by the Declaration or these Bylaws.

**6.16 RULES FOR CONDUCTING BOARD MEETINGS.** All meetings of the Board must be conducted in accordance with the latest available edition of Robert's Rules of Order.

#### **6.17 MEMBERS MAY ATTEND MOST BOARD MEETINGS.**

**A. OPEN MEETINGS.** All Board meetings are open to all Members of the Association. Members who are not on the Board may not participate in any deliberation or discussion unless a majority of the Directors present vote to let them do so. If there is not enough room for all the Members wishing to attend at the place of the meeting, the Board must adjourn and reconvene the meeting as soon as possible in a place that has enough room. Any Member may ask to be connected to any meeting being held by telephone conference call or similar device. If the number of Members asking to be connected makes the meeting impractical or impossible, the meeting may not be held by telephone conference or similar device.

**B. PRIVATE MEETINGS.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in "*executive session*". This means that only Board Members and persons invited by the Board may attend. In executive session the Board may discuss and vote on personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved, and other matters of a similar nature. The general nature of any and all business to be considered in executive session must first be announced in open session.

**6.18 MEETINGS BY TELEPHONE.** Regardless of any other provision of these Bylaws, and unless the law

provides otherwise, one or more Directors may take part in any meeting by telephone or other communications equipment. They may do so only if everyone authorized to participate in and actually participating in the meeting (including Owners who are not on the Board and who may listen and/or participate pursuant to Section 6.17A) can hear and be heard by each other. The Board may carry on all business within the Board's authority as if everyone participating by telephone or other communications equipment were physically present at the meeting.

**6.19 ADJOURNING BOARD MEETINGS.** Any meeting of the Board may be "*adjourned*" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the Directors voting, whether or not a quorum is present. If a meeting is adjourned for fifteen (15) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 6.11B or 6.12B. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Board may do anything that it could have done at the meeting as originally called.

**6.20 ACTION WITHOUT A BOARD MEETING.** Any action that the Board is required or permitted to take, by law or by the Vacation Plan Documents, also may be taken without a meeting if all Directors consent in writing to that action. Each written consent must describe the action taken, be signed by the Director, and be included in the minutes of the meetings of the Board. Any action taken in this way has the same force and effect as a unanimous vote of the Directors.

**6.21 CONFLICTS OF INTEREST.** Except as otherwise provided by law, any Member of the Board, any officer of the Association, and any Member of any Association committee (i.e. an "*interested party*") may be present at any Board or committee meeting, may be counted for quorum purposes, and may participate in the discussion of and voting on any matter on which the interested party, or any entity in which the interested party has any financial or other special interest, has an interest; provided that:

A. The interested party must first disclose his or her conflict of interest or the conflict must be known to all the other persons considering the matter; and

B. If the vote of the interested party is necessary in order for the matter to be authorized, approved or ratified, the result must be fair and reasonable to the Association.

Any claim of the Association that such a matter is void or voidable or otherwise subject to change because the result was not fair or equitable to it, must be made within three

(3) years from the date the matter was authorized, approved or ratified. Before pursuing any such claim, the Association must make reasonable efforts to modify the result so as to make it fair and equitable.

## **6.22 PAYMENTS TO DIRECTORS AND OFFICERS.**

A. **PAYMENT; EXPENSES.** No one will receive any compensation for acting as a Director or officer of the Association unless that compensation is specifically authorized by vote of a Majority of the Owners Voting (not counting the votes of the Developer) at an Association meeting. However, Directors and officers will be reimbursed for transportation expenses incurred and reasonable per diem payments for expenses incurred in connection with their attendance at regular and special meetings of the Board.

B. **OTHER WORK.** Nothing in these Bylaws prevents any Director or officer from serving the Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But regardless of what Section 6.21 says, he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

**6.23 MINUTES OF MEETINGS OF THE BOARD.** A copy of the written minutes of any meeting of the Board, or a summary of the minutes, will be sent to all Members within 60 days after the meeting ends. If notice of a meeting was properly given but a Director is absent, the minutes must say so.

## **7. OFFICERS**

### **7.1 OFFICERS.**

A. **REQUIRED OFFICERS.** The Association must have a President, a Vice President, a Secretary, and a Treasurer.

B. **OTHER OFFICERS.** The Association may have any other officers as may be deemed necessary or useful or as required by the Articles. The Board will determine the title, term of office, authority and duties of these officers.

**7.2 QUALIFICATIONS OF OFFICERS.** Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President must be a Director. The Vice President, Secretary and Treasurer may be Directors but they do not have to be Directors.

**7.3 APPOINTMENT OF OFFICERS.** The Board will appoint the officers required by Section 7.1A at the annual meeting of the Board. The Board may appoint any other officers permitted by Section 7.1B, or it may authorize the President or another officer to do so. Officers may be appointed at any meeting of the Board by vote of a majority of the entire Board.

**7.4 TERM OF OFFICE.** All officers will take office upon appointment. They will hold office only for so long as the Board desires.

**7.5 REMOVAL OF OFFICERS.** The Board may remove any officer, with or without cause, by vote of a majority of the Directors at any regular meeting of the Board or at any special meeting called for that purpose. Removal of an officer will not affect any contract rights of the officer.

**7.6 VACANCIES.** If any required officer resigns or dies, or if his or her office otherwise becomes vacant, then the Board must appoint a replacement at once. A majority of the remaining Directors may appoint a replacement even if there are not enough Directors remaining to have a quorum.

**7.7 PRESIDENT.** The President is the chief executive officer of the Association. The President has these powers and duties:

- ❖ The President supervises, directs and controls the business and affairs of the Association subject, however, to the control of the Board.
- ❖ The President chairs all meetings of the Association and all meetings of the Board.
- ❖ The President is a member of all committees.
- ❖ The President has the general powers and duties of management usually authorized for the office of president of a Hawaii corporation. This includes, among others, the power to appoint committees from among the Owners from time to time as the President alone decides are appropriate to assist in conducting the affairs of the Association.
- ❖ The President has any and all other powers and duties assigned to the President by the Declaration or these Bylaws, or by the Board.

**7.8 VICE PRESIDENT.** If the President is absent or unable to act, or if that office is vacant, the Vice President performs all the duties of the President. When doing so, the Vice President has all the powers and duties of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

**A. OTHER TEMPORARY REPLACEMENT OF THE PRESIDENT.** If the Vice President is also absent or unable to act, or if that office is also vacant, the Board must appoint another of its members to take the place of the President temporarily. The Board must do so even if there are not enough Directors remaining to have a quorum. The Director who is so appointed and acting will also have all of the powers and duties of, and is subject to all the restrictions on, the President.

**7.9 SECRETARY.** The Secretary has these powers and duties:

- ❖ The Secretary must keep the minutes of all meetings of the Association, the Board and all committees. For this purpose, the Secretary is a member of all committees.
- ❖ The Secretary must give all required notices of those meetings.
- ❖ The Secretary must keep a list of (i) all Owners, and (ii) anyone who is holding, insuring, or guaranteeing a mortgage and who has requested copies of all notices or other Association information and whose name is furnished as required by these Bylaws or the Declaration.
- ❖ The Secretary must keep all other books, records and documents of the Association except for financial records kept by the Treasurer.
- ❖ The Secretary has the general powers and duties of management usually authorized for the office of secretary of a Hawaii corporation.
- ❖ The Secretary has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

The duties of the Secretary may be delegated to and performed by the Plan Manager or any other person appointed for that purpose. If the Secretary is absent or unable to act at any meeting, or if the office is vacant, another person must be appointed to act as the Secretary at least temporarily.

**7.10 TREASURER.** The Treasurer is the chief financial officer of the Association. The Treasurer has these powers and duties:

- ❖ The Treasurer must keep full and accurate financial and books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.

- ❖ The Treasurer must deposit all money and other valuables in the name and to the credit of the Association with the depositories (such as a bank) chosen by the Board.
- ❖ The Treasurer must pay out the funds of the Association as ordered by the Board.
- ❖ The Treasurer must prepare all financial statements and reports requested by the President or the Board.
- ❖ The Treasurer has the general powers and duties of management usually authorized for the office of treasurer of a Hawaii corporation.
- ❖ The Treasurer has any other powers and performs any other duties assigned to him or her by the President, the Board, the Declaration, or these Bylaws.

The duties of the Treasurer may be delegated to and performed by the Plan Manager, accountants, or other suitable persons providing professional financial services. If the Treasurer is unable to act or if the office is vacant, another person must be appointed to act as the Treasurer at least temporarily.

## 8. INDEMNIFICATION

### 8.1 DEFINITIONS. For the purpose of this Section 8:

A. "Agent" means any person who is or was a director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise. An Agent is considered to be serving an employee benefit plan at the corporation's request if the Agent's duties to the Association also impose duties on, or otherwise involve services by, the Agent to the plan or to participants in or beneficiaries of the plan. "Agent" also includes, unless the context requires otherwise, the estate or personal representative of an "Agent."

B. "Proceeding" means any threatened, pending, or completed action or proceeding (such as a lawsuit), whether formal or informal. It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding.

C. "Expenses" includes, but is not limited to, attorneys' fees and costs.

D. "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise

tax assessed with respect to an employee benefit plan), or reasonable Expenses actually incurred with respect to a proceeding.

8.2 THE ASSOCIATION WILL INDEMNIFY (REIMBURSE) ITS AGENTS. To the extent allowed by law, the Association must indemnify (which means that it will reimburse) each of its Agents with respect to any liability incurred by the Agent in any proceeding. The Hawaii Nonprofit Corporations Act defines how, when, and under what conditions the Association can make those reimbursements. These bylaws authorize and require the Association to make those reimbursements, and to make advances for expenses, to the full extent allowed by law. If available, the Association must buy insurance to cover the reimbursements. The Association may, but need not, buy insurance that provides for payment of liabilities of an Agent in circumstances where the Association does not have the power to indemnify the Agent for those liabilities.

## 9. ASSOCIATION RECORDS

### 9.1 THE ASSOCIATION'S BOOKS AND RECORDS.

A. WHAT THE ASSOCIATION MUST KEEP. The Association must keep (i) correct and complete books and records of account of the Association; (ii) minutes of the meetings and all other proceedings of the Association, Board, and any committee; (iii) all notices, objections, waivers, consents, dissents, and other matters related to these meetings; (iv) the original or a copy of all of the Vacation Plan Documents; and (v) anything else required by law. The Association will keep the books and records of account, minutes, and other documents at the principal place of business of the Association or any other place or places selected by the Board.

B. MEMBER'S RIGHT TO INSPECT. The Members may inspect the Vacation Plan Documents at any reasonable time during normal hours. Members may also buy copies of the Vacation Plan Documents at a reasonable cost. Except as provided in Section 9.2, the books and records of account, minutes, papers and other books and records of the Association are open to inspection for any proper purpose at the written request of any Member. The inspection may be made at any reasonable time during normal business hours. The inspection may be made in person or by the Member's agent or attorney. Except as provided in Section 9.2, the right to inspect includes the right to copy and make extracts, at the Member's expense. The Board may make reasonable rules: (i) requiring notice before inspection; (ii) limiting the hours and days of the week for inspection; and (iii) setting the costs of making copies of documents requested by a Member.

**C. DIRECTOR'S RIGHT TO INSPECT.** Except as provided in Section 9.2, each Director has the absolute right at any reasonable time to inspect the books and records of account, minutes, papers and other books and records of the Association and the physical properties owned or controlled by the Association.

**9.2 LIST OF MEMBERS.** The Association must at all times keep a current list of the names and addresses of all Members of the Association.

**A.** The Association will furnish a copy of the list within a reasonable time after any Member asks for it in writing, pays a reasonable fee (to be determined by the Board), and complies with any other requirements of the Declaration or these Bylaws. The Declaration contains detailed requirements that must be satisfied before the Association is allowed (i) to furnish the list of Members or any copy of it, or any other documents from which a Membership list may be compiled, or (ii) to let anyone inspect or make copies or extracts of the list or any other documents from which a list may be compiled. Those provisions of the Declaration are made a part of these Bylaws, just as if they were repeated here.

**B.** The Association will furnish a copy of the list to the Developer and the Club Operator (while the Plan is part of the Club) within a reasonable time after any of them requests it. The requirements of the Declaration governing release of the list to the Members do not apply to the Developer or companies related to the Developer.

**C.** The Board may impose other reasonable conditions intended to assure the confidentiality of the list of Members and that the list is not used (i) for commercial purposes by anyone other than the Developer or companies related to the Developer, or (ii) for any other improper purpose.

**9.3 CERTIFICATE OF MEMBERSHIP.** The Board may, but is not obligated to, issue to the Members certificates of membership in the Association in any form the Board chooses.

## **10. MISCELLANEOUS**

**10.1 WHO CAN SIGN CHECKS AND SO ON.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, they must be signed by any two of the President, Vice President, Secretary or Treasurer. The same rule applies to signing and delivering other documents authorized by the Vacation Plan Documents or by action of the Board or the Association.

**10.2 WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS.** Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents, to enter into any contract or sign any document for the Association. This authority may be general or it may be limited to specific things. Unless authorized by the Board, no officer, agent or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.

## **10.3 AMENDMENTS.**

**A. THE ASSOCIATION'S RIGHTS.** These Bylaws may be "*amended*" (changed) from time to time by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Vacation Ownership Interest), and (ii) a Majority of the Owners Voting (not counting the Developer's Vacation Ownership Interests and votes) provided that the Owners voting for the amendment must hold at least ten percent of the total number of votes for all Vacation Ownership Interests (not counting the Developer's Vacation Ownership Interests and votes). There is an exception to this rule: Some parts of the Vacation Plan Documents require the approval of a Majority or more than a Majority of the Owners before taking certain actions (a "*super-majority*"). Such a provision cannot be amended unless (1) the number of votes cast by Owners voting in favor of that amendment equals or exceeds the number of votes required to take action under that provision (i.e., a super-majority), and (2) if the Developer owns, or holds a mortgage on, any Vacation Ownership Interest, the Developer signs the amendment. No amendment made under this Subsection 10.3A will take effect until it is signed by any two officers of the Association and recorded.

**B. THE DEVELOPER'S RIGHTS.** Without the consent or approval of any person, including any Owner and anyone having a contract to buy a Vacation Ownership Interest, the Developer may change these Bylaws at any time:

1) And for any purpose before any first deed or Agreement of Sale is recorded.

2) To comply with the laws and regulations of the State of Hawaii.

3) To comply with the real estate laws of any place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with the registration of (i) the Plan, or (ii) the Club (if any Owner is a Club Member), or (iii) the Network (if any Owner is a Network Member).

4) In any Declaration of Annexation adding new Unit Types or creating new kinds of Vacation Ownership Interests. See the provisions of the Declaration governing addition of new Unit Types and creation of new kinds of Vacation Ownership Interests.

No amendment under Subsections 10.3B.3) will be effective, however, unless:

(i) The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental authorities) having authority over the Plan as a result of the registration of it (or the Condominium, the Club, or the Network) with that governmental authority, and

(ii) The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

An amendment made by the Developer under this Section 10.3B takes effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

**10.4 CAPTIONS.** The Developer has tried to divide these Bylaws into useful Sections and to provide captions describing each Section. The captions are here only for convenience and as a matter of reference. They do not define, limit or describe the scope or intent of the provisions of these Bylaws. Members must read with

care each and every part of these Bylaws, not just the captions.

**10.5 PRONOUNS.** Pronouns (for example, "his" or "her") used in the Vacation Plan Documents include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

**10.6 ENFORCEMENT.** A violation of any part of these Bylaws by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of these Bylaws. Any failure to enforce any provision of these Bylaws does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked.

**10.7 INTERPRETATION.** These Bylaws should be liberally interpreted to carry out the purpose of creating a uniform plan for sharing the ownership, expenses and use of the Vacation Units under which the Association carries out and pays for the operation and maintenance of the Vacation Property and the Vacation Ownership Plan.

**10.8 EFFECT OF INVALID PROVISIONS.** The provisions of these Bylaws are "severable". This means that if any part of them is not legal or valid, that part can be ignored. But the rest of these Bylaws will remain in effect and everyone must obey them.

## END OF BYLAWS

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***Ocean Resort Villas  
Vacation Ownership Plan***

**DEVELOPER AFFIDAVIT TO THE  
FIRST AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR VACATION OWNERSHIP**

This AFFIDAVIT ("Affidavit") to the First Amendment To Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership ("Amendment") is made this 21 day of August, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer"). The Developer is the developer of Ocean Resort Villas Vacation Ownership Plan (the "Plan").

The Developer hereby affirms that (i) written notice of the proposed Amendment (and a copy of it) has been given to each governmental authority having authority over the Plan as a result of the registration of the Plan (or the Condominium, the Master Association, the Club, or SVN) and (ii) it is not necessary to obtain the approval or acceptance of the content of the Amendment by any such governmental authority as a condition to adopting the Amendment.

The Developer signed this Affidavit on the date referenced above.

SVO PACIFIC, INC.  
a Florida corporation

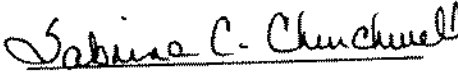
By: 

Name: Raymond L. Gellein, Jr.

Its: Chairman

STATE OF FLORIDA       )  
                                  ) ss:  
COUNTY OF ORANGE    )

On this 21 day of August, 2003, before me personally appeared Raymond L. Gellein, Jr. 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.

  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida  
My Commission expires: 10/20/2006

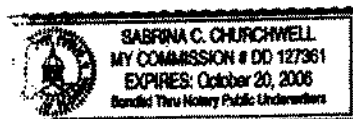


Exhibit 3

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. 3102691  
DATE Apr. 29, 2004 TIME 3:29

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McCorriston Miller Mukai MacKinnon LLP (CEP)

Five Waterfront Plaza, Suite 400

500 Ala Moana Blvd.

Honolulu, Hawaii 96813

This Document Contains      Pages

TMK No. (2) 4-4-14-3  
CPR Nos.: [Not yet assigned]  
TCT Nos.: [See Exhibit "1"]

## ***Ocean Resort Villas Vacation Ownership Plan***

### **SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VACATION OWNERSHIP**

THIS OCEAN RESORT VILLAS VACATION OWNERSHIP PLAN SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR VACATION OWNERSHIP (this "Amendment") is made this 10<sup>th</sup> day of November, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### **BACKGROUND**

The Developer is the developer of Ocean Resort Villas Vacation Ownership Plan (the "Plan"). The Plan is subject to the following documents (the "Declaration"):

- "Ocean Resort Villas Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership," dated September 14, 2001, and recorded September 18, 2001, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737947 ; and

- "Ocean Resort Villas Vacation Ownership Plan First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership," dated August 21, 2003, and recorded August 23, 2003, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2982411.

The Declaration has been noted on the Transfer Certificates of Title listed in Exhibit "1" which is attached to and part of this Amendment. All terms defined in the Declaration have the same meaning in this Amendment.

The Developer has filed an application to register the Plan in the State of California. The California Department of Real Estate has requested that the Developer record an amendment to the Declaration to describe the method used to assign identification numbers to the Vacation Ownership Interests. The Declaration authorizes the Developer to change the Declaration in connection with the registration of the Plan in California.

#### AMENDMENT

THE DEVELOPER HERE AND NOW AMENDS Section 4.9 B. 1) of the Declaration to read as follows:

- 1) It must assign an identification number to the Vacation Ownership Interest. It will assign identification numbers in the manner described in Exhibit "E", which is attached to and is a part of this Declaration.

#### CERTIFICATE OF ADOPTION

The Developer certifies that it has given notice of this Amendment, and a copy of it, to each governmental authority (other than Hawaii governmental authorities) having authority over the Plan as a result of the registration of it (or the Condominium, the Club, or the Network).

Attached is a copy of a letter or other document showing either that this Amendment has been accepted or approved by each such governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary, as follows:

- Exhibit 2: Letter from California Department of Real Estate.
- Exhibit 3: Affidavit of Developer.

The Declaration, as amended by this Amendment, is here and now ratified and confirmed and remains in full force and effect. The Developer signed this Amendment effective as of the date stated on page one.

Developer:

SVO PACIFIC, INC.,  
a Florida corporation

By: *Victoria H. Carter*

Name: *Victoria H. Carter*

Its: *Vice Pres. & Asst. Sec.*

STATE OF FLORIDA )

) ss:

COUNTY OF ORANGE )

On this 10<sup>th</sup> day of November, 2003, before me personally appeared *Victoria H. Carter* 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.



*Cynthia M. Keene*

Name: *Cynthia M. Keene*

Notary Public, State of Florida

My Commission expires: *11/11/2006*

Building B

First Floor	Transfer Certificate of Title	Thlrd Floor	Transfer Certificate of Title	Fifth Floor	Transfer Certificate of Title
3101/03	659079	3300	659114	3500	659150
3102	659080	3301/03	659115	3501/03	659151
3104/06	659081	3302	659116	3502	659152
3105/07	659082	3304/06	659117	3504/06	659153
3108/10	659083	3305/07	659116	3505/07	659154
3109/11	659084	3306/10	659119	3508/10	659155
3112/14	659085	3309/11	659120	3509/11	659158
3113/15	659086	3312/14	659121	3512/14	659157
3116/16	659087	3313/15	659122	3513/15	659158
3117/19	659088	3316/18	659123	3516/16	659159
3120/22	659089	3317/19	659124	3517/19	659160
3121/23	659090	3320/22	659125	3520/22	659161
3124	659091	3520/22	659126	3521/23	659162
3125	659092	3324	659127	3524	659163
3126/26	659093	3325	659126	3525	659164
3127/29	659094	3326/28	659129	3528/28	659165
3130/31	659095	3327/29	659130	3527/29	659166
		3330/31	659131	3530/31	659167
Second Floor	Transfer Certificate of Title	Fourth Floor	Transfer Certificate of Title	Sixth Floor	Transfer Certificate of Title
3200	659096	3400	659132	3600	659168
3201/03	659097			3601/03	659169
3202	859096			3602	659170
3204/06	859099	3404/06	659135	3604/06	659171
3205/07	659100	3405/07	659138	3605/07	859172
3208/10	859101	3408/10	659137	3608/10	659173
3209/11	659102	3409/11	659138	3609/11	659174
3212/14	659103	3412/14	659139	3612/14	659175
3213/15	659104	3413/15	659140	3613/15	659176
3216/18	659105	3416/18	659141	3616/18	659177
3217/19	659106	3417/19	859142	3617/19	659178
3220/22	659107	3420/22	659143	3620/22	659179
3221/23	659108	3421/23	659144	3621/23	659180
3224	859109	3424	659145	3624	659181
3225	659110	3425	659146	3625	659182
3226/28	659111	3426/28	659147	3626/28	659183
3227/29	659112	3427/29	659148	3627/29	659184
3230/31	659113	3430/31	659149	3630/31	659185

Building C

<b>First Floor</b>	<b>Transfer Certificate of Title</b>	<b>Fourth Floor</b>	<b>Transfer Certificate of Title</b>
4100/01	659186	4400/01	659220
4102/04	659187	4402/04	659221
4103/05	659188	4403/05	659222
4106/06	659189	4406/06	659223
4107/09	659190	4407/09	659224
4114/16	659191	4411	659225
4115/17	659192	4413	659226
4116/20	659193	4414/16	659227
4119/21	659194	4415/17	659226
4122/23	659195	4418/20	659229
		4419/21	659230
		4422/23	659231
<b>Second Floor</b>	<b>Transfer Certificate of Title</b>	<b>Fifth Floor</b>	<b>Transfer Certificate of Title</b>
4200/01	659196	4500/01	659232
4202/04	659197	4502/04	659233
4203/05	659196	4503/05	659234
4206/08	659199	4506/08	659235
4207/09	659200	4507/09	659236
4211	659201	4511	659237
4213	659202	4513	659238
4214/16	659203	4514/16	659239
4215/17	659204	4515/17	659240
4218/20	659205	4516/20	659241
4219/21	659206	4519/21	659242
4222/23	659207	4522/23	659243
<b>Third Floor</b>	<b>Certificate of Title</b>	<b>Sixth Floor</b>	<b>Certificate of Title</b>
4300/01	659206	4600/01	659244
4302/04	659209	4602/04	659245
4303/05	659210	4603/05	659246
4306/08	659211	4606/06	659247
4307/09	659212	4607/09	659248
4311	659213	4611	659249
4313	659214	4613	659250
4314/16	659215	4614/16	659251
4315/17	659216	4615/17	659252
4318/20	659217	4618/20	659253
4319/21	659216	4619/21	659254
4322/23	659219	4622/23	659255

**DEPARTMENT OF REAL ESTATE**

2201 BROADWAY  
P.O. BOX 187005  
SACRAMENTO, CA 95818-7005  
(916) 227-0813



April 14, 2004

D. Scott Turner  
Cox, Castle & Nicholson  
19800 MacArthur Boulevard, Suite 600  
Irvine, CA 92612-2435

RE: *DRE File Number:* 11406SHS-F00  
*Subdivision:* Ka'anapali Ocean Resort Villas

Dear Scott:

This will confirm that the California Department of Real Estate required the developer of the referenced time-share project to record an amendment to the Declaration to describe the method used to assign identification numbers to the Vacation Ownership Interests.

The Amendment has been accepted by the Department of Real Estate.

Sincerely,

  
Gil Hatfield  
Deputy Commissioner III  
Subdivisions, Technical Section

**EXHIBIT 2**

RE 617E (New 11/99)

EXHIBIT 3

***Ocean Resort Villas  
Vacation Ownership Plan***

**DEVELOPER AFFIDAVIT TO THE  
SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR VACATION OWNERSHIP**

THIS AFFIDAVIT ("Affidavit") to the Ocean Resort Villas Vacation Ownership Plan Second Amendment To Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership ("Amendment") is made this 10<sup>th</sup> day of November, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer"). The Developer is the developer of Ocean Resort Villas Vacation Ownership Plan (the "Plan").

The Developer hereby affirms that (i) written notice of the proposed Amendment (and a copy of it) has been given to each governmental authority having authority over the Plan as a result of the registration of the Plan (or the Condominium, the Master Association, the Club, or the Network) and (ii) except for the California Department of Real Estate (whose approval is attached to the Amendment) it is not necessary to obtain the approval or acceptance of the content of the Amendment by any such governmental authority as a condition to adopting the Amendment.

The Developer signed this Affidavit on the date referenced above.

SVO PACIFIC, INC.,  
a Florida corporation

By: *Victoria H. Carter*

Name: *Victoria H. Carter*

Its: *Vice Pres. & Asst. Sec.*

STATE OF FLORIDA )

) ss:

COUNTY OF ORANGE )

On this 10<sup>th</sup> day of November, 2003, before me personally appeared *Victoria H. Carter* 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.



*Cynthia M. Keene*  
Name: *Cynthia M. Keene*  
Notary Public, State of Florida

My Commission expires: *11/11/2006*

## EXHIBIT "E"

### **IDENTIFICATION NUMBERING SYSTEM FOR VACATION OWNERSHIP INTERESTS**

The Developer will assign identification numbers (the "ICN") pursuant to Section 4.9B. of the Declaration according to the following system:

1. Apartment Number: The first part of the ICN apartment number consists of the apartment number for the Owner's Vacation Unit (the apartment in which the Owner owns an undivided interest as described in Section 4.2B. of the Declaration).

2. Vacation Ownership Interest Number: The second part of the ICN is a Vacation Ownership Interest number ranging from 1 to 52. This number is used merely for tracking purposes. It does not indicate that the Owner of the Vacation Ownership Interest has the right to use a specific Use Week.

3. Kind of Vacation Ownership Interest and Unit Type: The third part of the ICN identifies whether the Vacation Ownership Interest has every-year or every-other-year use rights, as follows:

- "A" for an Every Year Vacation Ownership Interest.
- "E" for an Even-Year Vacation Ownership Interest.
- "D" or "X" for an Odd-Year Vacation Ownership Interest.

4. Unit Type: The fourth part of the ICN is used by the Developer for internal tracking purposes only. It generally relates to the Unit Type of the Owner's Vacation:

- "D" or "L" for an Ocean View Two Bedroom Unit.
- "O" for an Ocean View One Bedroom Unit.
- "P" for a Two Bedroom Deluxe Ocean Front Unit.
- "2" for a Two Bedroom Ocean Front Unit.

The following are examples of the ICN System:

- Every Year Ocean View Two Bedroom in Unit 2108/10 (assuming that this is the 50<sup>th</sup> Vacation Ownership Interest sold in that unit) = 2108/10-50-AL.
- Every Other Year Odd One Bedroom Ocean View in Unit 2301 (assuming that this is the 7<sup>th</sup> Vacation Ownership Interest sold in that unit) = 2301-7-DO. In this case, there would also be a corresponding Even-Year Vacation Ownership Interest, which might be owned by someone else, and its identification number would be 2301-7-EO.

Note: If multiple interests are conveyed on the same Deed, the ICN number for each interest shall be listed separately. For example, a sale of three Every Year Vacation Ownership Interests in One Bedroom Ocean View Unit 2301 (assuming that these are the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Vacation Ownership Interests sold in that apartment) will be shown as follows: 2301-4-AO, 2301-5-AO, 2301-6-AO.

68087.1

Certified to be a true and correct copy of the document  
on 8/8/03 at 4:00 pm.  
in the Office of the Assistant Registrar of the Land Court,

State of Hawaii, as Document No. 2974209

Island Title Corporation

By [Signature]

RETURN BY MAIL ( ) PICK UP ( ) TO:

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

170 198298

This document contains 85 pages.

Tax Map Key: 2<sup>nd</sup> Div., 4-4-14-3

AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM PROPERTY REGIME

OF

*Ocean Resort Villas*

McCORRISTON MILLER MUKAI MACKINNON LLP  
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Attorneys at Law

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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
OCEAN RESORT VILLAS

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF OCEAN RESORT VILLAS is made by SVO PACIFIC, INC., a Florida corporation (the "Developer").

BACKGROUND

- I. By that certain Declaration of Condominium Property Regime of Ocean Resort Villas dated August 24, 2001 (the "Original Declaration"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Document No. 2734238, together with that certain Condominium Map No. 1431 filed in the Land Court (the "Original Condominium Map"), the land described in Exhibit A, together with the improvements on it, as more particularly described in the Original Declaration and shown on the Original Condominium Map, was submitted to the provisions of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended, and the "OCEAN RESORT VILLAS" condominium project was established.
- II. The Original Declaration was later amended by First Amendment to Declaration of Condominium Property Regime of Ocean Resort Villas. It was dated March 12, 2003, and filed in the Land Court as Document No. 2920781. The Original Declaration, as so amended, is currently noted on the Transfer Certificates of Title listed in Exhibit 1 to Exhibit A.
- III. The Original Declaration, as amended, provides for the Project to be developed in one or more phases as more particularly described and set forth in the Original Declaration, as amended, and Developer reserved all necessary and appropriate rights under the Original Declaration, as amended, to amend and modify the Original Declaration, as amended, in order to incorporate into the Original Declaration, as amended, additional phases in the Project as more particularly described and set forth therein, including, without limitation, in Sections 4, 18, and 19 of the Original Declaration, as amended.
- IV. Developer now intends to (a) concurrently develop and construct Phase 2 and Phase 3 as described in Section 4 of the Original Declaration, as amended, and (b) further amend and restate the Original Declaration, as amended, in its entirety as set forth herein in order to add Phase 2 and Phase 3 to the Project. The Developer is also recording an amendment to the Original Condominium Map. That amendment depicts Phases 2 and 3.
- V. To make the Declaration easier to read, the Developer has chosen to restate the entire Declaration, including the amendments needed to add Phases 2 and 3 to the Project, in this document. This document completely replaces the Original Declaration, as amended.

NOW, THEREFORE, in consideration of the recitals set forth above and the Reserved Rights of the Developer set forth in the Original Declaration, as amended, Developer does hereby further amend and restate the Original Declaration, as amended, in its entirety as follows:

INTRODUCTION

- A. The Developer is the owner in fee simple of the land described in Exhibit A which is attached to and is part of this document.
- B. The Developer intends to construct or place certain buildings and other improvements on that land.
- C. The Developer intends to establish a condominium that consists of the land and the improvements on it.

- D. This Declaration is one of the documents required by law to create the condominium. It divides the land and the improvements into separately owned "Apartments" and commonly owned "Common Elements". It also establishes the rights of the Developer and anyone who owns an Apartment.

## 1. DEFINITIONS.

This Section 1 defines certain words or phrases having special meanings in this document. Other key words and phrases are defined elsewhere in this document. Defined terms will have these special meanings except where the context clearly required otherwise.

1.1 "ADJACENT CONDOMINIUM" means any condominium project established on an Adjacent Parcel.

1.2 "ADJACENT PARCEL" means:

A. Any property that was part of the Land but that the Developer deleted from the Project using its rights under Section 21, and

B. All or any part of Lot 101 as shown on Land Court Map 86, of Land Court Application 1744 filed by Pioneer Mill Company, Limited. If that lot is subdivided into separate lots, each of them will be an "Adjacent Parcel, whether or not they are each physically adjacent to the Project.

1.3 "ADJACENT PROJECT" means any hotel, vacation ownership or time share project, fractional ownership project, Adjacent Condominium, or other real estate development established on an Adjacent Parcel.

1.4 "APARTMENT" means any part of the Project designated as an Apartment in Section 5, and any New Apartment. All Resort Apartments and all Commercial Apartments are Apartments.

1.5 "APARTMENT OWNER" or "OWNER" means the person or persons who own an Apartment and its Common Interest; provided that:

A. To the extent and for the purposes, including voting, provided by a recorded lease of an Apartment, the person or persons leasing the Apartment will be deemed to be the Owner of it; and

B. The buyer of an Apartment under a recorded agreement of sale has all the rights of an Apartment Owner, including the right to vote. The seller may keep the right to vote, however, on "matters substantially affecting the seller's security interest in the Apartment" as that phrase is used in the Condominium Property Act.

Note: Anyone who owns a Vacation Ownership Interest is an Apartment Owner.

1.6 "ASSOCIATION" means the Association of Apartment Owners of Ocean Resort Villas.

1.7 "BOARD OF DIRECTORS" or "BOARD" means the Board of Directors of the Association.

1.8 "BYLAWS" means the "Bylaws of the Association of Apartment Owners of Ocean Resort Villas" recorded with this Declaration. It also includes any changes and additions properly made to them from time to time.

1.9 "CLUB" means the Starwood Pacific Vacation Club. "Starwood Pacific Vacation Club" is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered from time to time by the Club Operator to owners of Vacation Ownership Interests and other members of the Club. The Club is not a legal entity or association of any kind. It is a business owned and operated by the Club Operator.

1.10 "CLUB OPERATOR" means SVO Hawaii Management, Inc., a Hawaii corporation. If the Club Operator signs and records a document that transfers some or all of its rights as the "Club Operator" to someone else (other than as security for a loan), then that person will become "Club Operator" to the extent of the rights transferred.

1.11 "COMMERCIAL APARTMENTS" means the Apartments designated as Commercial Apartments in Section 5.2, and any New Apartments designated as a Commercial Apartments.

1.12 "COMMERCIAL APARTMENT OWNER" means the Owner of a Commercial Apartment.

1.13 "COMMON ELEMENTS" means all parts of the Project except for the Apartments, including those parts of the Project designated in this Declaration as Common Elements or as Limited Common Elements.

1.14 "COMMON EXPENSES" means (i) all expenses of operation of the Project, and (ii) all sums designated as Common Expenses by or pursuant to the Condominium Property Act, this Declaration or the Bylaws.

1.15 "COMMON INTEREST" means the undivided percentage interest in the Common Elements appurtenant to each Apartment in the Project as stated in this Declaration or in any amendment to this Declaration.

**1.16 "CONDOMINIUM DOCUMENTS"** means this Declaration, the Bylaws, any Rules and Regulations, and the Condominium Map.

**1.17 "CONDOMINIUM MAP"** means the plans and elevations for the Project recorded as Condominium Map No. 1431. It also includes any changes and additions properly made to them from time to time.

**1.18 "CONDOMINIUM PROPERTY ACT"** means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, and any changes to it. If that law is replaced, then "Condominium Property Act" will mean the substitute or replacement law. If the State of Hawaii adopts the Uniform Common Interest Ownership Act or any other law that permits condominium projects to choose to be governed by that law, and if this Project chooses to do so, then the term "Condominium Property Act" will mean that law, as amended from time to time, or any substitute or replacement for that law.

**1.19 "CONDOMINIUM REGULATIONS"** means the regulations adopted under the Condominium Property Act from time to time.

**1.20 "COURTYARD"** means the part of the Project designated on the Condominium Map as the Courtyard. Note that the Courtyard does not include the Snack Bar Building, the lanai area surrounding the Snack Bar Building, and the bridge leading from the lanai to terrace no. 5. The lanai and bridge are colored in green on the Condominium Map.

**1.21 "C.P.I. INDEX"** means the U.S. Department of Labor Consumer Price Index for All Urban Consumers – Honolulu. But if the government stops publishing that index, then the most similar index available will be used in its place. The Association will choose the replacement index.

**1.22 "C.P.I. ADJUSTED"** means that the figure will be increased or decreased as the C.P.I. Index changes. The amount of the increase or decrease will be equal to the percentage change between (i) the C.P.I. Index published for December of 2003, and (ii) the most recent December C.P.I. Index figure.

**1.23 "DECLARATION"** means the Original Declaration as amended and restated in this document and any changes and additions properly made to it.

**1.24 "DECLARATION OF MERGER"** means the "Declaration of Merger of Condominium Phases of Ocean Resort Villas" listed in Exhibit A or recorded with this Declaration. It also includes any changes and additions properly made to it from time to time.

**1.25 "DEVELOPER"** means SVO Pacific, Inc., a Florida corporation. If the Developer transfers some or all of its rights to another person as provided by Section 28.5, then that person will become the "Developer" to the extent of the rights transferred.

**1.26 "DEVELOPER'S RESERVED RIGHTS"** means all rights reserved to the Developer under this Declaration or in the Bylaws. For example, see the descriptions of the Developer's Reserved Rights contained in Sections 7.1I, 7.1J, 7.1K, 7.1R, 7.1R, 7.1T, 7.2, 7.4, 9.7, 17.2A (as to the Developer only), 18 through 29, and 34.3 of this Declaration.

**1.27 "DEVELOPMENT PERIOD"** means the period starting on the date that this Declaration is recorded and ending on the earlier of (i) December 31, 2019, or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights.

**1.28 "HALEKIPA LIMITED COMMON ELEMENTS"** means the Common Elements designated as Halekipa Limited Common Elements in Section 5.4D or pursuant to Sections 18, 22, or 24.

**1.29 "IMPROVEMENTS"** means all improvements located on the Land, now or in the future. If the Developer deletes any part of the Land using its rights in Section 21, then the term "Improvements" will not include any Improvements located on the part of the Land that is deleted. If the Developer annexes any Adjacent Parcel using its rights in Section 22, then the term "Improvements" will include both the improvements located on the Land before the annexation plus the improvements located on the Adjacent Parcel annexed.

**1.30 "INTERESTED PERSON"** means any person who has any interest in the Project or who has the right to use the Project or any part of it. For example, it includes (i) each Owner, each Lender, and anyone who rents or leases an Apartment, and (ii) anyone who has the right (in legal terms, an "easement") or who has permission to use the Project or any part of it.

**1.31 "KA'ANAPALI NORTH BEACH"** means all of the property that is subject to the Ka'anapali North Beach Declaration.

**1.32 "KA'ANAPALI NORTH BEACH ASSOCIATION"** means the Ka'anapali North Beach Master Association, Inc., a Hawaii non-profit corporation. If the rights or duties of the Master Association are transferred to someone else, then that person will become the "Ka'anapali North Beach Association" to the extent of the rights or duties transferred.

**1.33 "KA'ANAPALI NORTH BEACH DECLARATION"** means that certain "Declaration of Covenants, Conditions, Easements and Restrictions for Ka'anapali North Beach" described in Exhibit A. It also includes any changes and additions properly made to it from time to time.

**1.34 "KA'ANAPALI NORTH BEACH DEVELOPER"** means the Declarant under the Ka'anapali North Beach Declaration. If the rights of the Ka'anapali North Beach Developer are transferred to someone else, then that person will become the "Ka'anapali North Beach Developer" to the extent of the rights or duties transferred.

**1.35 "KA'ANAPALI NORTH BEACH DOCUMENTS"** means the Ka'anapali North Beach Declaration, the Articles of

Incorporation of the Ka'anapali North Beach Master Association, Inc., the Bylaws of Ka'anapali North Beach Master Association, Inc., and the other "Governing Documents" as that term is defined in the Ka'anapali North Beach Declaration. It also includes any changes and additions properly made to any of those documents from time to time.

**1.36 "LAND"** means the real property described in Exhibit A and any appurtenances to it. If the Developer deletes any part of the Land using its rights in Section 21, then the term "Land" will not include any part of the Land that is deleted. If the Developer annexes any Adjacent Parcel using its rights in Section 22, then the term "Land" will include both the Land just before the annexation plus the Adjacent Parcel annexed.

**1.37 "LENDER"** means anyone who holds a recorded Mortgage on an Apartment or on a Vacation Ownership Interest. It also includes the beneficiary of a deed of trust recorded against an Apartment or a Vacation Ownership Interest.

**1.38 "LIMITED COMMON ELEMENTS"** means (i) those parts of the Common Elements designated in Section 5.4 as Limited Common Elements, and (ii) any Common Elements later designated as Limited Common Elements as expressly permitted by this Declaration. For example, see Sections 17.2A, 18, 22, and 24.

**1.39 "MAJORITY OF THE OWNERS"** means Owners of Apartments having more than fifty percent (50%) of the Common Interests for the whole Project. Any other reference to a certain percentage of the Apartment Owners means the Owners of Apartments having that percentage of the Common Interests for the whole Project.

**1.40 "MAJORITY OF THE OWNERS VOTING"** means Owners of Apartments having more than fifty percent (50%) of the Common Interests voted on a particular issue. Any other percentage of the "Apartment Owners voting" means the Owners of Apartments having that percentage of the Common Interests voted on a particular issue.

**1.41 "MANAGING AGENT"** means the agent hired by the Developer using its authority to do so under the Bylaws. It also includes any replacement agent hired by the Board as allowed by the Bylaws.

**1.42 "MASTER ASSOCIATION"** means the Ocean Resort Master Association. It is a non-profit Hawaii corporation. It was created to permit Apartment Owners and others to share the use and the costs of the Master Association Amenities.

**1.43 "MASTER ASSOCIATION AMENITIES"** means the amenities available through the Master Association from time to time.

**1.44 "MASTER ASSOCIATION APARTMENT"** means the Arcade Apartment. It is a Commercial Apartment.

**1.45 "MASTER ASSOCIATION DECLARATION"** means that certain "Declaration of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association", dated September 5, 2001, and recorded in the Land Court as Document No. 2737946. It also includes any changes and additions properly made to it from time to time.

**1.46 "MASTER ASSOCIATION DOCUMENTS"** means the Master Association Declaration, the Articles of Incorporation of the Ocean Resort Master Association, the Bylaws of the Ocean Resort Master Association, and any rules and regulations of the Master Association. It also includes any changes and additions properly made to any of those documents from time to time.

**1.47 "MASTER ASSOCIATION MEMBER"** means any person who is a member of the Master Association from time to time. This includes, for example, the Owners of Resort Apartments and the Owners of Vacation Ownership Interests.

**1.48 "MASTER ASSOCIATION MANAGER"** means the person appointed as the "managing agent" of the Master Association. The Master Association Manager operates the Master Association and operates, maintains, repairs and replaces the Master Association Amenities.

**1.49 "MEMBER"** means the same thing as "Owner".

**1.50 "MORTGAGE"**, when used as a noun, means a recorded mortgage or deed of trust on an Apartment or a Vacation Ownership Interest as collateral for a loan. When used as a verb, it refers to making an Apartment or a Vacation Ownership Interest subject to a mortgage or deed of trust.

**1.51 "NETWORK"** means the Starwood Vacation Network. "Starwood Vacation Network" is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered from time to time by the Network Operator to owners of Vacation Ownership Interests and other members of the Network. The Network is not a legal entity or association of any kind. It is a business owned and operated by the Network Operator.

**1.52 "NETWORK OPERATOR"** means the Starwood Vacation Exchange Company, a Delaware corporation. If the Network Operator signs and records a document that transfers some or all of its rights as the "Network Operator" to someone else (other than as security for a loan), then that person will become "Network Operator" to the extent of the rights transferred.

**1.53 "NEW APARTMENT"** means any Apartment that the Developer creates from time to time using its rights under Sections 18 or 24.

**1.54 "NEW IMPROVEMENT"** means any improvements that the Developer develops, builds, or adds from time to time on the Land using its rights under Sections 19, 24, or 25, or on any Adjacent Parcel that the Developer adds to the Project using its rights in Section 22.

1.55 "PERSON" means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company or other legal entity or organization.

1.56 "PROJECT" means the condominium project created by this Declaration and the other Condominium Documents.

1.57 "PROPERTY" means the Land and the Improvements.

1.58 "RECORD", "RECORDED", "RECORDING", and similar terms mean recorded in the Land Court. Hawaii law may be changed to require that deeds, Mortgages, changes to the Condominium Documents, or other documents, be recorded in the Bureau of Conveyances. After any such law takes effect, "record", "recorded", "recording", and similar terms will mean and refer to recording in the Bureau to the extent provided by the change in the law.

A. "BUREAU" means the Bureau of Conveyances of the State of Hawaii.

B. "LAND COURT" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

1.59 "REPRESENTATIVES" means a person's directors, officers, members (in the case, a limited liability company), agents, employees and independent contractors.

1.60 "RESORT APARTMENTS" means the Apartments designated as Resort Apartments in Section 5.1, and any New Apartments designated as a Resort Apartments.

1.61 "RESORT APARTMENT OWNER" means the Owner of a Resort Apartment.

1.62 "RESORT LIMITED COMMON ELEMENTS" means Common Elements designated as Resort Limited Common Elements in Section 5.4C, or pursuant to Sections 18, 22, or 24.

1.63 "RULES AND REGULATIONS" means the rules and regulations adopted by the Board, as permitted by the Bylaws, governing the details of the operation and use of the Common Elements and (to the extent permitted by the Condominium Property Act, this Declaration, and the Bylaws) the Apartments. It also includes any changes and additions properly made to them from time to time.

1.64 "SHORELINE SETBACK AREA" means the parts of the Land that lie in the "Shoreline Setback Area" described in the Shoreline Setback Declaration.

1.65 "SHORELINE SETBACK DECLARATION" means the document named "Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions (North Beach Shoreline Setback Area)". It is dated December 29, 1998. It was recorded in the Land Court as Document No. 2513420, and in the Bureau as Document No. 99-005138.

1.66 "SMA PERMITS" means, with respect to the Project, the following permits and documents:

A. The Special Management Area Permit (88/SM1-023) and the Shoreline Setback Variance (88/SSV-002) issued by the County of Maui, dated July 19, 1988,

B. The Special Management Area Permit (SM1 970006) issued by the County of Maui, having an effective date of December 14, 1998,

C. Any other Special Management Area Permit and/or Shoreline Setback Variance that affects the Project, and

D. Any and all changes and additions properly made to any of those permits from time to time, any replacement permits, and any supplementary requirements related to those permit such as, for example, that certain Recreation and Park Plan approved by the Planning Commission of the County of Maui.

1.67 "TIME SHARE ACT" means Chapter 514E, Hawaii Revised Statutes, and any changes to it. If that law is replaced, then "Time Share Act" will mean the substitute or replacement law.

1.68 "VACATION OWNERSHIP PLAN" or "VACATION PLAN" means a time share plan that includes one or more Resort Apartments in the Project and that is either created by the Developer or is created by someone else with the Developer's written consent in a recorded document.

A. "VACATION PLAN DOCUMENTS" means the documents creating or governing a Vacation Ownership Plan. This includes, for example, any declaration of covenants, conditions, easements and restrictions, and the articles and bylaws of the Vacation Owners Association. It also includes any changes properly made to any of those documents from time to time.

B. "VACATION OWNERSHIP INTEREST" means a time share interest in a Vacation Ownership Plan.

C. "VACATION OWNER" means the owner of a Vacation Ownership Interest.

D. "VACATION OWNERS ASSOCIATION" means the association of Vacation Owners for a particular Vacation Ownership Plan.

## **2. SUBMISSION TO CONDOMINIUM PROPERTY REGIME.**

2.1 PURPOSE AND EFFECT OF THIS DOCUMENT. By signing and recording this Declaration, the Developer intends to:

- Comply with the legal requirements necessary to create a mixed-use condominium that consists of the Land and the Improvements.

- Divide the Project into Apartments and Common Elements.
- Designate some of the Common Elements as Limited Common Elements.
- Create easements in favor of the Developer or other persons.
- Reserve to the Developer certain rights to make changes to the Project and to develop it further.
- Establish a plan for the ownership, use, enjoyment, management, operation, upkeep, and repair of the Project.
- Increase the value, desirability, and enjoyment of each Apartment and the Common Elements.

## 2.2 SUBMISSION TO CONDOMINIUM PROPERTY REGIME.

The Developer declares that:

A. The Property is a condominium.

B. The Property is subject to this Declaration and to the Condominium Property Act. In legal terms, the Developer submits all of its estate, right, title and interest in the Property to this Declaration and the Bylaws and to the condominium property regime created by the Condominium Property Act.

C. The Project is divided into Apartments and Common Elements. The Common Elements are divided into general and Limited Common Elements. The Property is subject to these divisions and to any other divisions, limitations, covenants, conditions, easements and restrictions contained in this Declaration.

D. This Declaration, the Bylaws, and the Condominium Property Act will govern the Project. This includes, for example, the ownership, use, enjoyment, management, operation, upkeep, repair, and improvement of the Project. In legal terms, the Property will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Condominium Documents and the Condominium Property Act. Anyone who occupies or uses any Apartment or any other part of the Project must obey them.

E. The Condominium Documents are binding on the Property. They will also be binding on, and are intended to benefit these persons:

- 1) The Developer.
- 2) Anyone else who owns the Property or any Apartment or other interest in it, now or in the future. This includes, for example, all present and future Apartment Owners and their Lenders.
- 3) Anyone who, by law or by agreement, stands in the place of the persons listed in items 1) and 2). Such people

are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people have the right to enforce the Condominium Documents in any way permitted by the Condominium Property Act or the Condominium Documents.

In legal terms, the Condominium Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this Subsection.

**2.3 EASEMENTS AND DEVELOPER'S RESERVED RIGHTS.** The Developer grants and reserves the easements described in this Declaration. The Developer also reserves to itself the Developer's Reserved Rights in the Property and the Project. The Developer declares that all Apartments and their Common Interests and all Common Elements (including the Limited Common Elements) are subject to the Developer's Reserved Rights and to the easements granted or reserved in this Declaration or in the Bylaws.

## 3. NAME OF THE CONDOMINIUM

The name of the Project is "Ocean Resort Villas".

## 4. DESCRIPTION OF THE PROJECT.

The Developer plans to develop the Project in stages. Each stage is called a "phase" or an "increment". Each phase may include Apartments and other Improvements. The phases are described as follows:

**4.1 PHASE 1.** The first phase consists of the Halekipa Building, the Kahakai Building, the Snack Bar Building, the Courtyard, the Tennis Courts and Tennis Pavilion, and related Improvements.

**A. KAHAKAI BUILDING.** The Kahakai Building is a six-story building. It also has a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. The building contains one hundred and three (103) Resort Apartments, one (1) whole Commercial Apartment (the Master Association Apartment), and part of one (1) other Commercial Apartment (Apartment 101).

**B. HALEKIPA BUILDING.** The Halekipa Building is a one-story building. It also has a basement. It is constructed principally of steel, concrete, gypsum board, and glass. It contains part of one (1) Commercial Apartment (Apartment 101).

**C. Snack Bar Building.** The Snack Bar Building is constructed principally of concrete, steel, concrete masonry unit blocks, and gypsum board. It contains part of one (1) Commercial Apartment (Apartment 101).

**D. OTHER BUILDINGS.** The Project also includes a tennis pavilion. It has a concrete slab floor, wood roof framing, and concrete masonry unit block columns. There is also a

cooling tower enclosure. It is constructed of concrete and concrete masonry unit blocks. It has no roof. The tennis pavilion and the cooling tower enclosure contain no Apartments.

**4.2 PHASE 2.** The second phase consists of the Makani Kai Building and related Improvements.

**A. MAKANI KAI BUILDING.** The Makani Kai Building is a six-story building. It also has a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. The building contains one hundred seven (107) Resort Apartments, and part of one (1) Commercial Apartment (Apartment 101).

**B. OTHER BUILDINGS.** Phase 2 also includes a cooling tower enclosure. It is constructed of concrete and concrete masonry unit blocks. It has no roof. The cooling tower enclosure contains no Apartments. Phase 2 also includes an electric co-generation plant and related improvements.

**4.3 PHASE 3.** The third phase consists of the Ahelani Building and related Improvements.

**A. AHELANI BUILDING.** The Ahelani Building is a six-story building. It also has a basement. It is constructed principally of steel-reinforced concrete, gypsum board, and glass. The building contains seventy (70) Resort Apartments.

**B. OTHER BUILDINGS.** Phase 3 also includes a mechanical yard enclosure. It is constructed of concrete and concrete masonry unit blocks. It has no roof. The mechanical yard enclosure contains no Apartments.

**4.4 PHASE 4.** The fourth phase, if it is constructed, is presently planned to consist of a Gazebo. The Gazebo is likely to consist of a concrete slab floor, wood roof framing, and concrete masonry unit block columns. It contains one (1) Commercial Apartment (the Gazebo Apartment).

**4.5 ORDER OF DEVELOPMENT.** The Developer has no obligation to build any phase beyond phases 1, 2 and 3. The Developer can develop the phases in any order that it wishes. It can also develop more than one phase at a time. The Developer can also divide a phase into separate smaller phases. For example, the Developer might decide to develop the Makani Kai Building in two phases and possibly as two separate buildings. Instead of developing later phases, the Developer may choose to delete part of the Land as discussed in Section 21.

## **5. DIVISION OF PROPERTY.**

The Project is divided into Apartments and Common Elements, as follows:

**5.1 RESORT APARTMENTS.** The Developer hereby designates two hundred eighty (280) fee simple condominium apartment estates in the spaces within the boundaries of the two hundred

eighty (280) Resort Apartments shown on the Condominium Map.

**A. RESORT APARTMENT NUMBERS AND LOCATIONS.** The Condominium Map shows the location and Apartment number of each Resort Apartment.

**B. RESORT APARTMENT LAYOUTS AND AREA.** The layout and approximate net living area of each Resort Apartment is shown on the Condominium Map and is described in Exhibit B which is attached to and is a part of this Declaration.

1) The approximate net living area for each Resort Apartment consists of the net interior floor area plus the net lanai floor area as listed in Exhibit B.

2) The net interior floor areas listed in Exhibit B are based on measurements taken from the boundaries of the Apartment interior. Floor areas were not reduced, however, to account for interior walls, ducts, vents, shafts, stairways and so on located within the Apartment boundaries.

3) All net lanai floor areas listed in Exhibit B are based on measurements taken from the boundaries of the Apartment lanais.

4) The net interior floor areas and net lanai floor areas listed in Exhibit B are not exact. Instead, they are estimates based on the floor plans of each type of Resort Apartment. The measurements are based upon the requirements of the Condominium Regulations and do not necessarily follow the boundaries of the Apartments in every detail. The Developer makes no representation or warranty as to the actual area of any Resort Apartment.

**C. ACCESS TO COMMON ELEMENTS.** Each Resort Apartment has immediate access to Common Element corridors, stairways and/or elevators of the building. These lead to the grounds of the Project and to walkways, driveways, or roadways leading to a public street or highway.

**D. BOUNDARIES OF THE RESORT APARTMENTS.** The Resort Apartments consist of an Apartment interior and one or more lanais.

1) **APARTMENT INTERIOR.** The boundaries of the Apartment interior consist of the interior surface of the perimeter walls, windows, doors, floors, and ceilings.

2) **LANAI.** The lanai boundaries consist of these things:

➤ The decorated or finished surfaces of the outside walls of the building that separate the lanai from the Apartment;

➤ The outside surface of any doors, door frames, windows and window frames that separate the lanai from the Apartment; and

- The interior decorated surface of any railings or support posts, and any other walls or other Improvements enclosing the lanai.

**3) THINGS THAT ARE PART OF THE RESORT APARTMENTS.** These things are part of each Resort Apartment:

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

**4) THINGS THAT ARE NOT PART OF THE RESORT APARTMENTS.** These things are not part of the Resort Apartments:

- The undecorated or unfinished surfaces of the boundary walls.
- Any load-bearing walls or columns inside of the Apartment. However the decorated or finished surfaces are part of the Apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each Resort Apartment.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within an Apartment if they are used for or serve the Common Elements or more than one Apartment.

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

**5.2 COMMERCIAL APARTMENTS.** The Developer hereby designates three (3) fee simple condominium apartment estates in the spaces within the boundaries of the three (3) Commercial Apartments shown on the Condominium Map.

**A. COMMERCIAL APARTMENT NUMBERS AND LOCATIONS.** The Condominium Map shows the location and Apartment number of each Commercial Apartment.

**B. COMMERCIAL APARTMENT LAYOUTS AND AREA.** The layout and approximate area of each Commercial Apartment is shown on the Condominium Map and is described

in Exhibit B which is attached to and is a part of this Declaration.

1) The approximate net living area for each Commercial Apartment is equal to the net interior floor area plus the net lanai floor area listed in Exhibit B. Except for the portion of Commercial Apartment 101 on the first floor of the Makani Kai Building, the Commercial Apartments do not have a lanai that is a part of the Apartment. (Some of the Commercial Apartments have a Limited Common Element lanai, but those are not discussed in this Section 5.2)

2) The net interior floor areas listed in Exhibit B are based on measurements taken from interior surface of the perimeter walls, windows, doors, floors and ceilings. Floor areas were not reduced, however, to account for interior walls, ducts, vents, shafts, stairways and so on located within the Apartment boundaries.

3) The net lanai floor areas listed in Exhibit B are based on measurements taken from the boundaries of the Apartment lanais.

4) The net interior floor areas and net lanai floor areas set forth in Exhibit B are not exact. Instead, they are estimates based on the floor plans of each Commercial Apartment. The measurements are based upon the requirements of the Condominium Regulations and do not necessarily follow the boundaries of the Apartments. The Developer makes no representation or warranty as to the actual area of any Commercial Apartment.

**C. ACCESS TO COMMON ELEMENTS.** Each Commercial Apartment has immediate access to Common Element corridors, stairways and/or elevators or to the grounds of the Project and to walkways, driveways, or roadways leading to a public street or highway.

**D. BOUNDARIES OF THE COMMERCIAL APARTMENTS.** The Commercial Apartments consist of an Apartment interior and in some cases an Apartment lanai.

1) **APARTMENT INTERIOR.** The boundaries of the Apartment interior consist of: (i) the centerline of all perimeter walls that separate one commercial apartment from another, (ii) the interior surface of all other perimeter walls, and (iii) the interior surface of all perimeter windows, doors, floors, and ceilings. If the Condominium Map does not use walls or other physical improvements to mark the boundaries of the Apartment, then the boundary will consist of an imaginary vertical plane in the location shown by a line drawn on the Condominium Map. For purposes of this subsection and subsections 5.2D.3) and 5.2D.4):

(a) The "ceiling" of any Commercial Apartment (or part of a Commercial Apartment) located in the Kahakai Building or the Makani Kai Building is the surface of the underside of the floor above it.

(b) The "ceiling" of any Commercial Apartment (or part of a Commercial Apartment) located in the basement of the Halekipa Building is the surface of the underside of the floor above it.

(c) The "ceiling" of any Commercial Apartment (or part of a Commercial Apartment) located on the first floor of the Halekipa Building is the underside of the roofing structure above it.

(d) The "ceiling" of the Snack Bar and the Gazebo is the underside of the roofing structure above it.

This means that the Commercial Apartments include any crawl space or plenum between the "ceiling" and any acoustic tiles or other ceiling system.

2) LANAI. The lanai boundaries consist of these things:

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

3) THINGS THAT ARE PART OF THE COMMERCIAL APARTMENTS. These things are part of each Commercial Apartment:

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

4) THINGS THAT ARE NOT PART OF THE COMMERCIAL APARTMENTS. These things are not part of the Commercial Apartments:

- The undecorated or unfinished surfaces of the boundary walls (except for any part within the centerline of the boundary walls that separate one commercial apartment from another).

- Any load-bearing walls or columns inside of the Apartment. However the decorated or finished surfaces are part of the Apartment.
- The foundations, footings, girders, beams, floor slabs, supports, floors and ceilings surrounding each Commercial Apartment.
- Any pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning running through or otherwise located within an Apartment if they are used for or serve the Common Elements or more than one Apartment.

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

5.3 COMMON ELEMENTS. One freehold estate is hereby designated in all remaining parts of the Project, called the "Common Elements". The Common Elements include, among other things, the following:

A. The Land in fee simple.

B. All foundations, floor slabs, columns, girders, beams, supports, Apartment boundary and load-bearing walls and partitions (except for the finishes on them and except as otherwise provided for the Commercial Apartments), roofs, and the porte cochere.

C. All of the following so long as they are not located within an Apartment: all lobby areas, stairways, elevators, walkways, corridors, elevator lobby areas, entrances, entry ways and exits of each building, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, and trash rooms.

D. All yards, grounds, walkways, walkway railings, waterfalls, ponds, gardens, decorative rocks, and other landscaping, and all refuse facilities.

E. All roads, driveways, parking stalls and parking areas, access lanes, paved areas, ramps, and loading areas.

F. All mailboxes.

G. All vents, shafts, sewer lines, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the Project that serve more than one Apartment for services such as power, light, gas (if any), water, air conditioning, sewer, refuse, telephone, and radio and television signal distribution (if any); provided that the telephone system and all related wiring and equipment are not Common Elements but belong to the Developer.

H. Any and all other equipment, apparatus and installations existing for common use, such as tanks, pumps,

motors, fans, compressors, boilers, and, in general, any and all other parts of the Project necessary or convenient to its existence, maintenance or safety, or normally in common use.

**5.4 LIMITED COMMON ELEMENTS.** Some Common Elements, called "*Limited Common Elements*", are designated and set aside for the exclusive use of certain Apartments. Except as otherwise specifically provided in this Declaration, those Apartments have the exclusive right (in legal terms, an "*exclusive easement*") to use the Limited Common Elements set aside for their use. The following Common Elements are here and now designated as Limited Common Elements:

**A. PARKING STALLS.** Each Apartment has the exclusive right to use the parking stall or stalls assigned to it in Exhibit B. The Condominium Map assigns numbers to each parking stall.

**B. MAILBOXES.** Each Apartment has the exclusive right to use the mailbox having the same number as the Apartment.

**C. RESORT LIMITED COMMON ELEMENTS.** "*Resort Limited Common Elements*" are Limited Common Elements appurtenant to all of the Resort Apartments and to the Arcade Apartment.

**1) THINGS THAT ARE RESORT LIMITED COMMON ELEMENTS.** Except as provided in Subsection 5.4C.2), all Common Elements contained in or that are part of a building containing Resort Apartments are Resort Limited Common Elements. This includes, for example, the following Common Elements to the extent that they are located within a building containing Resort Apartments:

(a) The structural components of the building. This includes, among other things, all foundations, footings, floor slabs, girders, beams, supports, Apartment boundary and load-bearing walls and columns (except for the finishes on them and except as otherwise provided for the walls separating Commercial Apartments), and roofs.

(b) All of the following so long as they are not located within an Apartment or its Limited Common Elements: all lobby areas, stairways, elevators, hallways, elevator lobby areas, entrances, entry ways and exits of the building, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, housekeeping closets, and trash rooms.

(c) All other apparatus and installations existing for common use, as described in Sections 5.3G and 5.3H, that serve only a building containing Resort Apartments and that serve more than one Resort Apartment or the Common Elements of the building.

**2) THINGS THAT ARE NOT RESORT LIMITED COMMON ELEMENTS.** The following Common Elements are contained in or are part of the Kahakai Building, the Makani Kai Building, or the Ahelani Building. Even so, they are not Resort Limited Common Elements.

- The parking stalls located in the basement of the Kahakai Building, the Makani Kai Building, and the Ahelani Building.
- The driveways and ramps within or leading to parking stalls located in the basement of the Kahakai Building, the Makani Kai Building, and the Ahelani Building. These are colored in yellow on the Condominium Map.
- The areas in the basement of the Kahakai Building colored in green or gray on the Condominium Map.
- Terrace No. 2 on the first floor of the Kahakai Building. It is colored yellow on the Condominium Map.
- The corridor leading from Terrace No. 2 to the corridor in the middle of the Kahakai Building. It is colored yellow on the Condominium Map.
- The telecom rooms located between stairway no. 2 and elevator no. 2 on all floors of the Kahakai Building. They are colored green on the Condominium Map.
- The electrical room on the first floor of the Kahakai Building. It is colored yellow on the Condominium Map.
- The elevator shown on the Condominium Map as elevator no. 4, the elevator lobbies for that elevator, and the stairway adjacent to those lobbies. They are colored yellow on the Condominium Map.
- The areas in the basement and all other floors of the Makani Kai Building colored in green on the Condominium Map, including without limitation, Terrace No. 1 on the first floor, the telecom rooms located between stairway no. B-2 and elevator no. B-2 on each floor, and the room that lies between elevator no. B-3 and electrical room no. 1 on the first floor through sixth floor of the Makani Kai Building.
- The access way to the portion of Apartment 101 located on the first floor of the Makani Kai Building. It is colored in yellow on the Condominium Map.
- The access ways to the trash chute colored in yellow on the Condominium Map located in the room that lies between elevator no. B-3 and electrical room no. 1 on the first floor through sixth floor of the Makani Kai Building.
- The areas in the basement and all other floors of the Ahelani Building colored in green on the Condominium Map, including but not limited to the telecom rooms and the room that lies between elevator no. C-1 and the electrical room of first floor through sixth floor of the Ahelani Building.
- The access ways to the trash chute and elevator no. C-1 colored in yellow on the Condominium Map on the first floor through sixth floor of the Ahelani Building.

- Any other areas colored in yellow on the Condominium Map.

**D. HALEKIPA LIMITED COMMON ELEMENTS.** "Halekipa Limited Common Elements" are Limited Common Elements appurtenant to all of the Commercial Apartments located in the Halekipa Building. Initially this consists of only Apartment 101.

**1) THINGS THAT ARE HALEKIPA LIMITED COMMON ELEMENTS.**

(a) Except as provided in subsection 5.4D.2), all Common Elements contained in or that are part of the Halekipa Building are Halekipa Limited Common Elements. This includes, for example, the following Common Elements to the extent that they are located within the Halekipa Building:

(1) The structural components of the Halekipa Building. This includes, among other things, all foundations, footings, floor slabs, girders, beams, supports, Apartment boundary and load-bearing walls and columns (except for the finishes on them and except as otherwise provided for the walls separating Commercial Apartments), and roofs.

(2) All of the following so long as they are not located within an Apartment or its Limited Common Elements: all lobby areas, stairways, elevators, hallways, elevator lobby areas, entrances, entry ways and exits of the Halekipa Building, all storage rooms, maintenance rooms, elevator machine rooms, mechanical rooms, electrical rooms, and trash rooms.

(3) All other apparatus and installations existing for common use, as described in Sections 5.3G and 5.3H, that serve only the Halekipa Building and that serve more than one Commercial Apartment or the Common Elements of the Halekipa Building.

(b) Without limiting Subsection 5.4D.1), the supporting columns and roof of the porte cochere are Halekipa Limited Common Elements.

**2) THINGS THAT ARE NOT HALEKIPA LIMITED COMMON ELEMENTS.** The following Common Elements are contained in or are part of the Halekipa Building. Even so, they are not Halekipa Limited Common Elements:

- The parking stalls located in the basement of the Halekipa Building.
- The driveways and ramps within or leading to parking stalls located in the basement of the Halekipa Building.
- The areas in the basement of the Halekipa Building colored in green or gray on the Condominium Map.
- The trash room in the basement of the Halekipa Building. It is colored yellow on the Condominium Map.

- The corridors of the basement of the Halekipa Building. They are colored yellow on the Condominium Map.
- The areas on the first floor of the Halekipa Building colored in green on the Condominium Map.
- Terrace No. 3 on the first floor of the Halekipa Building. It is colored yellow on the Condominium Map.
- The driveway and entryway beneath the porte cochere adjacent to Apartment 101. They are colored green on the Condominium Map.

**E. MASTER ASSOCIATION APARTMENT.** These Common Elements are Limited Common Elements of the Master Association Apartment:

- The Land and Improvements located within the boundaries of the Courtyard as designated on the Condominium Map. This does not include the Snack Bar Building. It also does not include the lanai surrounding the Snack Bar Building or the bridge leading from it to terrace no. 3. The lanai and bridge are colored green on the Condominium Map.
- The amenities located within the Courtyard. This includes, among other things, the waterfalls, water slide, slide mountain, swimming pool, koi pond, spa, pool decks, pool bathrooms, towel pavilion, and beach and pool showers.
- The tennis courts and tennis pavilion.
- The fitness center, late departure guest lounge, bathrooms, and locker rooms in the basement of the Kahakai Building. These are colored gray on the Condominium Map.
- The pool laundry room, water feature equipment room, and the water feature pump room in the basement of the Halekipa Building. These are colored gray on the Condominium Map.
- All Common Element yards, grounds, walkways, walkway railings, waterfalls, ponds, gardens, decorative rocks, and other landscaping not located in the Shoreline Sethack Area.
- All apparatus and installations, as described in Sections 5.3G and 5.3H, that serve only the Master Association Apartment or any of its Limited Common Elements as listed above.

**F. APARTMENT 101.** These Common Elements are Limited Common Elements appurtenant to and are set aside for the exclusive use of Apartment 101:

- The driveway and entryway beneath the porte cochere adjacent to Apartment 101. This does not include the roof and supporting columns.

- Terrace nos. 1, 4, 5, and 6 on the first floor of the Halekipa Building. They are colored green on the Condominium Map.
- Stairway nos. 7 and 7a and ramp no. 2 leading from the terrace to the Courtyard. They are colored green on the Condominium Map.
- The lanai surrounding the Snack Bar Building and the bridge leading from it to terrace no. 5. They are colored green on the Condominium Map.
- The telecom rooms located between stairway no. 2 and elevator no. 2 on all floors of the Kahakai Building.
- The areas in the basements of the Halekipa Building and the Kahakai Building colored green on the Condominium Map.
- The attic of the Halekipa Building.
- The telecom rooms on the basement through sixth floors of the Makani Kai Building. These are colored in green on the Condominium Map.
- The other areas of the basement through sixth floors of the Makani Kai Building that are colored in green on the Condominium Map.
- The telecom rooms on the basement through sixth floors of the Ahelani Building. These are colored in green on the Condominium Map.
- The other areas of the basement through sixth floors of the Ahelani Building that are colored in green on the Condominium Map.
- The terrace and enclosed grounds located on the Southeast corner of the Halekipa Building and colored in green on the Condominium Map.

#### 6. COMMON INTEREST.

Each Apartment comes with an undivided percentage interest, called the "*Common Interest*", in all Common Elements and for all other purposes, including voting.

Except as otherwise provided in this Declaration, an Apartment and its Common Interest cannot be separated. In legal terms, the Common Interest is "appurtenant to" the Apartment.

The initial Common Interest for each Apartment is listed in Exhibit B. However, an Apartment's Common Interest may be adjusted pursuant to Section 29. This might happen, for example, when the Developer creates New Apartments.

Except as otherwise provided by law or in this Declaration or the Bylaws, the common profits of the Project will be distributed among, and the Common Expenses will be charged to the Apartment Owners, including the Developer, in

proportion to the Common Interest appurtenant to their Apartments.

#### 7. EASEMENTS.

**7.1 CREATION OF EASEMENTS.** "Easement" is a legal term. In general, it refers to the right of one person to use property in the possession of someone else. The Property is subject to (a) any recorded easements, (b) the exclusive easements to use the Limited Common Elements, (c) any easements granted or reserved in or pursuant to the Ka'anapali North Beach Documents, and (d) any easements granted or reserved in or pursuant to the Declaration of Merger. In addition, the Apartments and Common Elements also have and/or are subject to the following easements:

**A. EASEMENTS IN THE COMMON ELEMENTS.** Each Apartment has these non-exclusive easements:

1) An easement to use the Common Elements designed for such purposes for access to and from, utility services for, and support, maintenance and repair of the Apartment and its Limited Common Elements.

2) An easement in the other Common Elements for use according to their intended purposes (but this right is subject to the exclusive use of the Limited Common Elements as provided in this Declaration).

3) An easement in all other Apartments of the building(s) for support.

#### **B. EASEMENTS FOR ENCROACHMENT.**

1) If either of these things happens:

(a) Any part of the Common Elements now or later encroaches on any Apartment or any Limited Common Element, or

(b) Any Apartment or Limited Common Element now or later encroaches on the Common Elements or any other Apartment or Limited Common Element,

then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues.

2) If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Project, minor encroachments of any parts of the Common Elements or Apartments or Limited Common Elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

**C. EASEMENT FOR ASSOCIATION ACCESS.** The Association has the right to enter any Apartments and/or Limited Common Elements from time to time. This right

cannot be revoked. It may be exercised by the Board or its Managing Agent and by anyone authorized by them. They may use this right only as follows:

1) They may enter during reasonable hours as may be necessary or appropriate to operate or maintain the Project or to inspect, repair, paint, resurface, alter, add to, maintain, install, or replace any Common Elements. Requests for entry must be made in advance. The entry must occur at a time that is reasonably convenient to the Owner or occupant.

2) They may also enter at any time to make emergency repairs necessary to prevent damage to any Apartment or Common Element or injury to any person. No advance notice is required. It is not necessary for the Owner or any other occupant to be present at the time of entry.

**D. ACCESS CORRIDOR.** The Apartments located in the Kahakai Building have a non-exclusive right and an easement to enter the Project through the porte cochere (subject to the right of the Owner of Apartment 101 to control the flow of traffic) and to use a corridor on the first floor of the Halekipa Building leading from the porte cochere to Terrace no. 3 for the purpose of going to and from the Apartments.

1) The Owner of Apartment 101 has the absolute right to designate the location of the access corridor, and to change the lobby and the location of the access corridor, so long as there is always a corridor leading from the porte cochere to Terrace no. 3.

2) If the Owner of Apartment 101 requests it, the Owners of Apartments in the Kahakai Building must pay the operating expenses of the use of the access corridor. This includes a share of the Common Expenses, real property taxes, utilities, and all other expenses charged to or incurred by the Owner of Apartment 101. However it does not include Mortgage payments. The Owners of Apartments in the Kahakai Building will pay a share equal to the total amount of the expenses multiplied by a fraction equal to the number of square feet used for the access corridor divided by the total number of square feet for Apartment 101. The Association will collect this amount from the Owners of Apartments in the Kahakai Building as a Common Expense and will pay it to the Owner of Apartment 101.

**E. CHECK-IN DESK.** In the event that the Developer, or a company related to the Developer, is no longer the Managing Agent, then upon request by the Association, the Owner of Apartment 101 must make available to the Association an area of at least one hundred fifty (150) square feet for use as a check-in and check-out desk. This area may be used by the Association only for check-in and check-out purposes and related purposes.

1) The check-in and check-out desk may not be used for the promotion, sale, or resale of Vacation Ownership Interests or other time share interests or interests in any fractional ownership plan or for any other purpose prohibited by

Section 9.4. This restriction is intended to benefit the Developer alone and it will apply in every case unless the Developer gives its written consent in a recorded document.

2) The Owner of Apartment 101 has the absolute right to select the location for the check-in and check-out desk, and may change the location from time to time.

3) The Owner of Apartment 101 must provide an access corridor from the porte cochere to the check-in and check-out desk. It has the absolute right to designate the location of the access corridor, and to change the lobby and the location of that corridor, so long as there is always a corridor leading from the porte cochere to the check-in and check-out desk.

4) The Association must pay to the Owner of Apartment 101 all expenses of the check-in and check-out desk and the corridor leading from to it from the porte cochere. This includes a share of the Common Expenses, real property taxes, utilities, and all other expenses charged to or incurred by the Owner of Apartment 101. However it does not include Mortgage payments. The Association's share will be equal to the total amount of the expenses multiplied by a fraction equal to the number of square feet used for the check-in and check-out desk and access corridor divided by the total number of square feet for Apartment 101. The Association's share will be a Common Expense.

**F. EASEMENT FOR PUBLIC USE; PARK.** The Shoreline Setback Area is subject to an existing easement. This easement requires that the Shoreline Setback Area remain open and available to the public as open space, for recreational access and passive recreational uses, and for Native Hawaiian use for traditional and customary uses of the shoreline and near-shore ocean waters. The Native Hawaiian uses include fishing, diving, ho'okupu ceremonies (ritual prayers on the shoreline) and gathering. The terms and conditions of that easement may be further defined or changed by appropriate documents recorded by the Association pursuant to Section 7.3A, or by the Developer pursuant to Sections 7.4, 26 and 27. In addition, the Project is located adjacent to a parcel of land currently owned by a private landowner but open to the public for beach access and park use. A road crossing the Project is used for access to that park. Each Interested Person understands, acknowledges and accepts that the use of these easements may result in noise, gathering of crowds, security risks, and related inconveniences. Despite this, each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have, now or in the future, against the Developer and/or the Association, and each of their Representatives, and their successors and assigns, arising from or with respect to the use of these easements.

**G. EASEMENT FOR COMMERCIAL APARTMENT EMPLOYEES, CUSTOMERS AND GUESTS.** Each Commercial Apartment has an appurtenant easement under which the Owner's Representatives, vendors, licensees, and invitees have the right, for the purposes of the business conducted in the

Commercial Apartment or its Limited Common Elements to do these things:

1) To come onto the Project using the Common Elements intended for access to and from any nearby roads, streets or highways.

2) To park motor vehicles in any unassigned parking stalls.

3) To make deliveries using any delivery area and any Common Elements connecting the delivery area to the Commercial Apartment or its Limited Common Elements.

4) To go to and from the Apartment and its Limited Common Elements using the walkways and other Common Elements intended for such purposes.

5) For casual use (such as an after-dinner stroll) of the Common Element pathways and walkways of the Project located outside of the buildings, including but not limited to the pathways and walkways within the Master Association Limited Common Elements and the Shoreline Setback Area. This right is subject to any reasonable limitations set by the Board.

6) To use the Common Elements otherwise as may be reasonably necessary in connection with the ordinary conduct of business operations in the Commercial Apartment and/or its Limited Common Elements.

#### H. EASEMENT FOR MASTER ASSOCIATION APARTMENT.

1) The Master Association and its Representatives, licensees, and invitees (including, for example, the Master Association Manager), have a non-exclusive easement over, under and upon the Common Elements of the Project as necessary or convenient to use, operate, maintain, repair, paint, resurface, alter, add to, install, or replace the Master Association Apartment or its Limited Common Elements or any Master Association Amenities located on the Project.

2) In addition to the easements described in Section 7.1G, the Master Association Apartment has an appurtenant easement under which (i) the Master Association, (ii) Master Association Members, (iii) occupants of property participating in the Master Association, and (iv) each of their guests have the right to do these things:

(a) They may come onto the Project through the Common Elements intended for access to and from any nearby roads, streets or highways.

(b) They may park motor vehicles in any unassigned parking stalls.

(c) They may go to and from (i) the Master Association Apartment and/or its Limited Common Elements, and (ii) the Shoreline Setback Area, the beach, and the ocean.

(d) They may use the Shoreline Setback Area and any other Common Element areas adjacent to the beach intended for use as picnic areas, play areas, recreation areas, or otherwise available for use by Owners for outdoor recreational activities, and any facilities located on them. This includes, for example, any showers, restrooms, pedestrian walkways, trails, bike paths and other passageways.

3) The use of these rights is subject to the covenants, conditions and restrictions contained in the Master Association Documents, the SMA Permits, and the Shoreline Setback Declaration.

4) Each Interested Person understands, acknowledges and accepts that the easements provided in this Section 7.1H, and the use of them, may result in increased traffic, noise, gathering of crowds, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions arising from or with respect to the proper use of this easement that the Interested Person may have, now or in the future, against (i) the Master Association and its Representatives, licensees, and invitees, (ii) the Master Association Manager and its Representatives, licensees, and invitees, and (iii) the Master Association Members and occupants of property participating in the Master Association, (iv) the guests of any of the persons listed in items (i) to (iii), and (v) the successors and assigns of anyone listed in items (i) to (iv).

I. EASEMENT FOR SPECIAL EVENTS. The Developer and its Representatives, licensees and invitees may use the Limited Common Elements of the Master Association Apartment for the purpose of conducting educational, cultural, entertainment or sporting events, and other activities of general community interest. These events may occur at times they deem appropriate in their sole discretion. However, no such events may be held before 8:00 a.m. or after 10:00 p.m. The rights under Section 7.1G may be used in connection with any such events. The Developer must reimburse the Master Association for its costs of such activity as provided in the Master Association Documents. Each Interested Person understands, acknowledges and accepts that the use of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have, now or in the future, against the Developer, the Master Association, and each of their Representatives, licensees, invitees, successors and assigns and arising from or with respect to the proper use of this easement.

#### J. DEVELOPER'S EASEMENT FOR SALES ACTIVITIES.

1) The Developer and its Representatives, licensees, and invitees have the exclusive right and an easement to conduct extensive marketing and sales activities on the Common Elements (including but not limited to the Resort Limited Common Elements and the Limited Common Elements of the Master Association Apartment) and from any Apartment

owned by it. This right includes but it is not limited to the following rights:

(a) The right to permit purchasers and prospective purchasers and their family members and guests, to come onto the Project through the Common Elements intended for access to and from any nearby roads, streets or highways.

(b) The right to permit purchasers and prospective purchasers to park motor vehicles in any unassigned parking stalls.

(c) The right to show the Project (including but not limited to model Apartments, the Master Association Amenities, the Shoreline Setback Area, and the beach) or any Adjacent Project to purchasers and prospective purchasers (who will have a right of access for these purposes).

(d) The right to use Apartments owned by the Developer as model Apartments, sales, management, and/or administrative offices.

(e) The right to establish and operate tour or activity desks or other businesses intended to promote sales from any Apartment owned by the Developer or its Limited Common Elements, or from any booth that the Developer has the right to use pursuant to Section 7.4A or pursuant to the Master Association Documents.

(f) The right to use banners, signs or other extensive sales displays and activities at the Project.

2) This easement applies to activities conducted in connection with the initial sale and/or any resale of (i) one or more Apartments and/or Vacation Ownership Interests in the Project, and (ii) one or more apartments, time share interests and/or fractional ownership interests in any Adjacent Project.

3) Each Interested Person understands, acknowledges and accepts that the easements provided in this Section 7.1J, and the use of them, may result in increased traffic, noise, and related inconveniences. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions such person may have, now or in the future, against the Developer and its Representatives, licensees, invitees, successors and assigns and arising from or with respect to the use of this easement.

**K. DEVELOPER'S EASEMENTS FOR ACCESS.** The Developer and its Representatives, licensees, invitees (including any governmental officials that the Developer may invite), successors and assigns, have an easement over, under and upon the Project, including the Common Elements, Limited Common Elements, and any Apartment, as may be reasonably necessary or convenient to complete any Improvements and to correct any defects and other punchlist items in the Common Elements or any Apartment or to use any of the other Developer's Reserved Rights. The easement to complete Improvements or correct defects or punchlist items ends, as to any particular phase or

increment of the Project, sixty (60) months after the later to occur of (i) the recording date of the first deed of an Apartment or Vacation Ownership Interest in that increment or phase of the Project; or (ii) the "date of completion" (as the term is used in Chapter 507, Part II, Hawaii Revised Statutes) of the Improvement to be completed or corrected.

**L. EASEMENTS FOR THE VACATION OWNER'S ASSOCIATION.** Any Vacation Owners Association and its Representatives (including, for example, its plan manager), licensees, and invitees, have a non-exclusive easement over, under and upon the general Common Elements of the Project. They also have the right to use any Resort Limited Common Elements. This easement does not include the right to use the Limited Common Elements of any Commercial Apartment (for example, the Master Association Apartment).

1) They may only use this easement as necessary or appropriate for these purposes:

- The administration, management or operation of the Vacation Ownership Plan.
- The use, maintenance or servicing of Apartments included in the Vacation Ownership Plan.
- The use of any easements reserved or granted in the Vacation Plan Documents that allows them to use the Apartments included in the Vacation Ownership Plan.

2) Under no circumstances, however, may this easement be used for either of these purposes:

(a) To sell or promote the sale of Vacation Ownership Interests or other time share interests, or interests in any fractional ownership plan.

(b) To operate a tour or activity desk or any other business intended to sell or promote the sale of Vacation Ownership Interests, time share interests, or interests in a fractional ownership plan.

Any such activity is prohibited by and would violate Section 9.4.

3) This easement applies only to Vacation Owners Associations established within twenty (20) years after the date that this Declaration is recorded.

**M. EASEMENTS FOR USE OF HOUSEKEEPING FACILITIES.** Without limiting the generality of Section 7.1L, the Vacation Owners Association and its Representatives (including, for example, its plan manager), licensees, and invitees, have a non-exclusive easement (in common with the Association) to use the housekeeping rooms behind elevator no. 4 on the second to the sixth floors of the Kahakai Building, any housekeeping rooms that are general Common Elements and that are located on the basement to sixth floors of the Makani Kai Building and the Ahelani Building, and any linen and storage closets that are general Common Elements and that are

located on the basement to the sixth floors of the Kahakai Building, the Makani Kai Building and the Ahelani Building. They may use the housekeeping rooms to store linens, cleaning supplies and equipment, and for purposes related to providing housekeeping services to apartments in the Vacation Ownership Plan. The Association will provide keys to the Vacation Owners Association and its housekeeping staff. If necessary, the Association will modify these facilities so that the Association may keep its supplies and equipment separate from those of the Vacation Owners Association. For example, the Association may install partitions, locks, or similar security measures. The Association may require that the Vacation Owners Association reimburse the Association for a reasonable share of the costs to use, maintain, repair and replace the housekeeping rooms.

**N. EASEMENT FOR USE OF TELEPHONE ROOMS.** In the event that the Developer, or a company related to the Developer, is not the Managing Agent, then the Association will have a non-exclusive easement (in common with Apartment 101) for use of the telecom rooms located (a) between stairway no. 2 and elevator no. 2 on all floors of the Kahakai Building, (b) between stairway no. B2 and elevator no. B2 on all floors of the Makani Kai Building, and (c) on all floors of the Ahelani Building, for the purpose of providing any necessary telephone service to Resort Apartments located in the Kahakai Building, the Makani Kai Building, or Ahelani Building, respectively. In such case, all costs of maintenance and repairs of such rooms shall be divided equally between Apartment 101 and the Association. However, if the Owner of Apartment 101 is no longer using the telecom rooms, then the Association will pay all costs to maintain and repair those rooms.

**O. RIGHTS OF OCCUPANTS.** Anyone who has the right or permission to occupy an Apartment also has the right and a license to use the general Common Elements, and any Limited Common Elements of the Apartment occupied, to the same extent that the Owner would have the right to do so. This right of use and license remains in effect only during the time period when the person has the right to occupy the Apartment.

1) This includes, for example, anyone who rents or leases an apartment (subject to any limits contained in any rental agreement or lease with the Owner).

2) It also includes (i) a Vacation Owner who occupies an Apartment as allowed by the Vacation Plan Documents, and (ii) anyone else (an "Exchange User") whose use of an Apartment is arranged through an exchange program or is otherwise confirmed by the Vacation Association, the Club or the Network. Of course the rights of any Vacation Owner or Exchange User are subject to any limits contained in the Vacation Plan Documents. In addition to any other exchange program, the Club and the Network are expressly declared to be exchange programs for purposes of this Section.

**P. EASEMENT FOR BELLHOP SERVICE.** The Owner of Apartment 101 has the exclusive right (but no duty) to provide bellhop services to the occupants of the Resort Apartments. For

this purpose, the Owner and its Representatives and licensees have an easement across the Common Elements of the Project, and the Limited Common Element corridors, hallways, stairways, elevators, and other means of access within each building containing Resort Apartments. Bellhop activity must not be conducted in a way that unreasonably disturbs the occupants of the Resort Apartments. This easement is appurtenant to Apartment 101.

**Q. EASEMENT FOR ROOM SERVICE.** The Owner of Apartment 101 has the exclusive right (but no duty) to provide room service to the Resort Apartments or to arrange with someone else to provide room service. For this purpose, the Owner and its Representatives and licensees have an easement to use the Common Elements of the Project, and the Limited Common Element corridors, hallways, stairways, elevators, and other means of access within each building containing Resort Apartments, to provide room service to the occupants of the Resort Apartments. Room service must not be provided in a way that unreasonably disturbs the occupants of the Resort Apartments. Regular sweeps of the hallways and corridors must be made at reasonable intervals or times to remove carts, trays, dishes, and so on, placed in the hallways or corridors by occupants. This easement is appurtenant to Apartment 101.

**R. EASEMENT FOR VENDING MACHINES, ETC.** The Association has the exclusive right and an easement to install, maintain, operate, stock and restock, service, repair, and replace, cold drink, hot drink, and other vending machines, but not electronic game machines, in the areas of the Kahakai Building, the Makani Kai Building, and the Ahelani Building, shown on the Condominium Map as suitable for vending machines. The Association may not install the machines in a way that violates any fire or safety codes that apply to the Project. The machines may not unreasonably disturb the Apartment occupants.

**S. EASEMENT FOR VALET PARKING SERVICE.** The Owner of Apartment 101 has an exclusive right (but not an obligation) to provide valet parking services to the Apartment occupants and their guests, and to customers and other invitees of the Commercial Apartments. This includes the right for the Owner of Apartment 101 and its Representatives and licensees to use the Common Elements of the Project, and the porte cochere and semi-circular driveway fronting the Halekupa Building, to provide valet parking services. This easement includes the right to control the flow of vehicles through the port cochere and semi-circular driveway, and the loading, unloading, and parking of vehicles in the semi-circular driveway. If the Owner of Apartment 101 requests it, the Board must designate thirty (30) of the unassigned parking stalls for exclusive use as valet parking stalls. The Board may set aside any greater number of stalls that the Board reasonably determines to be necessary and, during the Development Period, as the Developer approves. This easement is appurtenant to Apartment 101.

**T. EASEMENT FOR CHILDREN'S PROGRAMS.** The Developer and the Master Association have the exclusive right

and an easement (but no duty) to operate one or more children's programs. They may make these programs available to children of (i) Apartment Owners and occupants, (ii) other Master Association Members and occupants of their property, (iii) potential Master Association Members while they are attending a sales presentation, and (iv) guests of any of these persons. The Developer or the Master Association may contract with someone else to operate such a program for them. The programs may involve use of the Master Association Amenities, the Project amenities, the Shoreline Setback Area (subject to the requirements of the SMA Permits) and the beach. Each Interested Person understands, acknowledges and accepts that the use of this easement may result in increased noise and other nuisances. Each Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions he or she may have arising from or with respect to the proper use of this easement, now or in the future, against: (1) the Developer and its Representatives, licensees, invitees, successors and assigns, and (2) the Master Association and its Representatives, licensees, invitees, successors and assigns.

#### U. EASEMENT FOR SNACK BAR OPERATIONS.

1) The Owner of the Apartment 101 and its Representatives and licensees have the following rights and easements:

(a) The right and an easement to place up to thirty (30) tables, with chairs and umbrellas, in the Courtyard.

(b) The exclusive right and an easement to provide food and beverage services to those tables and to customers elsewhere around the Courtyard, including the right to employ waiters, waitresses, busboys, etc., to do so.

(c) The right and an easement across the Courtyard and the Common Elements to transport food, beverages, supplies, glasses, dishes, and so on, to and from Apartment 101.

(d) The right and an easement to use the restrooms beneath the slide mountain. This includes, for example, use by employees, waiters, waitresses, busboys, etc., while they are working.

2) When using these rights and easements, the Owner of Apartment 101 has these duties:

(a) It must keep its tables, chairs, and umbrellas in a neat and attractive condition at all times.

(b) It must pick up and remove all of its glasses, trays, dishes, trash, and so on in a timely fashion so as to maintain the premises in a good and orderly condition at all times.

(c) It must indemnify (which means that it agrees to pay) the Association, the Developer, and the Master Association from any claim, loss or damage resulting from any failure to do these things.

3) The easements in this Section do not obligate the Owner of Apartment 101 to provide food and beverage service or any related services but permit it to do so. These easements are appurtenant to Apartment 101.

V. EASEMENTS FOR APARTMENT 101. The Owner of Apartment 101 has a non-exclusive right of access to and from its Limited Common Elements (such as the telecom rooms) in the Kahakai Building, the Makani Kai Building, and/or the Ahelani Building. For this purpose, the Owner and its Representatives and licensees have an easement across the Resort Limited Common Element corridors, hallways, stairways, elevators, and other means of access to and from its Limited Common Elements. This easement is appurtenant to Apartment 101.

7.2 DEVELOPER'S EASEMENT FOR NOISE, DUST, ETC. The Developer and its Representatives, licensees, and invitees, have an easement over, under and upon the Project and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the use of the easements it has under this Section 7, (b) the development of any Adjacent Parcel, or (c) the use of the Developer's Reserved Rights or any other rights of the Developer described elsewhere in this Declaration. Each Interested Party (i) understands, acknowledges and accepts that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that he or she may have, now or in the future, against the Developer and/or its Representatives, licensees, invitees, successors and assigns. Each Owner and other Interested Person assumes the risk of any property damage, personal injury or loss in property value arising from these activities. The rights of the Developer under this Section 7.2 are Developer's Reserved Rights.

#### 7.3 GRANT OF ADDITIONAL EASEMENTS AND MODIFICATION OF EASEMENTS BY THE ASSOCIATION.

A. EASEMENTS THROUGH COMMON ELEMENTS. The Association has the right, exercisable by the Board, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose. This includes, for example:

1) Any purpose necessary to the operation, care, upkeep, maintenance or repair of any Apartment, the Common Elements or any Limited Common Element.

2) Any easements for utilities or for any public purpose. This would include, for example, beach access, pedestrian walkways, stairs, ramps, or other passageways, or restroom facilities.

During the Development Period, the Association must have the written consent of the Developer before it can do any of these things.

**B. EASEMENTS THROUGH ADJACENT LANDS.** The Association has the right, exercisable by the Board, to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project, for any reasonable purpose. This includes, for example, any of the purposes mentioned in Subsection 7.3A. During the Development Period, the Association must have the written consent of the Developer before it can do any of these things. The Board may also use these rights if the owner of property that is subject to an easement in favor of the Land or the Project uses any right he or she has to require a change in the location of that easement. The Developer's consent is not required in this case.

#### **7.4 GRANT OF ADDITIONAL EASEMENTS AND MODIFICATION OF EASEMENTS BY THE DEVELOPER.**

The Developer hereby reserves, as additional Developer's Reserved Rights, the following rights:

**A. EASEMENTS THROUGH COMMON ELEMENTS.** The Developer reserves the right to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient to the use of any of the Developer's Reserved Rights, or for any reasonable purpose. This includes, but is not limited to:

1) Any purpose necessary to the operation, care, upkeep, maintenance or repair of any Apartment, the Common Elements or any Limited Common Element.

2) Any easements for utilities or for any public purpose. This would include, for example, beach access, pedestrian walkways, stairs, ramps, paths, trails, bikeways, or other passageways, or restroom facilities.

3) Any easements needed by the Developer and its Representatives, licensees and invitees, to establish, operate and maintain in the Shoreline Setback Area no more than three beach or beach side (meaning on the parts of the Project near the beach) concession stands. The stands may be used only for these purposes:

(a) They may be used for sales of food and/or beverages, rental and storage of portable beach cabanas, surfboards, boogie boards, boats, jet skis, snorkels, fins, bicycles, or other recreational equipment.

(b) They may also be used for the operation by the Developer of tour or activity desks or other businesses intended to promote the sales of Apartments or Vacation Ownership Interests in the Project or Apartments or time share interests or fractional ownership interests in any Adjacent Project.

The easement under this Subsection 7.4A.3) includes the right to connect the concession stands with utility services. However, each month the Developer must reimburse the Association in an amount equal to the estimated cost of utility services. Any concession stands must be built, set up, operated and maintained in accordance with the SMA Permits, the Shoreline Setback Declaration, and all laws that apply. The Developer must pay all costs to build, set up, operate and maintain any concession stands.

#### **B. EASEMENTS THROUGH ADJACENT LANDS.**

1) The Developer also reserves the right to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project for any reasonable purpose. This includes, for example, any of the purposes mentioned in Subsection 7.4A, above. The Developer may also use these rights if the owner of property that is subject to an easement in favor of the Land or the Project uses any right he or she has to require a change in the location of that easement.

2) The Developer also reserves the right to accept any easements or licenses over, under, across or through any part of the Land being deleted from the Project pursuant to Section 21. This may include, for example easements for access to and from the Project. These easements will be Common Elements of the Project.

**C. CONSENT OF OTHER PERSONS.** The Developer may use its reserved rights in this Section 7.4 without the consent or joinder of anyone else. This is discussed in more detail in Section 28. To the extent that the Developer determines that the consent or joinder of any Interested Person may be required or desirable in order to validate any act or thing done by the Developer using its reserved rights, such consent or joinder may be accomplished by power of attorney or otherwise as provided in Section 28.

#### **8. ALTERATION AND TRANSFER OF INTERESTS.**

**8.1 COMMON INTERESTS AND EASEMENTS.** Except as otherwise provided in this Declaration, an Apartment's Common Interest and any easements in favor of the Apartment, will each have these characteristics:

**A.** It will have a permanent character.

**B.** It cannot be changed without the consent of all Owners of affected Apartments. This consent must be expressed in an amendment to this Declaration. The amendment must be recorded. It must also contain the consent of each Lender who has a first Mortgage on an affected Apartment but only if:

1) The Lender is listed in the Association's record of ownership; or

2) The Lender has given the Board notice of its interest through the Secretary of the Association or the Managing Agent.

C. It cannot be separated from the Apartment to which it is appurtenant.

D. It will automatically be transferred or encumbered with the Apartment even if the deed or other encumbrance document does not say so.

8.2 PARTITION. "Partition" is the right of co-owners to ask a court to divide commonly owned property into separate parts for each co-owner. If the property cannot legally be divided, a court may order the property sold and divide the money from the sale among the co-owners. Except as otherwise provided in this Declaration, the Common Elements shall remain undivided, and no right shall exist to partition or divide any part of them except as provided by the Condominium Property Act. Without limiting Section 514A-21(a) of the Hawaii Revised Statutes, no partition or division may take place without the prior written consent of each Lender holding a first Mortgage on an Apartment or Vacation Ownership Interest.

## 9. PURPOSES AND USE

### 9.1 RESORT APARTMENTS.

A. The Resort Apartments may be occupied and used as a permanent or temporary residence or for hotel or transient vacation rental purposes.

**B. NO MATTER WHAT ELSE THE CONDOMINIUM DOCUMENTS SAY, THE RESORT APARTMENTS MAY BE USED AS TIME SHARE UNITS IN A TIME SHARE PLAN IF THE DEVELOPER CREATES THE PLAN OR IF THE DEVELOPER AUTHORIZES OR OTHERWISE CONSENTS TO THAT USE IN A RECORDED DOCUMENT.**

C. The Resort Apartments may also be used in a fractional ownership plan if the Developer creates the plan or if it authorizes or consents to that use in a recorded document. A "fractional ownership plan" is any plan or program, other than a time share plan, in which the use, occupancy, or possession of one or more Resort Apartments circulates among various persons. Under the current definition of "time share plan" contained in the Time Share Act, a fractional ownership plan would contemplate circulation for a period of sixty or more days in any year, for any occupant.

D. The following rules apply except where this Declaration allows the Developer to do otherwise:

1) The Resort Apartments and their Limited Common Elements must not be used to carry on any business, trade or profession.

2) The Resort Apartments and their Limited Common Elements must not be used for sales of any articles or goods.

3) No Apartment Owner, lessee, tenant or other occupant of a Resort Apartment can bring clients, customers or

other business invitees onto the premises on a regular basis for business purposes.

E. The Apartment Owners have the absolute right to sell, lease, rent or otherwise transfer their own Apartments. This right is subject to the restrictions in this Section 9.1. It is also subject to all other provisions of this Declaration and the Bylaws.

### 9.2 COMMERCIAL APARTMENTS.

A. The Commercial Apartments are established with the intent that business be conducted in them. Accordingly, the Commercial Apartments may be operated and used for any purpose permitted by law. For example, the Commercial Apartments may be used as a permanent or temporary residence, for hotel or transient vacation rental purposes, as administrative offices, restaurants, bars, liquor stores and other retail stores, health spas, fitness club, conference center, sales and marketing offices, and activity desks or offices.

B. The Owner of a Commercial Apartment has the absolute right to rent or lease all or any part of it and/or its Limited Common Elements for any length of time and upon any terms and conditions that the Owner chooses. The Owner has the right to keep the rent and any other amounts paid pursuant to the rental agreement or lease.

C. The Owner of any Commercial Apartment may contract with various providers of goods and services, such as food and beverage operators, retail stores and other vendors, to provide goods and services at the Project. The Owner may retain any compensation paid to the Owner in return for permitting that vendor to use space at the Project, whether that space is inside the Owner's Apartment or its Limited Common Elements. An Owner's rights under this Subsection are subject to the exclusive right of the Snack Bar Apartment under Section 7.1U and the exclusive right of Apartment 101 under Section 7.1Q, and any other exclusive rights granted or reserved in this Declaration.

**D. NO MATTER WHAT ELSE THE CONDOMINIUM DOCUMENTS SAY, ANY PART OF APARTMENT 101 LOCATED IN A BUILDING CONTAINING RESORT APARTMENTS (AND ANY APARTMENTS THAT WERE ORIGINALLY PART OF APARTMENT 101 AND THAT ARE LOCATED IN A BUILDING CONTAINING RESORT APARTMENTS) MAY BE CONFIGURED FOR USE AS RESORT APARTMENTS AND THEN USED AS TIME SHARE UNITS IN A TIME SHARE PLAN OR UNITS IN A FRACTIONAL OWNERSHIP PLAN IF THE DEVELOPER CREATES THE PLAN OR IF THE DEVELOPER AUTHORIZES OR OTHERWISE CONSENTS TO THAT USE IN A RECORDED DOCUMENT.** During any such use, Section 9.1 instead of this Section 9.2, will govern the use of those parts of Apartment 101, or formerly part of Apartment 101, being used for time

sharing or fractional ownership purposes. It will be as if they were Resort Apartments.

E. Any amendment to this Section 9.2 and any amendment to the Condominium Documents that would limit or interfere in any way with the use of a Commercial Apartment or its Limited Common Elements, or with access to or from the Commercial Apartment or its Limited Common Elements, will not be effective without the written consent of the Owner of that Apartment.

**9.3 USE OF THE COMMON ELEMENTS.** Subject to the rights reserved by the Developer elsewhere in this Declaration or in the Bylaws:

A. Each Apartment Owner may use the Common Elements for the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Apartment Owners. This right is subject to the following:

1) The exclusive use of the Limited Common Elements as provided in this Declaration.

2) The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514A-13(d) of the Condominium Property Act. However, no such lease, use or change in use may be made before the Development Period ends unless the Developer consents to it in writing.

3) The right of the Developer to change the use of or otherwise deal with the Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

B. Each Owner of a Commercial Apartment may operate and use any Limited Common Elements of that Apartment for any purpose permitted by law and by Section 9.2. If a Limited Common Element is appurtenant to more than one Commercial Apartment then these rules apply:

1) The Owners of those Commercial Apartments may operate and use that Limited Common Element for any purpose permitted by law and by Section 9.2.

2) The Owners of at least seventy-five percent (75%) of the Common Interests for all of the Apartments to which that Limited Common Element is appurtenant have the right to choose, and to change, the use of that Limited Common Element.

An Owner has the right to keep all revenues generated by any business that the Owner operates on the Limited Common Elements of his or her Commercial Apartment.

C. Regardless of anything else stated in the Condominium Documents, neither the Board nor the

Association has any right to change the use of or to lease or otherwise use any Limited Common Element of a Commercial Apartment. The only exception is when the Owners of all Apartments to which a Limited Common Element is appurtenant give their written consent in advance.

D. Regardless of anything else stated in the Condominium Documents, neither the Board nor the Association has any right, without first getting the written consent of the Owner of each Commercial Apartment affected, to obstruct the entrance to, or the visibility of any signage, notice, picture, placard, poster, or other advertising matter pertaining to or posted inside of any Commercial Apartment. However, any such signage and so on that is visible from outside of the Apartment must be consistent with a first class destination resort.

**9.4 LIMITS ON USE OF THE APARTMENTS AND COMMON ELEMENTS.** Notwithstanding the provisions of Sections 9.1, 9.2, and 9.3, no Apartment Owner, lessee, tenant, occupant, or other Interested Person can use the Project or any part of it:

- For the promotion or sale of Vacation Ownership Interests, other time share interests, or interests in a fractional ownership plan, whether directly or indirectly, or
- For the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of Vacation Ownership Interests, time share interests, or interests in a fractional ownership plan.

These restrictions are intended to benefit the Developer alone and they will apply in every case unless the Developer gives its written consent in a recorded document. Of course, these restrictions do not apply to the Developer. It has the right to use its Apartments and the Developer's Reserved Rights for the promotion and sale of Vacation Ownership Interests, other time share interests and fractional ownership interests.

**9.5 CHANGES TO PROJECT APPEARANCE.** Owners are not allowed to change or cause a change to the exterior appearance of the Project unless they have the prior written consent of either the Board or the Managing Agent. This rule applies even though some of the Common Elements are Limited Common Elements of certain Apartments. This rule does not apply to:

A. The Developer when using the Developer's Reserved Rights, or

B. The Master Association Apartment when acting as permitted by the Master Association Documents and Section 17.2A.1)(b).

The Board has the right to change the exterior appearance of the Project. During the Development Period, however, the Board cannot do so without the Developer's written consent. Nobody is allowed to change the appearance of the Project in a way that is not consistent with a first class destination resort.

## **9.6 MAINTENANCE AND REPAIR OF APARTMENTS AND LIMITED COMMON ELEMENTS.**

A. Each Owner must keep the interior of his or her Apartment, and its Limited Common Elements, in good order and repair, and in a condition consistent with a first class destination resort. This includes not just the walls, windows, and so on but also includes all plumbing, electrical and other fixtures and equipment that are part of the Apartment or its Limited Common Elements. The Board, however, will provide for periodic resurfacing and other routine maintenance of parking stalls. This does not relieve an Owner from the obligation to pay for damages beyond normal wear and tear to his or her parking stall.

B. The Owner of a Commercial Apartment has the right to make decisions on repairs or changes to its Limited Common Elements. If a Limited Common Element is appurtenant to more than one Commercial Apartment then the Owners of at least seventy-five percent (75%) of the Common Interests for all of those Apartments have the right to make decisions on repairs and changes to it. These rights of the Commercial Apartment Owners are subject to the requirements of Sections 9.5 and 9.6A, and any additional provisions contained in the Bylaws.

**9.7 DEVELOPER'S RIGHTS OF USE.** Regardless of anything else stated in the Condominium Documents, the Developer has the right to use any Apartment that it owns for promotional purposes or in connection with the initial sale and/or any resale of Apartments, Vacation Ownership Interests, fractional ownership interests, and/or time share interests or apartments in any Adjacent Project. This includes, for example, the right to have guests stay in those Apartments for any length of time. Of course, guests must comply with the Condominium Documents. It also includes the right to use its Apartments and their Limited Common Elements as model Apartments, or as sales, management or administrative offices or to sell tours and activities or to provide services to the Owners or other occupants of the Project. These rights are subject to any requirements of the zoning code and any other laws that may apply.

## **10. ADMINISTRATION OF PROJECT.**

Administration of the Project is vested in the Association, consisting of all of the Apartment Owners, acting in accordance with this Declaration and the Bylaws. Except as otherwise provided in the Condominium Documents, operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations to them, shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws. Without limiting the general nature of this statement, the Association has these rights and duties:

**10.1 IMPROVEMENTS REQUIRED BY LAW.** The Association must do the following things to the extent required by law or by any recorded document that applies to the Project: It must make, build, maintain and repair all fences, sewers, drains, roads,

driveways, driveway ramps, curbs, sidewalks, streetlights, parking areas and other Improvements that must be made, built, maintained and repaired on, or next to, or in connection with, or for the use of the Project or any part of it.

**10.2 OBSERVANCE OF LAWS.** The Association must keep all Common Elements in a strictly clean and sanitary condition. It must also obey and do anything required by all laws and regulations that apply to the Project or to the use of it from time to time.

## **10.3 MAINTENANCE IN GOOD ORDER.**

A. The Association must do the following things, and it must do them in a way that maintains the Project as a first class destination resort:

1) It must repair, maintain, and keep all of the Common Elements in good order and condition except as otherwise provided in this Declaration.

2) It must maintain and keep the Common Elements in a neat and attractive condition.

3) It must keep all trees, shrubs, and landscaping (except trees, shrubs, and landscaping located within an Apartment or its Limited Common Elements) in good cultivation. It must also replant them if necessary.

B. If any Owner or an Owner's agent gives written notice of any material and substantial deficiency in the repair or maintenance of any Common Element, the Association, consistent with generally accepted standards of practice and sound business judgment, must, if practicable, start making the appropriate repairs or maintenance or corrections to the defect not less than thirty (30) days after receiving the notice. After starting the work, the Association must work diligently to complete it. The Owner must bear any costs of temporary relocation during the times when the Association is doing the maintenance and repairs.

**10.4 ADMINISTRATION OF COMMERCIAL LIMITED COMMON ELEMENTS.** Subject to the provisions of Section 9.5, the Owner of a Commercial Apartment has the right to assume administration and maintenance of one or more of its Limited Common Elements. If a Limited Common Element is appurtenant to two or more Commercial Apartments then the Owners of at least seventy-five percent (75%) of the Common Interests for all of those Apartments have the right to assume administration and maintenance of it. In either case:

A. The Owner or Owners must give notice to the Association that they are assuming the administration and maintenance of the Limited Common Element.

B. The Owner or Owners must administer and maintain the Limited Common Elements in a manner consistent with a first class destination resort.

C. The Association and the Managing Agent must cooperate with the Owner or Owners by paying to them the part of the assessments for Common Expenses collected to maintain that area. Alternately, it may delegate to the Owner or Owners the right to pay directly any sums required to maintain that area. All such sums will be deemed sums paid for Common Expenses.

**10.5 CONSTRUCTION PLANS.** The Association must not erect or place on the Project any building or structure, including fences and walls, nor make material additions or structural alterations to or exterior changes of any Common Elements of the Project, except in accordance with plans and specifications prepared by a licensed architect and approved by the Developer (until the expiration of the Development Period) and by any other Owners whose consent is required by the Condominium Property Act. After starting the Improvements, the Association must work diligently to complete them.

**10.6 BOND FOR CONSTRUCTION.** The Association must require that the contractor provide a performance bond and a labor and materials payment bond before it begins construction of any Improvement on the Project that costs more than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on a C.P.I. Adjusted basis. The bonds must name the Association, all Apartment Owners and each of their Lenders, as obligees (the persons who can make a claim on the bond if there is a loss). The bonds must be issued by a responsible company authorized to do business in the State of Hawaii. It must guarantee the full and faithful performance of the construction contract free and clear of any mechanics' and materialmen's liens. And it must cover at least one hundred percent (100%) of the estimated cost of the construction.

**10.7 SETBACK LINES.** The Association must observe any setback lines affecting the Project. It must not erect, place or maintain any building or structure of any kind, except approved fences or walls, between any street boundary of the Project and the setback line along the boundary.

**10.8 IMPROPER USE.** The Association must not neglect or abuse the Project, or use it for any unlawful, improper or offensive purpose. It also must not allow anyone else to do so.

## **11. SERVICE OF PROCESS.**

Helen H. W. Lanford is designated as the agent to receive service of process (legal papers) for the Association from the date that this Declaration is recorded until the first Board is elected. After that, process may be served only on an officer of the Association or of the Managing Agent. Ms. Lanford's place of business and post office address is 10 Hoohui Street, Suite 307, Lahaina, Maui, Hawaii 96761.

## **12. COMPLIANCE WITH DECLARATION AND BYLAWS.**

**12.1 DUTY TO COMPLY.** All Apartment Owners, their tenants, families, servants, guest, and invitees, and anyone else who may

in any manner use the Project, or any part of it, are bound by and must comply strictly with the Condominium Documents and all agreements, decisions and determinations of the Association as lawfully made from time to time. Any failure to comply is grounds for an action to recover sums due, for damages or injunctive relief, or both. The Board or the Managing Agent acting on behalf of the Association or, in a proper case, an aggrieved Apartment Owner may bring such an action.

**12.2 COSTS AND EXPENSES OF ENFORCEMENT.** All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- A. Collecting any delinquent assessments against any Owner's Apartment;
- B. Foreclosing any lien on it;
- C. Enforcing any part of the Condominium Documents or the Condominium Property Act; or
- D. Enforcing the Condominium Regulations;

against an Owner, occupant, tenant, employee of an Owner, or anyone else who may in any manner use the Project or any part of it must be paid, promptly on demand, to the Association by that person or persons. If the claims upon which the Association takes any action are not substantiated, however, then promptly on demand the Association must pay all costs and expenses, including reasonable attorneys' fees, incurred by the Apartment Owner as a result of the Association's action.

**12.3 EXEMPTIONS FOR PERSONS WITH DISABILITIES.** No matter what else the Condominium Documents say, and except as otherwise provided by law, Owners with disabilities are allowed reasonable exemptions from the requirements of the Condominium Documents when necessary and to the extent appropriate to enable them to use and enjoy their Apartments or the Common Elements. Any Owner with a disability and who wants an exemption must ask the Board in writing. The request must include a specific and detailed description of the exemption requested and the reason why the Owner needs it. The Board must not unreasonably withhold or delay its consent to the request. A request will be granted automatically unless the Board denies it in writing within forty-five (45) days after the Board receives it, or within forty-five (45) days after the Board receives any additional information reasonably required by the Board in order to consider the request, whichever occurs last.

## **13. INSURANCE.**

**13.1 INSURANCE GENERALLY.** The Association must see that, at a minimum, the Association and the Apartment Owners are covered by the insurance required by this Section 13. The cost of the insurance will be a Common Expense. Each policy may be separate, or the Association can buy one or more commercial package policies.

**A. SOURCE OF THE INSURANCE.** The Association may buy the insurance itself. Or it may join with the Master Association or any Vacation Owners Association in order to buy insurance. If the Managing Agent or any related company manages more than one owners association or real estate project, then the Managing Agent may buy one or more blanket policies that cover the Project and any other owners associations or real estate projects. In that case, the covered projects will split the costs of the policies. The amount charged to the Project for its share of the costs is subject to approval by the Board.

**B. QUALIFIED INSURANCE COMPANIES.** Each insurance company must be licensed to do business in the State of Hawaii. The only exceptions are for (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each insurance company must have a financial performance rating of Class VI or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

**C. ADDITIONAL INSURANCE.** The Board has the right and power to increase coverage or to obtain better terms than those stated in this Section 13 if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this Section 13. For example, the Board might buy business interruption insurance.

**D. SUBSTITUTE COVERAGE; REDUCTION IN INSURANCE.** Except for insurance required by law, the Board need not buy any insurance if it is advised that it cannot reasonably be obtained or if the Board decides that it is too expensive. In those cases, the Board may buy other insurance that it believes to be appropriate under the circumstances for apartments in condominiums similar in construction, location and use. The Board may accept any deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a Common Expense; provided that if a loss results from the negligence or willful misconduct of an Owner, then the Association may charge the amount to the Owner as provided in Section 8.3B.2. of the Bylaws.

**E. YEARLY REVIEW OF INSURANCE PROGRAMS.** The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board will review this analysis and then make any changes in the insurance program that it deems necessary or appropriate. All Board decisions are final. The Board must report in writing its conclusions and the action taken after its review.

**F. LIABILITY FOR INSURANCE DECISIONS.** The Board will not be liable for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, neither the Developer nor the Managing Agent will be liable except for their gross negligence or intentional misconduct.

**G. INSPECTION AND COPIES OF INSURANCE POLICIES.** Any Owner (and anyone having a contract to buy an Apartment or a Vacation Ownership Interest) may inspect copies of the Association's insurance policies at the office of the Managing Agent. If asked to do so, the Board will furnish a copy of any policy, or a current certificate of insurance, to any Lender that has a first Mortgage on an Apartment or a Vacation Ownership Interest. The Lender must pay a reasonable fee for the copy.

**H. NOTICE OF CHANGES IN INSURANCE.** The Association will send notice to the Owners if:

1) The Association's policy of property insurance under Section 13.2 or liability insurance under Section 13.4 has lapsed, has been canceled, or will not be renewed. However, the Association does not have to send notice if replacement coverage will be in effect before the policies lapse or are canceled.

2) There is a significant adverse change in the coverage of those policies (for example, a significant reduction in the policy limits or an increase in the deductible).

The Association must send any notice required by this Subsection by first-class mail and it must do so as soon as reasonably possible.

**13.2 PROPERTY INSURANCE.** The Association must buy and keep in effect at all times a policy of property insurance. This is called the "Policy" in this Section 13.2.

**A. WHO IS INSURED.** The Policy must name the Association, as trustee for all Apartment Owners and any Lenders, as the insured. The Developer must also be named as an insured.

**B. REQUIRED COVERAGE.** The Policy must insure all Common Elements of the Project and, whether or not part of the Common Elements, all exterior and interior walls, floors, and ceilings, all in accordance with the as-built plans and specifications. The Policy must cover 100% of the cost of replacing that property without deductions for depreciation.

**C. COVERAGE NOT REQUIRED.** The Policy does not have to cover (i) exterior glass if the Board decides that this is too expensive, and (ii) underground Improvements, except for conduits, plumbing and wiring.

**D. FORM OF POLICY.** The Policy must cover those risks generally covered by a special form policy. A "special form policy" usually insures against these risks: fire, lightning, windstorm and hail, smoke, explosion, civil commotion, riot,

and riot attending a strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. If the Project is located in an area prone to earthquakes, the Association must also buy earthquake insurance if it is available at a reasonable cost.

#### E. ADDITIONAL COVERAGE.

1) The Policy must have an agreed amount endorsement. This protects Owners from co-insurance clauses. A co-insurance clause reduces benefits if the Association fails to buy enough insurance.

2) The Policy must also have an inflation guard endorsement. This automatically increases the Policy limits up to a certain amount each year to keep the Policy limits current with inflation.

F. REQUIRED AND PROHIBITED PROVISIONS. Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

1) The Policy must not relieve the insurance company from liability because of:

(a) Any increased hazard on any part of the Project, whether or not within the control or knowledge of the Association, the Board, the Developer, the Managing Agent, any Owner, or any persons under any of them; or

(b) Any breach of warranty or condition or any other act or neglect by any of those persons.

2) The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board and the Managing Agent. The Board will send a copy to each Lender and any other Interested Person who has, in either case, requested a copy of any such notice.

3) The Policy must provide that the insurance company gives up ("waives") any right to repair, rebuild or replace any damaged or destroyed Improvements if the Association decides not to do so pursuant to Section 16.

4) The Policy must provide that the insurance company gives up ("waives") any right of subrogation to any right of the persons insured by the policy as against the Association, the Board, the Managing Agent, the Developer, the Owners and any person under any of them. "Subrogation" is the right of the insurance company to try to recover its costs from the person who caused the loss.

5) The Policy must provide that the insurance company gives up any right to deny liability because any Apartment or Apartments are vacant.

6) The Policy must not limit or prohibit any Apartment Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance, and that the insurance company cannot claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Apartment Owner.

7) The Policy must provide that any loss will be adjusted (settled) by (i) the insurance company, (ii) the Board, and (iii) any Lender having a Mortgage on an Apartment directly affected by the loss.

8) The Policy must contain a standard "mortgagee clause". This protects the rights of Lenders. Unless it cannot be obtained, the mortgagee clause must do these things:

(a) It must name as an insured any Lender whose name has been furnished to the Board and to the insurance company.

(b) It must provide that any reference to a Lender in the policy includes all Lenders, in their order of priority, whether or not named in the policy.

(c) It must provide that any act or neglect of the Association, the Board, or any occupant will not release the insurance company from its duties to the lender.

(d) It must provide that the insurance company gives up these rights:

(1) Any right to deny coverage for the Lender's benefit because the Lender fails to notify the insurance company of any hazardous use or vacancy.

(2) Any requirement that the Lender pay any policy premium. (But, the Lender may pay any premium due if the Association fails to do so on time).

(3) Any right to contribution from the Lender.

(4) Any right to be subrogated to the right of any Lender against anyone causing the loss or to require that any Mortgage be transferred to the insurance company. However, the insurance company may retain the right of subrogation to the extent of insurance proceeds received and retained by the Lender, if the insurance company gives up any claims for liability against the Lender, the Association, the Board, the Managing Agent, the Developer, the Owners and all persons under them. This must not, however, impair the Lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

9) The Policy must provide that if there is a loss to the Project and the amount paid by the insurance company exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00) on a C.P.I. Adjusted basis, then the money must be paid to a bank

or trust company authorized to do business in Hawaii and chosen by the board to have custody and control of the insurance proceeds (the "Insurance Trustee"). The Policy must also require that the insurance company recognize the Insurance Trust Agreement. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association's records of ownership.

**13.3 FLOOD INSURANCE.** The Project may be located in a place designated by the federal Department of Housing and Urban Development as a flood hazard area. If so, the Association must buy a policy of flood insurance under the federal Flood Disaster Protection Act of 1973. The policy must be equal to the lesser of:

A. The aggregate of the outstanding principal balances of all Mortgage loans on Apartments in the Project, or

B. The maximum limit of coverage available under the National Flood Disaster Protection Act of 1973.

**13.4 LIABILITY INSURANCE.** The Board must buy and keep in effect a commercial general liability insurance and, if necessary, commercial umbrella insurance. In this Section 13.4, the commercial general liability insurance and commercial umbrella insurance are together called the "Policy".

A. **WHO IS INSURED.** The Policy must cover all Apartment Owners, the Board, the Association, the Developer, the Managing Agent, and each of their Representatives against claims for personal injury, bodily injury, death and property damage.

B. **REQUIRED COVERAGE.** The Policy limits, on a C.P.I. Adjusted basis, must not be less than THREE MILLION DOLLARS (\$3,000,000) for personal injury, bodily injury, and death, and ONE MILLION DOLLARS (\$1,000,000) for property damage.

C. **REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

1) The Policy must not limit or prohibit any Apartment Owner from buying other liability insurance for the Owner's own benefit.

2) The Policy must not relieve the insurance company from liability because of any act or neglect of the Association, the Managing Agent, the Developer, the Board, the Apartments Owners and occupants, or any person under any of them.

3) The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the policy as against the Association, the Board, the Managing Agent, the Developer, the Owners and any persons under any of them.

4) The Policy must contain a "cross-liability" endorsement. This permits one person who is covered by the Policy to file a claim on the Policy based on the acts or failure to act of another person who is also covered by the Policy.

5) The Policy must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of one person who is covered by the Policy because of the negligence of another person who is covered by the Policy.

6) The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board, the Managing Agent, and the Developer. The Board will send a copy to every Lender and any other Interested Person who has, in either case, requested a copy of any such notice.

**13.5 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.** The Board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a director, officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the "Policy" in this Section 13.5. The Policy must also cover anyone who serves, at the request of the Association, as a director, officer, member, employee or agent of another company or organization. The Board will choose the Policy limits.

If it can be obtained at a reasonable cost, the Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The Policy must pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

**13.6 FIDELITY BONDS.** A "fidelity bond" covers the loss of money in the care or custody of the Association or the Managing Agent. The Association must buy a fidelity bond or fidelity insurance. It must cover the Association and the Managing Agent. It must also cover each of their directors, officers, agents, and employees who handle funds belonging to or administered by the Association or the Managing Agent. And it must cover anyone who serves without pay (for example, a volunteer) and waive (give up) any defense based on excluding such persons from the definition of the term "employee" or similar terms. The fidelity bond or insurance must name the Association as the person protected and who gets paid in case of loss (the "obligee" or the "insured"). It must also satisfy the requirements of the Condominium Property Act and Condominium Rules. The cost of the bond or insurance will be a Common Expense.

#### **14. INSURED DAMAGE OR DESTRUCTION.**

**14.1 APPLICATION.** This Section 14 applies if all or any part of the Project is damaged and if the damage is covered by insurance. If this happens, then the Association or the Insurance Trustee will use the insurance proceeds as provided in this Section 14. In this Section 14 "proceeds" means any money paid by an insurance company for a loss under an insurance policy paid for by the Association.

**14.2 DAMAGE TO A SINGLE APARTMENT OR ITS LIMITED COMMON ELEMENTS.** If only a single Apartment or its Limited Common Elements are damaged then the Board will hire one or more contractors to rebuild or repair the Apartment and/or its Limited Common Elements. The repairs will include paint, floor covering and fixtures, and any Common Element mechanical, electrical and other equipment in the Apartment or Limited Common Elements.

A. The Association will rebuild and repair the Apartment and/or its Limited Common Elements according to their design just before the damage happened. If it cannot do this (for example, if changes in the law prevent it) then the Association will rebuild or repair the Apartment and/or Limited Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board and by any Lender having a Mortgage on that Apartment.

**14.3 OTHER INSURED CASUALTY.** In all other cases, the Board must hire one or more contractors to repair or rebuild the damaged parts of the Project, including all Common Elements, Apartments and Limited Common Elements damaged.

A. The Association will rebuild and repair the Project according to their design just before the damage. If it cannot do this (for example, if changes in the law prevent this) then the Association will rebuild or repair the Project according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board and by any Lender having a Mortgage on any Apartment that is directly affected.

B. It is possible that the modified plans and specifications will not provide for rebuilding or repairing a particular Apartment or its Limited Common Elements. Also, if the law or this Declaration allows it, the Association may decide not to rebuild or repair a particular Apartment or its Limited Common Elements. In either case the Association or the Insurance Trustee will use the insurance proceeds as follows:

1) Proceeds will be applied first to pay that Apartment's share of the cost of debris removal.

2) The part of the insurance proceeds allocable to that Apartment and/or its Limited Common Elements will be paid to the Owner of the Apartment and to any Lender having a Mortgage on that Apartment, as their interests may appear.

**14.4 SHORTFALL OF INSURANCE PROCEEDS.** The Association or the Insurance Trustee will use insurance proceeds to pay any contractor hired by the Board. Payments will be made as and when required by the construction contract and this Section 14. If there are not enough insurance proceeds to pay the full cost to repair and/or rebuild the Common Elements, then the Board can pay the shortfall from the replacement reserve fund. If this is not enough, then the Board must (i) determine the amount of the remaining shortfall, and (ii) charge a special assessment to each Apartment except for Apartments that are not being rebuilt or repaired. Each Apartment will pay a percentage of the special assessment equal to the percentage of the Common Expenses that it will be paying after the removal of any Apartments that are not being rebuilt or repaired. The Association will also charge a special assessment to the Owner of an Apartment for any costs in excess of the insurance proceeds for repairing and/or rebuilding an Apartment or its Limited Common Elements (but not including any Common Elements within any Apartment).

**14.5 DISBURSEMENT OF INSURANCE PROCEEDS.** The Association or the Insurance Trustee will pay the cost of the work (as estimated by the Board) from time to time or at the direction of the Board as the work progresses. If an Insurance Trust is required, then the Insurance Trustee will make payment only if these conditions are met:

A. An architect or engineer (who may be an employee of the Board) must be in charge of the work.

B. Each request for payment must be given to the Insurance Trustee at least seven (7) days in advance. It must include a certificate signed by the architect or engineer.

1) The certificate must state that all of the work completed complies with the approved plans and specifications.

2) It must also state that the amount requested is justly required to reimburse the Board for payments by the Board to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons providing services or materials for the work. It must include a brief description of those services or materials.

3) The certificate must also state that when the amount requested is added to all sums previously paid by the Insurance Trustee, the total does not exceed the value of the work done as of the date of the certificate.

C. Each request must include releases of liens. The releases must be satisfactory to the Insurance Trustee. They must cover the work for which payment or reimbursement is being requested.

D. Each request must include a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that nobody has recorded with respect to the Property any mechanics' or other lien or instrument for

the retention of title with respect to any part of the work not discharged of record.

E. If the work is finished, then the request for any payment must include a copy of any certificate or certificates required by law to make it legal to occupy the Property. This includes, for example, a certificate of occupancy in the case of a Resort Apartment.

F. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, are a Common Expense. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time to time.

G. The Insurance Trustee may establish any other reasonable conditions to payment if they are not inconsistent with the conditions listed in this Section 14.5.

**14.6 EXCESS INSURANCE PROCEEDS.** "Excess proceeds" are proceeds remaining after paying the cost to rebuild or repair any damage. Any excess proceeds will be paid to the Apartment Owners and their Lenders in proportion to their share of the Common Expenses.

**14.7 RELEASE OF CLAIMS.** To the extent that the Association's insurance covers any loss, damage or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage or destruction against the Developer, the Managing Agent, the Association, or any of their Representatives or against any Apartment Owner (except for any special assessment charged under Section 14.4) or any person under any of them. To the extent that any loss, damage or destruction to the property of any Apartment Owner or anyone under the Apartment Owner is covered by insurance purchased by that Owner, the Owner will have no claim or cause of action for that loss, damage or destruction against the Association, the Developer, the Managing Agent or any other Apartment Owner, or any person under any of them, or any of their Representatives.

## **15. CONDEMNATION.**

**15.1 CONDEMNATION.** The government and certain other persons have the "power of eminent domain". This means that they can make someone sell their property to them. This process is called "condemnation". Anyone having the power of eminent domain is called a "condemning agency". This Section 15 explains what happens if the Project or any part of it is "taken", meaning that it is condemned or is sold to a condemning agency that has threatened to condemn it.

**15.2 CONDEMNATION TRUSTEE.** The Association must pay the condemnation proceeds it receives to a bank or trust company (the "Condemnation Trustee") designated by the Board and authorized to do business in the State of Hawaii. In this Section 15, "proceeds" means any money paid by the condemning agency as compensation or damages for taking the Project or any part of it.

**15.3 REPRESENTATION IN CONDEMNATION MATTERS.** Each Owner gives the Association a special power of attorney to represent the Owner in any proceedings, negotiations, settlements or agreements related to any actual or threatened condemnation of the Project or any part of it. However, the Developer will represent itself with respect to any right or claim it may have to proceeds payable for the Developer's Reserved Rights.

**15.4 NOTICE TO LENDERS.** The Association must provide a copy of any notice of a condemnation proceeding to anyone who holds, insures or guarantees a Mortgage and who files a written demand for notice with the Board. The notice must state the person's name and address and the Apartment number for the Apartment on which it has (or insures or guarantees) a Mortgage.

**15.5 DIVISION OF PROCEEDS BETWEEN DEVELOPER AND OWNERS.** If all or any part the Project is taken or is sold under threat of condemnation before the end of the Development Period, then the condemnation proceeds must first be divided between the Developer and the Apartment Owners.

### **A. HOW PROCEEDS ARE DIVIDED.**

1) The Developer will be entitled to receive all proceeds payable for or on account of the loss of the Developer's Reserved Rights. This includes, for example, (i) the right to all proceeds paid for any part of the Land that the Developer has the right to delete under Section 21, and (ii) the right to all proceeds paid for Improvements made by the Developer to serve phases or increments of the Project to be built in the future. For example, if the Developer builds more parking stalls than needed for the current phase of the Project, the Developer can claim any proceeds payable for the excess stalls.

2) The Apartment Owners will be entitled to receive the rest of the proceeds. The Condemnation Trustee will use them as provided in Sections 15.6, 15.7 and 15.8. The Developer will, of course, be entitled to receive any part of those proceeds paid on account of any Apartments owned by the Developer.

### **B. HOW TO DETERMINE THE DEVELOPER'S SHARE.**

1) If a court makes a final decision as to how much of the proceeds to pay to the Developer for the Developer's Reserved Rights, then the Condemnation Trustee will pay that amount to the Developer.

2) In all other cases, the Condemnation Trustee must pay to the Developer a share of proceeds equal to the value of the Developer's Reserved Rights. A qualified real estate appraiser will determine the value of Developer's Reserved Rights. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If a single qualified appraiser acted on behalf of the Developer and the Apartment Owners in the

condemnation proceedings, then he or she will make the decision. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, or if the Developer and the Apartment Owners used different appraisers, then the Board and the Developer must choose an appraiser. However the Developer may elect to require that a panel of three appraisers make the decision simply by giving written notice to the Board. Within fifteen days after the notice is received, the Board and the Developer will each choose an appraiser. Within fifteen days after that, the two appraisers will choose the third appraiser. If either party fails to choose an appraiser on time, then the appraiser chosen by the other party will decide how much of the proceeds will be paid to the Developer for the Developer's Reserved Rights. Otherwise, the decision of any two appraisers will decide how much to pay to the Developer. The Developer and the Association will each pay half the cost and expenses of the appraisers.

**15.6 HOW PROCEEDS WILL BE DIVIDED BETWEEN THE APARTMENTS.** Any proceeds remaining after payment of the Developer's share under Section 15.5 will be split by the Apartment Owners in this way:

A. If a court makes a final decision as to how much of the proceeds to pay to each Apartment, then the proceeds will be divided in that way.

B. In all other cases, a qualified real estate appraiser will divide the proceeds among the Apartments based on the value of each Apartment and its Common Interest. To be qualified, the appraiser must be a member of the American Institute of Real Estate Appraisers, or of a successor organization. If the appraiser who acted on behalf of the Apartment Owners in the condemnation proceedings is qualified, then he or she will make the decision. If there was no such appraiser, or if that appraiser is not qualified, or if there was more than one appraiser, then the Board must choose an appraiser. However, the Owners of the Apartments taken may elect, by a majority vote, to require that a panel of three appraisers make the decision. They must make this election within fifteen days after the Board announces the appointment of the appraiser. If they elect to do so, the Board must choose three appraisers and the decision of any two of them will decide how to divide the proceeds.

**15.7 CONDEMNATION OR TERMINATION OF THE WHOLE PROJECT.** If the whole Project is taken or so much of it is taken that the Association decides to terminate the condominium property regime, then the Condemnation Trustee must pay the condemnation proceeds as follows:

A. It must pay to the Developer and to its Lender, if any, the Developer's share of the proceeds for the Developer's Reserved Rights as required by Section 15.5.

B. It must pay to each Apartment Owner and to the Owner's Lender, as their interests may appear, the share of the proceeds for the Owner's Apartment as provided in Section 15.6.

**15.8 PARTIAL TAKING.** If only part of the Project is taken and if the Association does not decide to terminate the condominium property regime, then the Condemnation Trustee must use the condemnation proceeds as follows: It must pay to the Developer and to its Lender, if any, the Developer's share of the proceeds for the Developer's Reserved Rights as provided in Section 15.5. It must use the rest of the proceeds in this way:

A. **ELIMINATION OF APARTMENTS.** This is what happens if (i) an Apartment or its Limited Common Elements are physically eliminated, or (ii) only a portion is eliminated and the rest cannot be repaired or rebuilt in a way that is satisfactory to the Owner of the Apartment.

1) The Condemnation Trustee will pay to the Owner and to any Lender having a Mortgage on the Apartment, as their interests may appear and in full satisfaction of their interests in the Apartment, the share of the proceeds allocable to that Apartment and its Limited Common Elements. However, the Condemnation Trustee must first deduct from those proceeds that Apartment's share of the cost of debris removal.

2) The Association must amend this Declaration to remove the Apartment and to adjust the Common Interests of the remaining Apartments.

B. **REPAIR AND RESTORATION.** In all other cases, the Association must repair and restore the remaining Improvements according to their design just before the taking. If this cannot be done, then the Association must repair or restore the remaining Improvements according to a new design. The new design must comply with all laws then in effect. Any changed plans and specifications must first be approved by the Board and by any Lender having a Mortgage on each Apartment remaining after the taking. If there are not enough proceeds to pay the cost of the repairs and restoration, the Association must pay the shortfall as Common Expense. The Board is expressly authorized to pay the shortfall using money in the replacement reserve funds. If this is not enough, then the Board must (i) determine the remaining amount of the shortfall, and (ii) charge a special assessment to the Owners of all Apartments except any Apartments eliminated as provided in Section 15.8A. Each Apartment will pay a percentage of the special assessment equal to the percentage of the Common Expenses that it will be paying after the removal of any Apartments being eliminated as provided in Section 15.8A.

C. **EXCESS CONDEMNATION PROCEEDS.** "Excess proceeds" are proceeds remaining after paying (i) all amounts payable to Owners and Lenders of removed Apartments, (ii) the costs of debris removal, and (iii) the costs to repair and restore the rest of the Project. Each Apartment (including Apartments eliminated under Section 15.8A) will each receive a percentage of the excess proceeds equal to the percentage of the Common Expenses that it paid before the condemnation.

D. **REMOVAL OF DEBRIS.** Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its Common

Expense must remove all remains of the Improvements on the remaining Land and restore the site to good orderly condition and even grade.

## **16. UNINSURED DAMAGE; DECISION NOT TO REPAIR.**

**16.1 UNINSURED DAMAGE.** This Section 16.1 applies if the Common Elements are substantially damaged or destroyed and if the damage or destruction is not covered by insurance.

**A. DECISION NOT TO REBUILD.** The Association may decide not to repair, rebuild or restore the Improvements. The Association may make this decision only if at least seventy-five percent (75%) of the Apartment Owners vote to do so at an annual or special meeting of the Association and their Lenders consent in writing. The meeting must be held within ninety (90) days after the damage or destruction occurs. During the Development Period the consent of the Developer is also required.

**B. REBUILDING.** In all other cases, the Project will be repaired, rebuilt and restored as follows:

- 1) The Association must work diligently to repair, rebuild or restore the Common Elements, except for the Limited Common Elements. It will pay the cost to do so as a Common Expense.
- 2) Each Apartment Owner will pay the cost to repair, rebuild, and restore the Owner's Apartment and its Limited Common Elements. The Association will, however, will pay the cost to repair, rebuild and restore all parking stalls, mailboxes, and other Limited Common Elements where the Association decides that it is more practical for it to do so.
- 3) The Improvements must be repaired, rebuilt or restored according to their design just before the damage occurred. If this cannot be done, then they must be repaired, rebuilt or replaced according to a new design that complies with all laws then in effect. Any changed plans and specifications must first be approved (i) by the Board, (ii) by any Lender having a Mortgage on any Apartment directly affected, and (iii) by the Developer during the Development Period.

**16.2 DETERMINATION AGAINST RESTORATION.** Except as otherwise provided in Sections 16.1, in the event of an insured casualty or the condemnation of any part or all of the Project, the Project will be repaired, rebuilt and restored as provided in Section 14 (in the case of an insured casualty) or Section 15 (in the case of condemnation) unless, within ninety (90) days after such a casualty or condemnation, the Association decides by the affirmative vote of eighty percent (80%) of the Apartment Owners (including the Owners of eighty percent (80%) of the damaged or condemned Apartments) not to repair, rebuild, or restore the Project and their Lenders give their consent in a recorded document.

## **17. CHANGES TO THE PROJECT.**

### **17.1 GENERAL PROVISIONS.**

**A.** This Section 17.1 applies except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted under it, as either of them may be amended from time to time and except as otherwise provided in this Declaration. This Section 17.1 does not apply to changes made by the Developer when using the Developer's Reserved Rights.

**B.** Neither the Association nor any Owner may:

- 1) Restore or replace the Project or any building or other structure on it,
- 2) Construct any new building or other structure on it, or
- 3) Make any structural change or addition to it, that is different in any material respect from the Condominium Map, except pursuant to an amendment of this Declaration. The amendment must be adopted by the vote or the written consent of (i) seventy-five percent (75%) of the Apartment Owners, (ii) the Developer until the end of the Development Period, and (iii) all Apartment Owners whose Apartments or whose Limited Common Elements are directly affected (as the Board reasonably determines). Any such restoration, replacement, construction, alteration or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing. Promptly after the work is completed, the Association must record (1) the amendment, and (2) a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer. This section does not apply to "nonmaterial structural additions to the Common Elements" as that term is used in §514A-89 of the Condominium Property Act.

### **17.2 CHANGES BY OWNERS OR BY THE DEVELOPER.**

**A. CHANGES PERMITTED.** No matter what else the Condominium Documents say (including, for example, Section 17.1), and except as otherwise provided by law, (i) the Developer here and now reserves the rights listed in this Section 17.2A for itself (and these will be Developer's Reserved Rights), and (ii) each Owner (including the Developer to the extent that it is an Owner) will also have the rights listed in this Section 17.2A. The Developer and the Owners may use their rights under this Section 17.2A at any time and may use them more than once. The Developer or the Owners must pay all costs associated with the use of these rights.

#### **1) ADDITIONS OR CHANGES WITHIN AN APARTMENT OR LIMITED COMMON ELEMENT.**

**(a) ALL APARTMENTS.** Each Owner has the right to make any of the following changes, additions and improvements solely within the Owner's Apartment or within any Limited Common Element that the Owner controls:

(1) The Owner may install, maintain, remove and rearrange partitions and other structures from time to time within the Apartment or Limited Common Element.

(2) The Owner may finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Apartment or Limited Common Element.

(3) The Owner may decorate, paint, repaint, wallpaper or otherwise change the appearance of the walls, floors and ceilings of the Apartment or Limited Common Element.

(4) The Owner may tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Apartment or Limited Common Element.

(5) The Owner may install, change or remove the ceiling system of a Commercial Apartment or its Limited Common Element.

In addition, an Owner may make "nonmaterial structural additions to the Common Elements" as that term is used in §514A-89 of the Condominium Property Act.

The Developer's Reserved Rights include the right to do any or all of these things with respect to any Apartment that the Developer owns or the Limited Common Elements of an Apartment that it owns.

**(b) THE MASTER ASSOCIATION APARTMENT.**

In addition to the rights under Section 17.2A.1), the Owner of the Master Association Apartment has the right to do these things:

(1) It may plant, change and remove grasses, shrubs, trees, gardens, and other landscaping within the Limited Common Elements of the Master Association Apartment.

(2) It may install, change and remove waterfalls, ponds, streams, or foot bridges, benches, decorative rocks, and other landscaping enhancements within the Limited Common Elements of the Master Association Apartment;

(3) It may install, change and remove, from time to time, automatic sprinkler systems and other systems for the maintenance and upkeep of the landscaping within the Limited Common Elements of the Master Association Apartment.

(4) It may install, change and remove walkways, walkway railings, pathways, driveways, and other accessways within the Limited Common Elements of the Master Association Apartment.

(5) It may install, change and remove tiki torches within the Limited Common Elements of the Master Association Apartment.

(6) It may install, change and remove special lighting, security, and/or sound systems within the Master Association Apartment or its Limited Common Elements.

(7) It may install electric lines, gas lines, water lines, and other utilities to serve the Master Association Apartment and/or its Limited Common Elements.

(8) It may install, change and remove tile, carpet, flooring, paint, or other products that change the finish or appearance of the pool and pool deck.

(9) It may install, change and remove Master Association Amenities within the Master Association Apartment or its Limited Common Elements. This includes, for example, changes to the pools or water slides, whether for safety reasons, updating, or for other reasons, installation of new waterfalls, slides, volleyball courts, putting greens, shuffleboard courts, or other new amenities, removal of the existing amenities, and so on.

The Developer's Reserved Rights include the right to do any or all of these things while the Developer owns the Master Association Apartment.

During the Development Period, the Master Association must first get the Developer's consent before making any material changes to the Limited Common Elements of the Master Association Apartment.

**2) CHANGES BETWEEN APARTMENTS AND/OR LIMITED COMMON ELEMENTS.**

**(a) BETWEEN AN APARTMENT AND ITS LIMITED COMMON ELEMENTS.** The Owner of a Commercial Apartment has the right and an easement to do these things:

(1) It can change or remove all or any part of any Common Element wall, floor, or ceiling that separates the Apartment from its Limited Common Elements.

(2) It can install doors, stairways and other improvements in any opening that it makes.

(3) It can seal hallways or other openings.

(4) It can make other reasonable changes or additions.

The Developer's Reserved Rights include the right to do the same things with respect to any Commercial Apartment that it owns.

**(b) BETWEEN TWO APARTMENTS.** The Owner of two (2) Commercial Apartments which are separated by a Common Element that is a wall, floor or a ceiling, or whose Limited Common Elements are separated from each other or from such Commercial Apartments by a Common Element that

is a wall, floor or ceiling, has the right and an easement to do these things:

- (1) It can change or remove all or part of the intervening wall, floor and/or ceiling.
- (2) It can install doors, stairways and other improvements in such opening or openings in the intervening Common Element.
- (3) It can seal hallways or other openings.
- (4) It can make other reasonable changes or additions.

The Developer's Reserved Rights include the right to do the same things with respect to any two (2) Commercial Apartments that it owns. Before terminating its common ownership of any of the adjacent Apartments, the Owner or Developer must restore the Common Element wall, floor, ceiling, hallway and/or other openings to substantially the same condition as before the change or removal unless the new Owners each agree otherwise in writing.

(c) **CONDITIONS.** The Owners and the Developer may do the things permitted by this Section 17.2A.2) only if:

- (1) The structural integrity of the building will not be adversely affected,
- (2) The finish of the remaining Common Element Improvements are restored to substantially the same condition they were in before the change or removal, and
- (3) All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the Owner or Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

3) **SUBDIVISION OF APARTMENT.** The Owner of a Commercial Apartment has the right to do these things:

- (a) It can subdivide the Apartment to create two or more Apartments.
- (b) It can designate which Limited Common Elements of the subdivided Apartment will be appurtenant to the Apartments resulting from the subdivision.
- (c) It can convert parts of the existing Apartment to Common Element status to facilitate the subdivision.

The total of the Common Interests for the newly created Apartments must be equal to the Common Interest of the Apartment that was subdivided. If the Owner of Apartment 101 subdivides that Apartment, the Owner can decide whether one

or more than one of the resulting Apartments will have any special rights or easements of Apartment 101 under this Declaration, or it can divide some or all of those rights among the resulting Apartments.

The Developer's Reserved Rights include the right to do the same things with respect to any Commercial Apartment that it owns.

4) **CONSOLIDATION OF APARTMENTS.** An Owner who owns any two (2) Commercial Apartments has these rights:

(a) The Owner may consolidate the Apartments into a single Apartment (whether or not the Apartments are adjacent to each other).

(b) If the Apartments are adjacent to each other, the Owner may make any Common Element walls, floors or ceilings between the Apartments part of the Apartment or its Limited Common Elements.

The Common Interest of the newly created Apartment will be equal to the sum of the Common Interests of the Apartments being consolidated.

The Developer's Reserved Rights include the right to do the same things with respect to any two (2) Commercial Apartments that it owns.

5) **REDESIGNATION OF LIMITED COMMON ELEMENTS.** The Owners of any two (2) Commercial Apartments have the right to change the designation of the Limited Common Elements that go with their Apartments so that all or any part of one Apartment's Limited Common Elements now will be appurtenant either to the other Apartment or to both of the Apartments. The Owners cannot do this without the written consent of each Lender who has a Mortgage on either Apartment. The Developer's Reserved Rights include the right to do the same things with respect to any two (2) Commercial Apartments that it owns.

**B. LIMITS ON OWNER ALTERATIONS.** Nothing contained in Section 17.2A:

- 1) Authorizes any work or change by an Owner or the Developer that would not be consistent with a first-class destination resort.
- 2) Authorizes any work or change by an Owner or the Developer that would jeopardize the soundness or safety of any part of the Project, or reduce the value of it.
- 3) Authorizes any work or change by an Owner (other than the Developer or the Master Association) that would materially change the uniform external appearance of the Project without the consent of the Board and, during the Development Period, the Developer.
- 4) Prohibits the Board from making or requiring that an Owner or the Developer make changes within an

Apartment or Limited Common Element as needed to comply with the fire code and all other laws that apply to the Project.

C. **FINANCING AND BOND.** If the Board reasonably decides that any changes or additions to be made under Section 17.2A are substantial in nature then the Board may require that the Owner of the Apartment (or the Developer as to its Apartments):

1) Provide evidence satisfactory to the Board that the Owner (or Developer) has sufficient financing to complete the changes or additions, or

2) Provide a performance and a labor and materials payment bond. The bonds must name as obligees (the persons protected) the Board on behalf of the Association, the Apartment Owners and their Lenders, as their interests may appear. The bonds must cover at least one hundred percent (100%) of the estimated cost of the construction.

**17.3 BOARD APPROVAL.** Changes and additions made under Section 17.2A by any Owner other than the Developer require the consent of the Board if and to the extent required by the Condominium Property Act. See Section 514A-89 of that Act. Changes and additions made under Section 17.2A by the Developer do not require the vote or consent of the Board or anyone else. See Section 514A-11(12) of the Condominium Property Act. Subdivisions and consolidations of Apartments made under Section 17.2A by the Developer or by an Owner or Owners do not require the vote or consent of the Board or anyone else except any Lenders having a Mortgage on the subdivided or consolidated Apartments. See Section 514A-13(b) of the Condominium Property Act.

**17.4 AMENDMENT TO DECLARATION.** If any change to an Apartment made under the authority of Section 17.2 materially changes the depiction of a particular Apartment or Apartments on the Condominium Map or the description of it in the Declaration, then the Owner or Owners of the Apartment(s) (or the Developer as to its Apartments) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded.

A. The Owner of the changed Apartment or Apartments (or the Developer as to its Apartments) must sign the amendment. No matter what Section 34 says, it is not necessary for anyone else to vote for, consent to, or sign the amendment except for any Lender who has a Mortgage on the Apartment or Apartments that are changed or altered.

B. When an Apartment Owner or other Interested Person acquires an Apartment or any other interest in the Project, he or she automatically:

- 1) Consents to the change;
- 2) Agrees that he or she will, if required by law or by the Owner who has changed an Apartment under the authority of Section 17.2, join in, consent to, sign, deliver and

record all documents necessary or desirable to make the amendment of the Condominium Documents effective; and

3) Gives the Owner a special power of attorney to sign, deliver and record such documents and to do such things for him or her.

**18. DEVELOPER'S RESERVED RIGHTS TO CREATE NEW APARTMENTS AND TO EXPAND APARTMENT 101.**

No matter what else the Condominium Documents say, the Developer reserves the right to create one or more New Apartments in the Project, to expand Apartment 101, and to designate Limited Common Elements appurtenant to any New Apartment or to Apartment 101. The Developer may do this more than once and at any time before the Development Period ends.

**18.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 18 are subject to these terms and conditions:

A. The Developer can only expand Apartment 101 to include, or create New Apartments with respect to: (i) New Improvements constructed or intended to be constructed or added to the Project pursuant to Section 19, or (ii) New Improvements constructed or to be constructed on any Adjacent Parcel annexed into the Project pursuant to Section 22.

B. The total number of Apartments in the Project may not exceed the limits contained in the SMA Permit. In applying this rule, an Apartment is still considered to be only one Apartment even if it can be used on a "lock-off" or "lock-out" basis.

C. The Developer may only expand Apartment 101 if the Developer is the Owner of it or if the Owner of it consents in writing. If Apartment 101 subject to a Mortgage, the Lender must also give its consent in a recorded document. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner or Lender.

D. The Developer must pay all costs of creating the New Apartments, expanding Apartment 101, and designating the Limited Common Elements appurtenant to the New Apartments and/or Apartment 101.

**18.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limit stated in Section 18.1:

A. The Developer's Reserved Rights in this Section 18 include the right to do anything necessary or convenient to create the New Apartments, to expand Apartment 101 or to designate Limited Common Elements appurtenant to the New Apartments or Apartment 101. For example, the Developer has the right to sign, acknowledge and record one or more amendments to this Declaration and to the Condominium Map meeting the requirements of Section 18.3. It also has the right to amend any recorded deed or other document conveying or

encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. Or it can record a new deed or conveyance document for that purpose.

For example, if the Developer creates New Apartments or expands Apartment 101, it may need to adjust the Common Interest of each existing Apartment as provided in Section 29. If so, the Land Court may insist that the Developer change the deeds for existing Apartments to reflect the change in the Common Interest or it may require that the Developer issue replacement deeds reflecting the new Common Interest of each Apartment.

B. The Developer may also use any of the other Developer's Reserved Rights as may be necessary or convenient to create New Apartments, to expand Apartment 101, or to designate Limited Common Elements appurtenant to the New Apartments or Apartment 101. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**18.3 THE DEVELOPER MUST AMEND THE CONDOMINIUM DOCUMENTS.** The Developer must amend this Declaration and the Condominium Map in order to create New Apartments or to expand Apartment 101. It may also have to do so to designate Limited Common Elements appurtenant to the New Apartments or Apartment 101.

**A. CONTENT OF AMENDMENT TO DECLARATION.** These rules apply to an amendment to this Declaration required or allowed by this Section 18.3:

- 1) The amendment must describe any additional buildings. This must include the number of stories and basements, the number of Apartments and the principal materials of which they are or will be constructed.
- 2) If New Apartments are being created, the amendment must state the Apartment number of each New Apartment. It must also describe its location, approximate area, number of rooms, immediate Common Elements to which it has access, any parking stall designated as a Limited Common Element to it, and anything else needed to properly identify it.
- 3) If Apartment 101 is being expanded, the amendment must revise the description of Apartment 101 to properly state its location, approximate area, number of rooms, immediate Common Elements to which it has access, any parking stall designated as a Limited Common Element to it, and anything else needed to properly identify it.
- 4) It must describe any additional Common Elements.
- 5) It must describe any additional or newly designated Limited Common Elements, if any, and identify the Apartments to which they are appurtenant.

6) It must state the purposes for which the additional buildings and each of the New Apartments are intended and restricted as to use, if different from the provisions in this Declaration.

7) It must list the Common Interest of each Apartment in the Project. This includes both the existing Apartments and New Apartments. The Common Interest for each Apartment will be determined as stated in Section 29.

8) It may provide easements for access to and from the New Apartments, and to and from Apartment 101, across the Common Elements and any Limited Common Elements including, for example, the Limited Common Elements of the Master Association Apartment.

9) It may include anything else that the Developer deems necessary or appropriate or that is required by law.

**B. CONTENT OF AMENDMENT TO CONDOMINIUM MAP.** These rules apply to an amendment to the Condominium Map required or allowed by this Section 18.3:

- 1) It must include the floor plans and elevations of any additional building or buildings.
- 2) If New Apartments are created, it must show the layout, location, apartment numbers, and dimensions of the New Apartments.
- 3) If Apartment 101 is expanded, it must show the layout, location, apartment number, and dimensions of the addition to Apartment 101;
- 4) It may contain any additional or amended site plans, floor plans and elevations, or other drawings as may be necessary or appropriate.
- 5) It must be accompanied by a certificate signed by a registered architect or professional engineer. The certificate must comply with Section 514A-12 of the Condominium Property Act.

**18.4 CONSEQUENCES OF CREATION OF NEW APARTMENTS.** This is what happens when the Developer records the amendments to the Declaration and the Condominium Map required by Section 18.3:

**A. ESTABLISHMENT OF NEW APARTMENTS.** The New Apartments become condominium Apartments and are part of the Project for all purposes. The Limited Common Elements will be appurtenant to the Apartments to which they are assigned. The Owner of a New Apartment can deed it, lease it, Mortgage it, encumber it, or otherwise deal with title to it just the same as any other Apartment.

**B. OWNERSHIP OF NEW APARTMENTS.** The Developer is the "Owner" of each New Apartment and its Common Interest until the Developer deeds it to someone else. Nobody else except the Developer will have any rights in the Apartment or

its Common interest. (In legal terms, no Owner or other Interested Person will have any "legal or equitable interest in or to" the New Apartments.) Of course, if the Developer signs a proper Mortgage that covers any New Apartment then that Mortgage will be valid.

**C. EXPANSION OF APARTMENT 101.** Apartment 101 will include any additional areas designated as being a part of it in the amendment to the Declaration and the Condominium Map. Any Limited Common Elements designated for Apartment 101 in the amendment to the Declaration or the Condominium Map will be appurtenant to Apartment 101. For all purposes, Apartment 101 will be a single condominium Apartment consisting of (i) the Apartment and its Limited Common Elements as they existed before the expansion, plus (ii) any additional area and any additional Limited Common Elements. The Owner of Apartment 101 will own the expanded Apartment 101 and can deed it, lease it, Mortgage it, encumber it, or otherwise deal with title to it just the same as any other Apartment.

**D. COMMON ELEMENTS; RESERVE FUNDS.** After any construction is substantially completed:

1) The Owners of all of Apartments (including the New Apartments) will have the right to use the Common Elements in the Project to the same extent and subject to the same limits, just as if the Project had been developed with the New Apartments (and any expansion of Apartment 101) from the outset. However, the Owner of a New Apartment is not required to pay any assessments for Common Expenses of the Project (except as provided in Section 18.4D.2) that arise before the New Apartment is created and construction of it is substantially completed. Likewise, Apartment 101 is not required to pay (on account of the expansion of Apartment 101, the assignment of new Limited Common Elements to it, or the change in its Common Interest) any additional share of Common Expenses (except as provided in Section 18.4D.2) that arise before Apartment 101 is expanded and construction of the expansion area and its new Limited Common Elements is substantially completed.

2) All replacement reserve funds accumulated by the Association before the Developer created the New Apartments and/or expanded Apartment 101 will become the property of all Apartment Owners. Each Apartment will have an interest in the replacement reserve funds proportionate to the Apartment's Common Interest. If it is necessary to assure that each Apartment contributes a share of the reserve funds equal to its percentage share of the Common Expenses, the Board may adjust the account of each Apartment Owner by (i) refunding all or part of its money in the reserve fund, (ii) giving a credit against future assessments, (iii) charging a special assessment or series of assessments, or (iv) doing anything else that is consistent with generally accepted accounting principles. The Board cannot, however, charge any Apartment Owner a special assessment for reserves in any one month which exceeds twenty percent (20%) of the monthly assessment for other Common Expenses, after excluding any assessment for reserve funds.

## **19. DEVELOPER'S RESERVED RIGHT TO ADD TO OR CHANGE THE IMPROVEMENTS.**

No matter what else the Condominium Documents say, the Developer reserves the right to design, develop, build, add, and complete New Improvements on the Land. The Developer may do this more than once and at any time before the Development Period ends.

**19.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 19 are subject to these terms and conditions:

**A. PLANS AND SPECIFICATIONS.** A licensed architect or engineer must prepare plans and specifications for the New Improvements. The plans and specifications must be approved by the officer of the County of Maui having jurisdiction over the issuance of building permits. The plans and specifications must be designed so that the New Improvements will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion. The Developer must build the New Improvements substantially in accordance with the plans and specifications.

**B. CHANGES TO EXISTING IMPROVEMENTS.** The plans and specifications cannot require any material change to, or the demolition of: (i) any existing Apartment or Limited Common Element, or (ii) any material building or structure of the Project; provided that:

1) The Developer has right to connect to, use, relocate and/or realign existing, and/or to develop additional central and appurtenant installations for services to the New Improvements to provide electricity, hot and cold water, air conditioning and other applicable utilities and services. It may also designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary and desirable in connection therewith. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

2) The Developer can change or demolish all or any part of an existing Apartment owned by the Developer or where the Owner consents to the change or demolition in writing. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner.

3) The Developer can change or demolish all or any part of an existing Limited Common Element of an Apartment owned by the Developer or where the Owner of the Apartment to which the Limited Common Element is appurtenant consents to the change or demolition in writing. If the Limited Common Element is appurtenant to more than one Apartment then the consent of the Owners of all of those Apartments is necessary. The Developer cannot use its power

of attorney under Section 28.3 to give this consent on behalf of the Owners.

4) The Developer can change or remove any roads, driveways, parking structures, and the like so long as there is reasonable and adequate access from the public streets and highways to the parking stalls and to the entries to the buildings of the Project.

5) The Developer can relocate or replace any utility buildings and installations and the like so long as the plans and specifications provide for replacements that provide comparable services. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

6) The Developer has the right to remove or change parking stalls provided that:

(a) At all times each Resort Apartment must have at least one parking stall as a Limited Common Element.

(b) The Developer cannot materially reduce the size of a parking stall that is a Limited Common Element of an Apartment not owned by the Developer unless the Apartment Owner consents in writing. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner.

(c) The Developer cannot remove a parking stall that is a Limited Common Element of an Apartment not owned by the Developer unless the Developer provides a replacement stall to that Apartment. The replacement stall cannot be a compact stall unless it replaces a compact stall. For this purpose, the Developer can use its power of attorney under Section 28.3 to sign and record all documents required by Section 34.5C.

7) The Condominium Map shows the tentative location of the buildings and driveways that may be constructed in future phases of the Project. Under Section 5.4E all Common Element yards, grounds, walkways, walkway railings, waterfalls, ponds, gardens, decorative rocks, and other landscaping not located in the Shoreline Setback Area are Limited Common Elements of the Master Association Apartment. Even so, the Developer can relocate the site of the buildings, driveways, and related Improvements that may be constructed in future phases and it may also construct additional buildings, driveways, and so on in these Limited Common Element Areas. If this happens, any part of the Land on which the Developer builds new buildings, driveways, and related Improvements will no longer be Limited Common Elements of the Master Association Apartment. In legal terms, the Master Association's interest in those Limited Common Elements is a "defeasible interest".

#### C. COST AND TIME FOR COMPLETION.

1) The Developer must pay all costs of the New Improvements.

2) The Developer must complete each new phase of the Project within forty-eight (48) months after it starts building that phase. The Developer must finish building any other New Improvements within a reasonable time after it starts building them. In either case, if there is a delay for reasons beyond the reasonable control of the Developer or its contractors, the construction must be completed in the additional time reasonably needed to finish it by working on it diligently.

D. EXPENSES. The Developer must repair any damage to the Common Elements caused by the construction contractors.

E. INSURANCE. The Developer must arrange and pay for builder's risk insurance. The insurance must stay in effect during the entire course of the construction. The insurance must cover at least 100% of the estimated cost of construction. The insurance policy must name the Association and the Managing Agent as additional insureds (persons protected by the insurance). The Developer must deposit evidence of the insurance with the Board and the Managing Agent.

F. ENCUMBRANCE OF APARTMENTS. The Developer can Mortgage or assign its interest in the New Apartments as security for a loan. It may do this even before construction of the New Improvements is complete. This might happen, for example, if the Developer borrows money to pay the cost of building the New Improvements. The Developer cannot Mortgage any Apartment that it does not own. Likewise, the Developer cannot put any other encumbrance on any Apartment that it does not own unless this Declaration permits it. For an example of express permission, see the Developer's Reserved Rights to grant easements under Section 7.4 or to file an "as-built" amendment under Section 34.3A.2).

19.2 NATURE OF DEVELOPER'S RESERVED RIGHTS. Subject to the limits stated in Section 19.1, the Developer's Reserved Rights in this Section 19 include the right to do anything necessary or convenient to design, develop, build, add, and complete New Improvements on the Land. For example, the Developer has these rights:

A. It can develop, construct and complete the New Improvements.

B. It can remove, change or add Common Elements.

C. It can build and install Improvements that the Developer intends to designate as Apartments or Limited Common Elements pursuant to Section 18.

D. It can remove, amend or add parking stalls subject to the requirements of Section 19.1B.6).

E. It can connect the New Improvements to utilities of the Project.

F. It can build a fence around the construction area. If it does this, it will have the exclusive use and control of the area enclosed by the fence. This includes the right to make all

Owners stay out of that area until the construction is finished and the County of Maui has issued a certificate of occupancy.

G. It has the exclusive right to control, manage, and conduct the design, development construction, addition and completion of the New Improvements on the Land. It will still have this right even after it deeds Apartments or Vacation Ownership Interests to others. This includes, for example, these rights:

1) The Developer has the right to obtain all permits, licenses, and approvals necessary or convenient to the development, construction, completion, and/or operation and use of the Project.

2) It also has the right to coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others to complete the Project in accordance with the Developer's objectives on time, costs and quality.

3) It has the right to exercise all rights and make all decisions of the "owner" or the "developer" or similar contracting party with respect to all contracts now or later made in connection with the development and construction of the New Improvements. This includes, for example, the following contracts:

- Any contract for architectural or engineering services.
- Any contract for landscape architectural services.
- Any contract for soils engineering services.
- Any contract for site work.
- The construction contract.
- The builder's risk insurance policy.
- Any performance and payment bond and any completion bond; provided that if the Association is named as an additional obligee on the bond, then the Developer may not do anything that adversely affects the Association's rights under the bond.
- All subcontracts and materials and equipment supplies contracts and subcontracts related to the construction and development of the Project.
- Any construction management contract.
- All other contracts to furnish labor, materials and/or services in connection with the development and construction of the New Improvements.

The Developer has, among other rights, all rights and the authority to make all decisions with respect to litigation and arbitration of claims arising under or in connection with any of

these contracts and the compromise of any disputes arising under any of them.

4) The Developer also has the right to review and approve necessary or desirable changes and requests for changes and change orders with respect to the New Improvements.

5) It also has the right to file the notice of substantial completion under Chapter 507, Part II, H.R.S.

6) It has the right to seek and obtain temporary and/or permanent certificates of occupancy from the appropriate authorities of the County of Maui.

7) It has the right to approve and direct the replacement of any Improvements that are under construction and that are damaged by fire or something else. This includes the right to settle any insurance claims made under any insurance policy that the Developer buys or arranges.

H. The Developer can also amend the Declaration and Condominium Map as necessary or convenient to describe the New Improvements.

I. The Developer has the right to amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

J. The Developer has the right to use any of the other Developer's Reserved Rights as may be necessary or convenient to design, develop, build, add, and complete New Improvements on the Land. For example, the Developer may do these things:

- It may come onto the Project and authorize others to do so using its rights under Section 7.1K.
- It may make noise, dust, and so on using its rights under Section 7.2.
- It may use its rights to deal with easements under Section 7.4.
- It may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**19.3 OWNERS' OBLIGATIONS.** During the construction period, each Owner must: (1) remain outside of any fenced construction area; (2) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements in the manner determined by the Developer in its sole discretion.

## **20. DEVELOPER'S RESERVED RIGHT TO SUBDIVIDE AND CONSOLIDATE THE LAND.**

No matter what else the Condominium Documents say, the Developer reserves the right to subdivide the Land of the Project, and/or to consolidate the Land of the Project with any Adjacent Parcel, for or in connection with the use of the Developer's Reserved Rights in Sections 21 or 22. The Developer may do this more than once and at any time before the Development Period ends.

**20.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 20 are subject to these terms and conditions:

A. The Developer may only consolidate the Land of the Project with one or more Adjacent Parcels.

B. The Developer must pay all costs of any subdivision or consolidation. This includes, but is not limited to, the following costs:

1) The cost of preparing and recording any amendment to this Declaration, the Bylaws, and the Condominium Map, and the cost of preparing and recording any other legal documents required for the subdivision or consolidation.

2) The cost of constructing any New Improvements that are needed for the subdivision or consolidation.

3) The cost of relocating any walls or fences that the County of Maui requires as a condition to approving the subdivision or consolidation.

4) The cost of relocating utility easements, utility lines, and so on that the County of Maui requires as a condition to approving the subdivision or consolidation.

5) The cost of providing access to each lot as required by the County of Maui as a condition to approving the subdivision or consolidation.

**20.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 20.1, the Developer's Reserved Rights in this Section 20 include the right to do anything necessary or convenient to subdivide the Land of the Project and/or to consolidate the Land of the Project with any Adjacent Parcel. For example the Developer has the right to do any of these things:

A. It can file one or more applications to subdivide the Land of the Project. It can process the application to final approval.

B. It can file one or more applications to consolidate the Land of the Project with any Adjacent Parcel. It can process the application to final approval.

C. It can file, register or record any document required to effect the subdivision or consolidation in the recorded legal records. This includes, for example, (i) a Land Court Map showing the new lot or lots, the location of any easements, and

so on, and/or (ii) Land Court Petitions to approve the subdivision or consolidation of the lots.

D. It can make any improvements necessary or convenient to obtain any necessary approvals or to complete the subdivision or consolidation. The Developer may do this by using the Developer's Reserved Rights under Section 19 to make New Improvements.

E. It can seek and obtain any variance, zoning change, or other land use approval necessary or convenient to accomplish such subdivision or consolidation or for the benefit of any parcel to be deleted pursuant to Section 21.

F. It can amend this Declaration or the Bylaws to change the description of the Land.

G. It can amend the Condominium Map if the Developer deems it necessary or useful to reflect the subdivision and/or consolidation.

H. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

I. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to subdivide the Land or to consolidate the Land with any Adjacent Parcel. For example, the Developer may (i) use its rights to deal with easements under Section 7.4, or (ii) sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

## **21. DEVELOPER'S RESERVED RIGHT TO DELETE LAND.**

No matter what else the Condominium Documents say, the Developer reserves the right to withdraw and delete from the Project, and from the condominium property regime, all or any part of the areas designated on the Condominium Map as "Possible Deletion Areas." The Developer may do this more than once and at any time before the Development Period ends.

**21.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 21 are subject to these terms and conditions:

A. The Developer may delete all or any part of the Land designated on the Condominium Map as "Possible Deletion Areas". It cannot delete any other part of the Land.

B. The part of the Land deleted must be a legally separate lot. The Developer can use the Developer's Reserved Rights under Section 20 to make all or any part of the Possible Deletion Areas into a separate lot.

C. The Developer may not delete any part of the Land that contains an Apartment no longer owned by the Developer

or a parking stall that is a Limited Common Element of an Apartment no longer owned by the Developer unless either:

- 1) The Apartment Owner consents in writing, or
- 2) The Developer provides a replacement stall to that Apartment. The replacement stall cannot be a compact stall unless it replaces a compact stall. For this purpose, the Developer can use its power of attorney under Section 28.3 to sign and record all documents required by Section 34.5C. This includes an amendment to this Declaration and, to the extent required by law, the deeds to the Apartments whose stalls are being reassigned.

D. The Developer must pay all costs of deleting any part of the Land. This includes but is not limited to these costs:

- 1) The cost of preparing and recording any amendment to this Declaration, the Bylaws, and the Condominium Map, and the cost of preparing and recording any other legal documents required to delete all or any part of the Possible Deletion Areas.
- 2) The cost of constructing any New Improvements (pursuant to Section 19) needed to operate the Project without the deleted land.
- 3) The cost of relocating any walls or fences that may be required by law to separate the Project from the deleted land.
- 4) The cost of relocating utility easements, utility lines, and so on as needed to operate the Project without the deleted land.
- 5) The cost of providing access to the Project across the deleted land.
- 6) The cost of installing a sign on the deleted land directing traffic to the Project.

Under no circumstances can this Subsection 21.1D or any other part of the Condominium Documents be construed to require that the Developer pay any compensation or other sums on account of the part of the Land deleted.

**21.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 21.1, the Developer's Reserved Rights in this Section 21 include the right to do anything necessary or convenient to delete all or any part of the Possible Deletion Areas. For example, the Developer has these rights:

- A. It can amend this Declaration and the Bylaws to change the description of the Land.
- B. It can amend the Condominium Map if necessary or useful to reflect the deletion of the Possible Deletion Areas.
- C. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation

Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

D. It can sign, acknowledge, and record one or more deeds, releases, or other documents as the Developer deems necessary or convenient to do these things:

- 1) To complete the deletion of all or any part of the Possible Deletion Areas.
- 2) To remove the deleted land from the condominium property regime.
- 3) To vest title to the deleted land in the Developer free of all claims, liens, and interests of anyone else, or to convey it to someone else. The deleted land, however, will be subject to any the Declaration of Merger, the Ka'anapali North Beach Declaration, and to any Mortgage signed by the Developer that covers the Possible Deletion Areas.

E. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to delete all or any part of any Possible Deletion Areas. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**21.3 THE DEVELOPER MUST AMEND THE CONDOMINIUM DOCUMENTS.** To delete some or all of any Possible Deletion Areas, the Developer must amend this Declaration and the Bylaws. It may also have to amend the Condominium Map to do so.

**A. CONTENT OF AMENDMENT TO DECLARATION.** The Developer must amend this Declaration and the Bylaws so that the description of the Land refers only to the lot or lots that will remain after the deletion takes effect. The Developer may also change the Land descriptions as necessary or convenient to refer to any easements and other changes to title. It may include anything else that the Developer deems necessary or appropriate or that is required by law.

**B. AMENDMENT TO CONDOMINIUM MAP.** The Developer may amend the Condominium Map but it does not have to do so unless the law requires it. The amendment may also contain any site plan, floor plans and elevations, or other drawings that the Developer chooses to include.

**21.4 WHAT HAPPENS WHEN AREAS ARE DELETED.**

A. The deletion of all or a part of the Possible Deletion Areas will be effective for all purposes when the Developer records the amendment to this Declaration and any amendment to the Condominium Map required by Section 21.3. From then on, no Apartment Owner and no other Interested Person except for the Developer and its Lender (if the Developer signed a Mortgage that covers any Possible Deletion Areas) will have any rights in or claims on (in legal terms, any "legal or equitable interest in or to") any part of the Land that is deleted. To be

clear, the Developer intends that title to the land deleted will belong only to the Developer. Each Interested Person understands, acknowledges, accepts and agrees (i) that the Developer will be the sole owner of any part of the Land designated as a Possible Deletion Area and that is deleted as provided in this Section 21, and (ii) after the deletion takes effect, the land deleted will no longer be part of the Project or subject to the Condominium Documents. In legal terms, the interest of the Owners in the Possible Deletion Areas is a "defeasible interest".

For example, part of the Land deleted as provided in this Section 21 may be a Limited Common Element of the Master Association Apartment. Even so, any part of the Land deleted, and any Improvements on that part, will no longer be a Limited Common Element of the Master Association Apartment.

B. Any part of the Land that is deleted as provided in this Section 21 will become an Adjacent Parcel. The Developer has the right to sell, deed, convey, or otherwise deal with title to any Adjacent Parcel free of the covenants, conditions and restrictions of this Declaration and the Bylaws. For example, the Developer may dedicate any Adjacent Parcel to the County of Maui, the State of Hawaii, or any other governmental or quasi-governmental entity for use as a public street or roadway or for any other lawful purpose.

## **22. DEVELOPER'S RESERVED RIGHT TO ANNEX LAND AND IMPROVEMENTS.**

No matter what else the Condominium Documents say, the Developer reserves the right to change the Project by annexing into the Project and the condominium property regime any Adjacent Parcel and any Improvements located on the Adjacent Parcel. The Developer may do this more than once and at any time before the Development Period ends.

**22.1 LIMITS ON THE DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 22 are subject to these terms and conditions:

- A. The Developer may only annex an Adjacent Parcel.
- B. Any Adjacent Parcel to be annexed must be a legally separate lot.
- C. If the Adjacent Parcel contains any improvements, and if those improvements will not be replaced by new construction, then these requirements apply:

- 1) The improvements on the Adjacent Parcel must have been constructed according to plans and specifications prepared by a licensed architect or engineer.

- 2) The plans and specifications must have been approved by the officer of the County of Maui having jurisdiction over the issuance of building permits.

- 3) The improvements must be substantially consistent with the existing Improvements of the Project in

terms of quality of construction and finish, as determined by the Developer in its sole discretion.

D. The Developer must pay all costs of annexing the Adjacent Parcel.

E. Each person who has a Mortgage or other lien on the Adjacent Parcel must sign a document that makes the Mortgage or lien subordinate to the Condominium Documents. Anyone else who has a lien on the Adjacent Parcel must sign a document that makes the lien subordinate to the Condominium Documents. These requirements do not apply, however, to a lien for taxes, a lien in favor of any government or governmental agency, a lien to enforce payment of the costs to keep up a roadway or some other kind of commonly used property or easement, or a lien in favor of a homeowners association (for example, the Ka'anapali North Beach Association).

**22.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 22.1, the Developer's Reserved Rights in this Section 22 include the right to do anything necessary or convenient to annex any Adjacent Parcel and any Improvements on it. For example, the Developer has these rights:

A. It can amend this Declaration or the Bylaws so that the description of the Land includes the Adjacent Parcel annexed.

B. It can amend this Declaration to describe any improvements on the Adjacent Parcel.

C. It can amend the Condominium Map if the Developer deems it necessary or useful to reflect the annexation of the Adjacent Parcel or any Improvements on it.

D. It can create New Apartments and designate Limited Common Elements for the New Apartments pursuant to Section 18.

E. It can designate all or any part of the Adjacent Parcel and any improvements on it as Limited Common Elements appurtenant to one or more existing Apartments. However, the Developer cannot assign Limited Common Elements (except for Resort Limited Common Elements) to any Apartment not owned by the Developer unless the Apartment Owner consents in writing. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner.

1) Despite what Section 22.2E says, the Limited Common Elements of the Master Association Apartment will include all Common Element yards, grounds, walkways, and so on (as described in Section 5.4E) located on the Adjacent Parcel except to the extent that the same are specifically assigned as Limited Common Elements of some other Apartment or as general Common Elements.

F. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

G. It can sign, acknowledge, and record one or more deeds, or other documents that the Developer deems necessary or convenient to make any Adjacent Parcel and the Improvements on it subject to this Declaration and the Bylaws, and part of the condominium property regime.

H. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to annex any Adjacent Parcel and any Improvements on it. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**22.3 THE DEVELOPER MUST AMEND THE CONDOMINIUM DOCUMENTS.** To annex an Adjacent Parcel and the improvements on it the Developer must amend this Declaration. The Developer may also have to amend the Condominium Map to do so.

**A. CONTENT OF AMENDMENT TO DECLARATION.**

1) The Developer must amend this Declaration to change the description of the Land so that it includes the Adjacent Parcel. The Land description may also be changed as necessary or convenient to refer to any easements and other changes to title.

(a) It is not necessary to annex all rights in the Adjacent Parcel. For example, the Adjacent Parcel might be a lot that contains a road. The road might serve other property besides the Project. The persons who have the right to use the roadway lot would each own a share (in legal terms, an "undivided interest") in the lot. In such a case, the Developer has the right to annex just the undivided interest in the Adjacent Parcel. The Adjacent Parcel might also be subject to a reasonable agreement to share the cost of any maintenance, upkeep, repair and replacement of the road and the cost of insurance for any liabilities arising with respect to the road. The Developer has the right to annex an Adjacent Parcel, or any interest in it, subject to reasonable agreements and restrictions on title.

2) If the Developer designates all or any part of the Adjacent Parcel and/or any improvements on it as a Limited Common Element assigned to one or more existing Apartments, the amendment to this Declaration must identify the Apartment or Apartments to which it is appurtenant. It is not necessary to do so, however, as to Common Element yards, grounds, walkways, and so on (as described in Section 5.4E) that are located on the Adjacent Parcel and that will be Limited Common Elements of the Master Association Apartment.

3) The amendment may include anything else that the Developer deems necessary or appropriate or that is required by law.

**B. AMENDMENT TO CONDOMINIUM MAP.** The Developer may amend the Condominium Map but it does not have to do so unless the law requires it. The amendment may also contain any site plans, floor plans and elevations, or other drawings that the Developer chooses to include.

**C. NEW APARTMENTS.** If the Developer creates any New Apartments or designates any Limited Common elements for the New Apartments as provided in Section 18, then the Developer must amend this Declaration and the Condominium Map as required by Section 18.

**22.4 WHAT HAPPENS WHEN AN ADJACENT PARCEL IS ANNEXED.** The annexation of an Adjacent Parcel takes effect when (i) the Developer records an amendment to this Declaration annexing the Adjacent Parcel and any amendment to the Condominium Map required by Section 22.3, and (ii) any Lender or other lienholder signs and records a document that meets the requirement of Section 22.1E. After that:

A. Any improvements on the Adjacent Parcel (except for improvements that will be replaced by new construction) will be deemed New Improvements.

B. The Adjacent Parcel and the New Improvements will be Common Elements unless and until any parts of them are designated as Apartments or Limited Common Elements as permitted in Section 18.

C. All of the Apartments will have the right to use the Common Elements in the Project to the same extent and subject to the same limits as if the entire Project (including any annexed Adjacent Parcel) had been developed at the same time. This includes both the Land as it existed before the annexation and the Adjacent Parcel, to the extent that they are Common Elements. After the Adjacent Parcel is annexed, and after any designation of any New Apartments, Common Elements, and Limited Common Elements, the Project will be treated as though it had always been developed, divided into Apartments, held, occupied and used by the Owners as a single undivided Project.

**23. DEVELOPER'S RESERVED RIGHT TO BUILD ADJACENT PROJECTS AND TO MERGE ADJACENT CONDOMINIUMS WITH THE PROJECT.**

No matter what else the Condominium Documents say, the Developer reserves the right to develop one or more Adjacent Projects on any Adjacent Parcel and to merge any Adjacent Condominium with the Project pursuant to the Declaration of Merger. The Developer may do this more than once and at any time before the Development Period ends.

**23.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 23 are subject to these terms and conditions:

**A. WHEN MERGER IS PERMITTED.** The Developer may only merge the Project and any Adjacent Condominium in accordance with the terms of and subject to the conditions to merger stated in the Declaration of Merger.

**B. PLANS AND SPECIFICATIONS.** A licensed architect or engineer must prepare plans and specifications for the Adjacent Project. The plans and specifications must be approved by the officer of the County of Maui having jurisdiction over the issuance of building permits. The Developer cannot merge an Adjacent Condominium with the Project unless (i) the improvements of the Adjacent Condominium, as shown in the plans and specifications, will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion, and (ii) the Adjacent Condominium is constructed substantially in accordance with those plans and specifications.

**C. COST AND TIME FOR COMPLETION.** The Developer must pay all costs of the Adjacent Project. The Developer must complete each phase of any Adjacent Project within forty-eight (48) months after it starts building it. If there is a delay for reasons beyond the control of the Developer or its contractors, the construction must be completed in the additional time reasonably needed to finish it by working on it diligently.

**D. EXPENSES.** The Developer must repair any damage to the Common Elements caused by the construction contractors. Any permanent roadway easement across the Common Elements in favor of any Adjacent Project must require that the Adjacent Project share the cost of any maintenance, upkeep, repair and replacement of the roadway and the cost of liability insurance on it.

**E. INSURANCE.** The Developer must arrange and pay for builder's risk insurance. The insurance must stay in effect during the entire course of the construction. The insurance must cover at least 100% of the estimated cost of construction. The insurance policy must name the Association and the Managing Agent as additional insureds (persons protected by the insurance). The Developer must deposit evidence of the insurance with the Board and the Managing Agent.

**23.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 23.1, the Developer's Reserved Rights in this Section 23 include the right to do anything necessary or convenient to develop one or more Adjacent Projects on any Adjacent Parcel and/or to merge any Adjacent Condominium with the Project. For example, the Developer has these rights:

**A.** It can come onto the Project and to authorize others to do so, using its easement under Section 7.1K, as may be necessary or convenient to design, develop, construct, add, and

complete the Adjacent Project according to plans and specifications approved by the officer of the County of Maui having jurisdiction over the issuance of building permits, or to sell apartments, time share interests or fractional ownership interests in the Adjacent Project.

**B.** It can create noise, dust, vibrations, and so on using its easement rights under Section 7.2, whether the activities that give rise to the noise, dust, vibrations, and so on occur on the Project or on the Adjacent Parcel.

**C.** It can connect the Adjacent Project to utilities of the Project so long as either (i) there are separate meters, or (ii) the Adjacent Project is a condominium that will be merged with the Project.

**D.** It can record a Certificate of Merger as provided in the Declaration of Merger.

**E.** It can take any steps needed to comply with the SMA Permit, and any zoning or other land use requirements as provided in Section 27 or any SMA Permit, and any zoning or other land use requirements that apply to the Adjacent Parcel.

**F.** It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

**G.** It can use any of the other Developer's Reserved Rights as may be necessary or convenient to develop one or more Adjacent Projects on any Adjacent Parcel and to merge any Adjacent Condominium with the Project pursuant to the Declaration of Merger. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

#### **24. DEVELOPER'S RESERVED RIGHT TO CONVERT LIMITED COMMON ELEMENTS TO APARTMENTS.**

No matter what else the Condominium Documents say, and except as otherwise provided by law, the Developer reserves the right, at any time and from time to time, to convert all or any part of a Limited Common Element appurtenant to a Commercial Apartment owned by the Developer into one or more separate Apartments. Any Apartment created in this way will be a New Apartment.

**24.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 24 are subject to these terms and conditions:

**A. PLANS AND SPECIFICATIONS.** A licensed architect or engineer must prepare plans and specifications for any New Improvements and any changes to the existing Improvements. The plans and specifications must be approved by the officer of the County of Maui having jurisdiction over the issuance of

building permits. The plans and specifications must be drawn so that the changed or New Improvements will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion. The Developer must build the New Improvements and make any changes to the existing Improvements substantially in accordance with the plans and specifications.

**B. CHANGES TO EXISTING IMPROVEMENTS.** The plans or specifications cannot require any material change to or the demolition of any existing Apartment or Limited Common Element; provided that:

1) The Developer has right to connect to, use, relocate and/or realign existing, and/or to develop additional central and appurtenant installations for services to the New Apartments to provide electricity, hot and cold water, air conditioning and other applicable utilities and services. It may also designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary and desirable in connection therewith. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

2) The Developer can change or demolish all or any part of an existing Apartment owned by the Developer or where the Owner consents to the change or demolition in writing. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner.

3) The Developer can change or demolish all or any part of an existing Limited Common Element of an Apartment owned by the Developer or where the Owner of the Apartment to which the Limited Common Element is appurtenant consents to the change in writing. If the Limited Common Element is appurtenant to more than one Apartment then the consent of the Owners of all of those Apartments is necessary. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owners.

**C. COST AND TIME FOR COMPLETION.** The Developer must pay all costs of converting the Limited Common Element to a New Apartment. The Developer must finish making any changes to the Improvements within a reasonable time after its starts making them. If there is a delay for reasons beyond the reasonable control of the Developer or its contractors, the construction must be completed in the additional time reasonably needed to finish it by working on it diligently.

**D. EXPENSES.** The Developer must repair any damage to the Common Elements caused by the construction contractors.

**E. INSURANCE.** The Developer must arrange and pay for builder's risk insurance. The insurance must stay in effect during the entire course of the construction. The insurance must cover at least 100% of the estimated cost of construction. The

insurance policy must name the Association and the Managing Agent as additional insureds (persons protected by the insurance). The Developer must deposit evidence of the insurance with the Board and the Managing Agent.

**24.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 24.1, the Developer's Reserved Rights in this Section 24 include the right to do anything necessary or convenient to convert all or any part of a Limited Common Element appurtenant to a Commercial Apartment owned by the Developer into one or more separate Apartments. For example, the Developer has these rights:

A. It can remove or change the Limited Common Elements to be converted and remove, change or add Common Elements in the immediate vicinity of the Apartment or Limited Common Element, as necessary or convenient (i) to establish the physical limits of each New Apartment, (ii) to re-establish the physical limits of the Developer's existing Apartment, or (iii) otherwise to complete the conversion of the Limited Common Elements to a New Apartment;

B. It can connect each New Apartment to the utilities of the Project.

C. It can designate Common Elements adjacent to the New Apartments, or Limited Common Elements appurtenant to an Apartment owned by the Developer, as Limited Common Elements appurtenant to one or more New Apartments provided that there is no material adverse affect on the remainder of the Project.

D. It can sign, acknowledge and record one or more amendments to this Declaration and to the Condominium Map meeting the requirements of Section 24.3.

E. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

F. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to convert all or any part of a Limited Common Element appurtenant to a Commercial Apartment owned by the Developer into one or more separate Apartments. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**24.3 THE DEVELOPER MUST AMEND THE CONDOMINIUM DOCUMENTS.** The Developer must amend this Declaration and the Condominium Map in order to convert all or any part of a Limited Common Element assigned to a Commercial Apartment owned by the Developer into one or more separate Apartments:

**A. CONTENT OF AMENDMENT TO DECLARATION.** These rules apply to an amendment to the Declaration required or allowed by this Section 24.3:

1) It must state the Apartment number of each New Apartment and describe its location, approximate area, number of rooms, immediate Common Elements to which it has access, designated parking stall if considered a Limited Common Element, and anything else needed to properly identify it.

2) It must change the description of the Limited Common Elements appurtenant to any Apartment whose Limited Common Elements are being converted to a New Apartment.

3) It must describe any change in or addition to the Common Elements.

4) It must describe any additional or newly designated Limited Common Elements, if any, and identify the Apartments to which they are assigned.

5) It must list the Common Interest of each Apartment in the Project. This includes both the existing Apartments and the New Apartments. The Common Interest for each Apartment will be determined as stated in Section 29.

6) It must state the purposes for which each New Apartment is intended and restricted as to use, if different from the provisions in this Declaration.

7) It may include anything else that the Developer deems necessary or appropriate or that is required by law.

**B. CONTENT OF AMENDMENT TO CONDOMINIUM MAP.** These rules apply to an amendment to the Condominium Map required or allowed by this Section 24.3:

1) It must show the layout, location, apartment numbers, and dimensions of the New Apartments.

2) It may contain any additional or amended site plans, floor plans and elevations, or other drawings as may be necessary or appropriate.

3) It must be accompanied by a certificate signed by a registered architect or professional engineer. The certificate must comply with Section 514A-12 of the Condominium Property Act.

**24.4 CONSEQUENCES OF CREATION OF NEW APARTMENTS.** This is what happens when the Developer records the amendments to the Declaration and the Condominium Map required by Section 24.3:

**A. CREATION OF APARTMENTS.** The New Apartments become condominium Apartments and are part of the Project for all purposes. The Limited Common Elements designated in the amendment will be appurtenant to the Apartments to which they are assigned. The Owner of a New Apartment can deed it,

lease it, Mortgage it, encumber it, or otherwise deal with title to it just the same as any other Apartment. The Limited Common Elements converted to New Apartments will no longer be Limited Common Elements.

**B. OWNERSHIP OF NEW APARTMENTS.** The Developer is the "Owner" of each New Apartment and its Common Interest until the Developer deeds it to someone else. Nobody else except the Developer will have any rights in the Apartment or its Common interest. (In legal terms, no Owner or other Interested Person will have any "legal or equitable interest in or to" the New Apartments.) Of course, if the Developer signs a proper Mortgage that covers the Limited Common Elements converted to a New Apartment then that Mortgage will be valid and will apply to the New Apartment.

**C. COMMON ELEMENTS; RESERVE FUNDS.** After any construction is completed:

1) The Owners of all of Apartments (including the New Apartments) will have the right to use the common elements in the Project to the same extent and subject to the same limits, just as if the Project had been developed with the New Apartments from the outset. However, the Owner of a New Apartment is not required to pay any assessments for Common Expenses of the Project (except as provided in Section 24.4C.2)) that arise before the New Apartment is created and construction of it is substantially completed.

2) All replacement reserve funds accumulated by the Association before the Developer created the New Apartments will become the property of all Apartment Owners in the Project in proportion to the Common Interests appurtenant to such Owners Apartments. If it is necessary to assure that each Apartment contributes a share of the reserve funds equal to its percentage share of the Common Expenses, the Board may adjust the account of each Apartment Owner by (i) refunding all or part of its money in the reserve fund, (ii) giving a credit against future assessments, (iii) charging a special assessment or series of assessments, or (iv) doing anything else that is consistent with generally accepted accounting principles. The Board cannot, however, charge any Apartment Owner a special assessment for reserves in any one month which exceeds twenty percent (20%) of the monthly assessment for other Common Expenses, after excluding any assessment for reserve funds.

**25. DEVELOPER'S RESERVED RIGHTS TO CONVERT APARTMENTS TO LIMITED COMMON ELEMENTS OR TO CONVERT APARTMENTS OR LIMITED COMMON ELEMENTS TO COMMON ELEMENTS.**

No matter what else the Condominium Documents say, and except as otherwise provided by law, the Developer reserves the right, at any time and from time to time, to convert: (i) any part of an Apartment owned by the Developer into Limited Common Elements appurtenant to that Apartment, or (ii) all or any part of

an Apartment owned by the Developer, or its Limited Common Elements, into general Common Elements.

**25.1 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 25 are subject to these terms and conditions:

**A. PLANS AND SPECIFICATIONS.** If the Developer chooses to build any New Improvements or to make any changes to the existing Improvements when using its reserved rights in this Section 25, then these rules apply: A licensed architect or engineer must prepare plans and specifications for any New Improvements and any changes to the existing Improvements. The plans and specifications must be approved by the officer of the County of Maui having jurisdiction over the issuance of building permits. The plans and specifications must be drawn so that the changed or New Improvements will be substantially consistent with the existing Improvements of the Project in terms of quality of construction and finish, as determined by the Developer in its sole discretion. The Developer must build the New Improvements and make any changes to the existing Improvements substantially in accordance with the plans and specifications.

**B. CHANGES TO EXISTING IMPROVEMENTS.** The plans or specifications cannot require any material change to or the demolition of any existing Apartment or Limited Common Element; provided that:

1) The Developer has right to connect to, use, relocate and/or realign existing, and/or to develop additional central and appurtenant installations for services to:

(a) the remainder of the reduced Apartment or its Limited Common Elements, if any, or

(b) any newly designated general Common Elements or Limited Common Elements,

to provide electricity, hot and cold water, air conditioning and other applicable utilities and services. It may also designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary and desirable in connection therewith. The Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

2) The Developer can change or demolish all or any part of an existing Apartment owned by the Developer or where the Owner consents to the change or demolition in writing. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owner.

3) The Developer can change or demolish all or any part of an existing Limited Common Element of an Apartment owned by the Developer or where the Owner of the Apartment to which the Limited Common Element is appurtenant consents to the change in writing. If the Limited

Common Element is appurtenant to more than one Apartment then the consent of the Owners of all of those Apartments is necessary. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of the Owners.

**C. COST AND TIME FOR COMPLETION.** The Developer must pay all costs of converting (i) any part of an Apartment to Limited Common Element, or (ii) all or any part of an Apartment and/or its Limited Common Element to general Common Elements. The Developer must finish making any changes to the Improvements within a reasonable time after its starts making them. If there is a delay for reasons beyond the reasonable control of the Developer or its contractors, the construction must be completed in the additional time reasonably needed to finish it by working on it diligently.

**D. EXPENSES.** The Developer must repair any damage to the Common Elements caused by any construction contractors.

**E. INSURANCE.** The Developer must arrange and pay for builder's risk insurance. The insurance must stay in effect during the entire course of any construction. The insurance must cover at least 100% of the estimated cost of construction. The insurance policy must name the Association and the Managing Agent as additional insureds (persons protected by the insurance). The Developer must deposit evidence of the insurance with the Board and the Managing Agent.

**F. LENDER'S CONSENT.** If the Developer's Apartment has a Mortgage on it, then the conversion will not take effect until both of these things happen:

1) The Lender must give its consent in a recorded document.

2) If any part of an Apartment and/or its Limited Common Element is being converted to general Common Elements, the Lender must release the converted property from the Mortgage in a recorded document.

**25.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 25.1, the Developer's Reserved Rights in this Section 25 include the right to do anything necessary or convenient to convert (i) any part of an Apartment owned by the Developer into Limited Common Elements appurtenant to that Apartment, or (ii) all or any part of an Apartment owned by the Developer, or its Limited Common Elements, into general Common Elements. For example, the Developer has these rights:

**A.** It can remove, change or add Common Elements in the immediate vicinity of the Apartment or its Limited Common Elements, as necessary or convenient (i) to re-establish the physical limits of the remainder of the Apartment or its Limited Common Elements, (ii) to establish the physical limits of the newly designated general Common Elements or Limited Common Elements, or (iii) otherwise to complete the conversion of any part of an Apartment to Limited Common Element, or the conversion of all or any part of an Apartment

and/or its Limited Common Element to general Common Elements;

B. It can connect the remainder of the Apartment or its Limited Common Elements to the utilities of the Project.

C. It can connect any newly designated general Common Elements or Limited Common Elements to the utilities of the Project.

D. It can sign, acknowledge and record one or more amendments to this Declaration and to the Condominium Map meeting the requirements of Section 25.3.

E. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

F. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to convert (i) any part of an Apartment owned by the Developer into Limited Common Elements appurtenant to that Apartment, or (ii) all or any part of an Apartment owned by the Developer, or its Limited Common Elements, into general Common Elements. For example, the Developer may reconfigure the interior of the remainder of the Apartment as permitted by Section 17.2A.1), or sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**25.3 THE DEVELOPER MUST AMEND THE CONDOMINIUM DOCUMENTS.** The Developer must amend this Declaration and the Condominium Map in order to convert (i) any part of an Apartment owned by the Developer into Limited Common Elements appurtenant to that Apartment, or (ii) all or any part of an Apartment owned by the Developer, or its Limited Common Elements, into general Common Elements.

**A. CONTENT OF AMENDMENT TO DECLARATION.** These rules apply to an amendment to the Declaration required or allowed by this Section 25.3:

1) It must state the Apartment number of the Developer's Apartment affected.

2) If the Developer's Apartment has been reduced in size but not eliminated, it must describe the location, approximate area, number of rooms, immediate Common Elements to which the Apartment has access, designated parking stall if considered a Limited Common Element, and anything else needed to properly identify it.

3) It must describe any additional or newly designated Limited Common Elements of the Apartment.

4) If the Limited Common Elements have been reduced or eliminated, it must change the description of the Limited Common Elements appurtenant to the Apartment.

5) It must describe any change in or addition to the Common Elements.

6) It must list the Common Interest for each Apartment in the Project. The Common Interest for each Apartment will be determined as stated in Section 29.

7) It may include anything else that the Developer deems necessary or appropriate or that is required by law.

**B. CONTENT OF AMENDMENT TO CONDOMINIUM MAP.** These rules apply to an amendment to the Condominium Map required or allowed by this Section 25.3:

1) If the Apartment has been reduced in size but not eliminated, it must show the layout, location, apartment number, and dimensions of the remainder of the Apartment.

2) If the Apartment has been eliminated, it must change the floor plans to reflect that the Apartment has been eliminated.

3) It may contain any additional or amended site plans, floor plans and elevations, or other drawings as may be necessary or appropriate.

4) It must be accompanied by a certificate signed by a registered architect or professional engineer. The certificate must comply with Section 514A-12 of the Condominium Property Act.

**25.4 CONSEQUENCES OF CONVERSION.** This is what happens when the Developer records the amendments to the Declaration and the Condominium Map required by Section 25.3 and any consent or release of a Lender required by Section 25.1F:

**A. NEW LIMITED COMMON ELEMENT.** Any part of the Apartment converted to Limited Common Element will become a Limited Common Element appurtenant to that Apartment for all purposes. The Developer and all later Owners of that Apartment will have these rights:

1) They will have the right to use the newly designated Limited Common Element to the same extent and subject to the same limits, just as if it had been appurtenant to Apartment from the time that the Project was first developed.

2) They can deed the Apartment with its newly designated Limited Common Elements, lease it, Mortgage it, encumber it, or otherwise deal with title to it just the same as any other Apartment.

**B. NEW COMMON ELEMENTS.** Any part of the Apartment or any Limited Common Element converted to general Common Element will become a general Common Element for all purposes. All Owners, including the Developer if it owns other Apartments, will own the newly designated general Common Elements just as they own all other Common Elements. The Owners of all of Apartments will have the right to use the Common Elements in the Project, including the newly

designated general Common Elements, to the same extent and subject to the same limits, just as if the Project had been developed with the newly designated general Common Elements from the outset. These rights will be subject to any easements created, relocated, and so on, which affect the newly designated general Common Elements.

**C. BOUNDARIES OF APARTMENT OR LIMITED COMMON ELEMENTS.** If the Apartment is reduced in size but not eliminated, then the new boundaries of the Apartment and/or its Limited Common Elements will be changed as stated in the amendments to the Declaration and the Condominium Map required by Section 25.3 for all purposes.

**D. RESERVE FUNDS.** After:

1) the Developer converts (i) any part of an Apartment owned by the Developer into Limited Common Elements appurtenant to that Apartment, or (ii) all or any part of an Apartment owned by the Developer, or its Limited Common Elements, into general Common Elements, and

2) any construction is substantially completed,

all replacement reserve funds accumulated by the Association up to that time will become the property of all Apartment Owners in the Project in proportion to the Common Interests appurtenant to the Owners Apartments. The Board will not refund to the Developer all or any part of the replacement reserve funds paid on account of any part of the Apartment or its Limited Common Elements that is converted to general Common Elements.

**26. DEVELOPER'S RESERVED RIGHT TO CHANGE THE PROJECT TO COMPLY WITH LAW.**

No matter what else the Condominium Documents say, and except as otherwise provided by law, the Developer reserves the right, at any time and from time to time, to change the Apartments, the Common Elements, the Limited Common Elements, and/or to amend the Condominium Documents as required to comply with any laws that apply to the Project or to the Association, any Vacation Owners Association or the Developer. This includes, for example, the federal Fair Housing Act, 42 U.S.C. §§3601 *et seq.*, and the Americans With Disabilities Act 42 U.S.C. §§12101 *et seq.*, (the "ADA"), and any rules and regulations adopted under either of them. For example, the Developer could use this right: (i) to re-stripe or reconfigure parking stalls to comply with the ADA, or (ii) to change the slope of a ramp for wheelchairs to comply with the ADA. The Developer may also use any of the other Developer's Reserved Rights described in this Declaration in connection with the use of its rights under this Section 26. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

**27. DEVELOPER'S RESERVED RIGHTS REGARDING SMA PERMITS.**

Because the Land is beachfront property, the Project is located in a "Special Management Area" or "SMA". Hawaii law requires that the Developer obtain an SMA Permit for any development in a Special Management Area. The Project is presently subject to the SMA Permits described in Section 1.66. Some of the requirements of the SMA Permit apply to the initial construction and completion of the Project. Other requirements apply to the Project on an ongoing basis. No matter what else the Condominium Documents say, and except as otherwise provided by law, the Developer reserves the right to do all things necessary or convenient to satisfy the requirements of the Project's SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. The Developer may do this more than once and at any time before the Development Period ends.

**27.1 LIMITS OF DEVELOPER'S RESERVED RIGHTS.** The Developer must pay all of the immediate costs arising out of the use of the Developer's Reserved Rights under this Section 27. The Developer does not, however, have to pay the costs to the Association to comply with the Project's SMA Permits on an ongoing basis. The Association is responsible for ongoing compliance with the SMA Permits and must pay the cost to do so. It is understood that ongoing costs are simply costs of owning property on the Island of Maui. The Developer is responsible for compliance with the SMA Permits pertaining to the initial construction and completion of the Project and must pay the cost to do so. The Developer, however, has no obligation to comply with requirements of the SMA Permits that do not apply to the initial construction and completion of the Project or any phase of it. If the Developer chooses to do more than that, then it must also pay the cost of doing so.

**27.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** Subject to the limits stated in Section 27.1, the Developer's Reserved Rights under this Section 27 include the right to do anything necessary or convenient to satisfy the requirements of the Project's SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer has these rights:

A. It can do anything required by the Project's SMA Permits. For example, the SMA Permits may require that construction stop if historic, archaeological, or cultural sites are discovered. This would extend the time period within which the Developer must complete its construction of New Improvements.

B. It can enter into any agreements with the County of Maui or the State of Hawaii, or any agency of either of them. It can also record those agreements so that they are binding on the Project, and it can do the things required by those agreements.

C. It can defend any challenge to the Project's SMA Permits. It can also enter into settlement agreements with anyone who challenges the Project's SMA Permits or who otherwise intervenes in the SMA Permitting process, and do the things required by the settlements.

D. It can agree to changes to the Project's SMA Permits. However the Developer may not do so if the change would impose an unreasonable financial burden on the Association.

E. It can amend the Condominium Documents.

F. It can amend any recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms to the revised Declaration. It can also record a new deed or conveyance document for that purpose.

G. It can use any of the other Developer's Reserved Rights as may be necessary or convenient to satisfy the requirements of the Project's SMA Permits, and any zoning or other land use requirements that apply to the Project from time to time. For example, the Developer may sign, acknowledge, record and deliver documents and do other things in its own right and/or using its power of attorney under Section 28.3.

## **28. DEVELOPER'S RESERVED RIGHTS GENERALLY.**

**28.1 RELATIONSHIP TO INCREMENTAL OR PHASED DEVELOPMENT.** The Developer has adopted an incremental plan of development for the Project under which the Project will be developed in two or more stages. These stages are called "increments" or "phases." Some of the Developer's Reserved Rights are or may be necessary or helpful to developing the Project in phases as described elsewhere in this Declaration. Even so, the use of the Developer's Reserved Rights is not limited to the development of the Project in phases except to the extent that this Declaration expressly states otherwise.

**28.2 NATURE OF DEVELOPER'S RESERVED RIGHTS.** The Developer may use the Developer's Reserved Rights separately or in one or more combinations and at one or more times. The Developer has no duty to use the Developer's Reserved Rights. Nothing contained in the Condominium Documents can be deemed to be a representation that it will do so. For example, the Developer has no duty to establish any New Apartments, build any New Improvements, subdivide any of the Land, delete any of the Land, annex any Adjacent Parcel, merge the Project with any Adjacent Condominium, and so on. Conversely, the use of these rights on one occasion does not limit or otherwise affect the Developer's right to use them again from time to time. The Developer's Reserved Rights are reserved and preserved to and may be used by the Developer regardless of anything stated in or that may be inferred from any provision of the Condominium Documents or any other document creating, governing, or encumbering the Project or any part of it.

**28.3 CONSENT; SPECIAL POWER OF ATTORNEY.** The Developer may use the Developer's Reserved Rights without being required to obtain the approval, consent, or joinder of anyone else, and without having to give notice to anyone else. This includes, but is not limited to, the Association, any Apartment Owner, any Lender, or any other Interested Person.

A. When an Apartment Owner or any other Interested Person acquires an Apartment or any other interest in the Project, he or she automatically does each of these things:

1) He or she takes his or her interest in the Project subject to the Developer's Reserved Rights, and each and every exercise and/or assignment of them.

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

(a) The Developer's Reserved Rights and its use of them from time to time;

(b) That this may change the Project;

(c) That this may result in the recalculation of the Common Interest of some or all Apartments in some cases; and

(d) That the Developer can file and/or record any and all documents that the Developer deems necessary or convenient to the use of its rights. This includes, but it is not limited to, amendments to some or all of the Condominium Documents.

3) He or she agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the use of the Developer's Reserved Rights or to accomplish the purposes for which those rights were reserved (as determined by the Developer). This promise includes the duty to sign, have notarized, deliver, and record a special power of attorney in the form attached as Exhibit C (with any changes needed to record it).

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

(a) This power of attorney appointment is permanent. In legal terms, it is *coupled with an interest*, it is *irrevocable*, it is a *durable power of attorney*, and it will not be affected by any disability of the Owner or any other Interested Person who gives it.

(b) It includes "*full power of substitution*". This means that the Developer can let someone else act in its place as a substitute attorney-in-fact.

(c) Each Owner and every other Interested Person gives the Developer this power of attorney whether or not it expressly says so in the deed, Mortgage, or other document by which the Owner or other Interested Person obtained any interest in the Project.

(d) It is a "special power of attorney". This means that the Developer has the power to do only the things stated or intended by the Condominium Documents (as determined by the Developer). This includes, however, the power to do anything else that the Developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the Developer the power to act.

To be clear, and regardless of the preceding language of this Section 18.3, the Developer intends and this Declaration should be construed to provide, to the fullest extent permitted by law, that any amendment to the Condominium Documents made in connection with the use of the Developer's Reserved Rights, and any other action taken by the Developer using the Developer's Reserved Rights, requires the vote or written consent of only the Developer and does not require the vote or written consent of any Owner or any other Interested Person. To the extent that the vote or written consent of any Owner or other Interested Person is required, however, the Developer may use this power of attorney to cast that vote or give that consent on behalf of that Owner or other Interested Person.

B. When this Section 28.3 or any other Section of this Declaration dealing with the Developer's Reserved Rights refers to "documents", it means documents and instruments of any kind. For example, it includes Land Court petitions and orders, Land Court maps, deeds and other conveyance instruments, grants of easements, releases, amendments to the Condominium Documents, applications to governmental agencies or authorities, and so on.

**28.4 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights in this Section 28 are subject to these terms and conditions:

A. The Developer cannot use its power of attorney under Section 28.3A.4) to do any of these things:

1) It cannot give up (in legal terms, "waive or release") any right that an Owner has, under the Condominium Property Act or the Time Share Act, to cancel the purchase of an Apartment or Vacation Ownership Interest.

2) It cannot Mortgage an Owner's Apartment (if the Owner owns the whole Apartment) or Vacation Ownership Interest.

3) It cannot otherwise encumber an Owner's Apartment (if the Owner owns the whole Apartment) or Vacation Ownership Interest unless this Declaration expressly permits it. For an example of express permission, see the Developer's rights to grant utility easements and so on as provided in Section 7.4 or the various Developer's Reserved Rights to amend this Declaration or the other Condominium Documents.

B. The Developer cannot use the Developer's Reserved Rights in a way that prevents an Owner from occupying his or

her Apartment or from having access to and from his or her Apartment. This rule does not apply, however, to limits under any Vacation Plan Documents or Master Association Documents on the times when the owner of a Vacation Ownership Interest, time share interest or fractional ownership interest can occupy his or her Apartment or come onto the Project.

## **28.5 TRANSFER OF DEVELOPER'S RIGHTS.**

A. If the Developer signs and records a document that expressly transfers to someone else some or all of the Developer's Reserved Rights, or any of its other rights as the Developer under the Condominium Documents, then that person will become the "Developer" to the extent of the rights transferred. The new "Developer" can likewise transfer the rights it has. After a transfer (i) the new "Developer" has and may use the rights transferred to it, and (ii) the old Developer is automatically relieved of any and all liability arising after the transfer takes effect with respect to the rights and duties transferred. Each Owner and other Interested Person, by acquiring an Apartment or other interest in the Project, automatically consents to this and agrees to recognize the new Developer as the "Developer" under the Condominium Documents to the extent of the rights transferred.

B. The Developer may also transfer its rights as collateral for a loan. If so, the lender will not have the rights of the "Developer" until (i) it forecloses the loan, (ii) it holds the rights of the Developer outright, and (iii) it records a document that says so. The lender will also have the rights of the "Developer" if the Developer assigns its rights to the lender, pursuant to the Subsection 28.5A, in place of foreclosure.

C. No deed, lease, Mortgage, or other conveyance of (i) all or any part of the Land (including for example any part of the Land deleted from the Project pursuant to Section 21), or (ii) any Apartment or any interest in it, or (iii) any Vacation Ownership Interest, will transfer any of the Developer's Reserved Rights, or any of its other rights under the Condominium Documents, unless the document expressly says so and unless it describes the rights transferred.

## **29. RECALCULATION OF COMMON INTERESTS.**

Except where this Declaration says otherwise, the Common Interests for the Apartments will be determined as follows:

**29.1 COMMON INTEREST.** Each Apartment will have an appurtenant undivided percentage interest in the Common Elements of the Project. The undivided percentage interest appurtenant to a particular Apartment is based on the following fraction:

The Relative Valuation of that Apartment  
The Sum of the Relative Valuations  
for all Apartments in the Project.

The percentage Common Interest appurtenant to an Apartment is equal to the result of this fraction, rounded as provided in Section 29.4.

**29.2 RELATIVE VALUATION.** "Relative Valuation" refers to the idea that the Common Interest of each Apartment, and its share of the Common Expenses, should be based on a comparison of each Apartment to other Apartments in the Project. While some condominiums compare the size of apartments to determine their common interest, this does not necessarily result in a fair and equitable allocation of maintenance fees among the apartments. For example, the owner of a two-bedroom apartment having 1,500 square feet should not necessarily have to pay 50% more of the common expenses than the owner of a two-bedroom apartment in the same project having 1,000 square feet.

The Developer has determined a "Relative Valuation" for each Apartment in phases 1, 2 and 3 based on Apartment size, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. The Relative Valuation for each Apartment in phases 1, 2 and 3 of the Project is stated in Exhibit "B". The Developer will determine the Relative Valuation of each New Apartment in its sole discretion and will state the Relative Valuation of each existing and any New Apartment in the amendment to this Declaration creating the New Apartment. Note that Relative Valuation is not intended to reflect the fair market value a particular Apartment and will not change based on changes in market conditions.

**29.3 APARTMENTS IN FUTURE PHASES.** The Developer intends to develop the Project in several phases. It is likely that Apartments or Vacation Ownership Interests in the first phase will be deeded before construction of later phases is completed and/or before the plans for later phases are completely finalized. When New Apartments are created, the Developer has the right to reallocate the Common Interests among the existing Apartments and the New Apartments. This includes the right to change the Common Interests of existing Apartments. A change in the Common Interests may require that all existing deeds be amended or replacement deeds recorded. Since the Land is registered in the Land Court, a change in the Common Interest of existing Apartments might require issuance of new certificates of title. Since each Vacation Ownership Interest has a separate certificate of title, this would be impractical, costly and time-consuming.

To avoid changing the Common Interest of existing Apartments, when developing phase 1, the Developer estimated the Relative Valuations of the Makani Kai Building and the Ahelani Building based on the Developer's then-current plans for those buildings (although those plans could change). The sum of those Relative Valuations were assigned to the Oazebo Apartment.

If and when the Developer creates New Apartments, the Developer has the right to reallocate a portion of the Relative Valuation of the Gazebo Apartment to the New Apartments.

The Relative Valuation allocated to the New Apartments will be taken from the Relative Valuation of the Gazebo Apartment, and the Relative Valuation of the Gazebo Apartment will be reduced by that amount. The Developer has done this with respect to the Apartments in phases 2 and 3, and Exhibit B reflects this.

If at any time the Developer decides not to proceed with the development of any further phases, or if not all phases are built before the end of the Development Period, then the Common Interest for each Apartment actually constructed will be determined in the manner provided in Sections 29.1 and 29.2. The Developer may sign, acknowledge and record one or more amendments to this Declaration reflecting the changes to the Common Interests. The Developer may also amend any previously recorded deed or other document conveying or encumbering an Apartment or Vacation Ownership Interest so that it conforms with the revised Declaration and/or to record a new deed or conveyance instrument for that purpose. The Developer may do so in its own right and/or using its power of attorney under Section 28.3.

These Rights are among the Developer's Reserved Rights.

**29.4 ROUNDING.** It is important that the total of all Common Interests for all Apartments adds up to one hundred percent (100%). To make sure that this happens, the Developer will round off the Common Interests to the nearest ten-thousandths of a percent (0.0001%). The Common Interests of one or more Apartments may be rounded up or down if it is necessary to reach a total of one hundred percent (100%).

## **30. MASTER ASSOCIATION.**

**30.1 MASTER ASSOCIATION.** The Developer intends to build the Project in phases. The Developer also has the right to develop Adjacent Projects on the Adjacent Parcels. The Developer may also develop one or more hotels, vacation ownership or time share plans, and/or fractional ownership plans on the Adjacent Parcels or elsewhere in Ka'anapali North Beach. Any Adjacent Condominiums may or may not be merged with the Project to form a single condominium.

Whether or not they are merged, the Developer wants to be sure that certain amenities can be shared by Owners in this Project, and owners and occupants of Adjacent Projects, or other Ka'anapali North Beach real estate developments. These amenities may be part of the Project, an Adjacent Project, or another of the Ka'anapali North Beach projects.

The Developer also wants a way to be sure that these amenities, and the landscaping and grounds of the Project and any Adjacent Projects provide a complementary vacation ambience consistent with a first class destination resort, and that they can be updated and enhanced over the years to keep up with modern trends for first class destination resorts.

Finally, the Developer intends to reserve the right to use some of these amenities for its own purposes. For example, the Developer wants to be able to do these things:

- It wants to be able to show the amenities and the Project grounds to persons who might buy an Apartment or Vacation Ownership Interest in the Project or an apartment, time share interest, or fractional ownership interest in any Adjacent Project.
- It wants to be able to offer activities to these prospective purchasers.
- It wants to be able to establish booths or concessions for the sale of tourist activities or other incentives intended to encourage prospective purchasers to attend a sales presentation.
- It wants to be able to conduct receptions for purchasers and prospective purchasers for the purpose of promoting the sales of Apartments or Vacation Ownership Interests in the Project or apartments or time share interests or fractional ownership interest in any Adjacent Project.

To accomplish these things, the Developer created the Master Association Apartment and the Master Association.

**30.2 MASTER ASSOCIATION MEMBERSHIP.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that: (a) the Developer established the Master Association; (b) each Owner of a Resort Apartment (including, for example, Owners of Vacation Ownership Interests) is required to be a member of the Master Association; (c) the Developer has the right to permit or require owners of apartments or of time share interests or fractional ownership interests in any condominium or other development on any Adjacent Parcel or elsewhere in Ka'anapali North Beach to be members of the Master Association; (d) the Developer has the right to permit any hotel developed by the Developer on any Adjacent Parcel or elsewhere in Ka'anapali North Beach to be a member of the Master Association and to permit the hotel guests to use the Master Association Amenities; and (e) the Master Association Documents govern the Master Association. Among other things, they set the terms and conditions of membership, the rights to use the Master Association Amenities, limitations on those rights, and so on. The Master Association Documents are binding on each Resort Apartment and on each Resort Apartment Owner.

**30.3 MASTER ASSOCIATION AMENITIES.** For now, the Master Association Amenities consist of the amenities that are Limited Common Elements of the Master Association Apartment. At the outset, this includes various waterfalls, a water slide, slide mountain, swimming pool, koi pond, spa, pool decks, pool bathrooms, beach and pool showers, fitness center, late departure guest lounge, and tennis courts and a tennis pavilion, among other things. The Developer has the right to add to the Master Association Amenities any amenities located on any other project participating in the Master Association, but the

Developer does not promise to do so. The Master Association has the rights stated in the Master Association Declaration to add, continue, change or remove any of the Master Association Amenities. This includes the right to change any Master Association Amenities located on the Project.

**30.4 MASTER ASSOCIATION DUES AND FEES.** The Master Association Declaration requires that each Owner of a Resort Apartment pay a share of the costs to operate, maintain, repair, replace, change, and upgrade the Master Association Amenities and other Master Association property, and the costs to operate and maintain the Master Association. All other Master Association Members must also pay a share of these costs as provided in the Master Association Declaration. Each Owner of a Resort Apartment understands, acknowledges, agrees and accepts that, under the Master Association Documents, each Owner of a Resort Apartment must pay the fees, charges, and expenses charged by the Master Association in accordance with the Master Association Documents.

**30.5 AMENDMENT.** No matter what else the Condominium Documents say, no change to the Condominium Documents that changes, terminates, or otherwise adversely impacts this Section 30 or any other rights or easements of the Master Association or the use, maintenance, repair, replacement, remodeling, operation, or administration of the Master Association Amenities will be effective unless it is signed by the Master Association and, during the Development Period, the Developer.

## **31. DEVELOPMENT OF KA'ANAPALI NORTH BEACH**

**31.1 KA'ANAPALI NORTH BEACH.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that the Project is part of Ka'anapali North Beach and that it is subject to and governed by the Ka'anapali North Beach Documents.

**31.2 KA'ANAPALI NORTH BEACH ASSOCIATION.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that (a) each Owner is required to be a member of the Ka'anapali North Beach Association pursuant to the Ka'anapali North Beach Documents, (b) the Association, not the individual Owners, has the right to vote in the Ka'anapali North Beach Association, (c) the Association must pay to the Ka'anapali North Beach Association the assessments charged by the Ka'anapali North Beach Association, and (d) the amount that the Association pays to the Ka'anapali North Beach Association is a Common Expense and each Owner will pay a share of it except as provided in Section 8.3B.2. of the Bylaws.

**31.3 OBSTRUCTION OF VIEWS; NOISE; TRAFFIC.** The owners of other property in Ka'anapali North Beach have the right to develop their land but do not have to do so. Each Owner understands, acknowledges, agrees and accepts that the ocean and/or mountain views, if any, available from the Project or Apartments may be obstructed, and that noise, dust, vibrations, and/or traffic in the vicinity of the Project may increase when (i)

New Improvements are constructed on the Project, or (ii) any Adjacent Project is constructed, or (iii) any improvements are constructed elsewhere in Ka'anapali North Beach. Each Owner and every other Interested Person gives up (in legal terms, "waives, releases and discharges") any rights, claims or actions that such person may have, now or in the future, against the Developer and its Representatives, licensees, successors and assigns, and arising directly or indirectly out of or from such obstruction of views, additional noise, dust, vibrations, and/or additional traffic by reason of such further development.

## **32. DISCLOSURES AND LIMITATIONS ON LIABILITIES.**

**32.1 PRIOR USE OF THE LAND.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that the Project is located on a site previously used and operated as an airport and airstrip, and that the Land was also used for activities related to the operation, maintenance, and use of an airport, airstrip and aircraft. For example, fuels, chemicals, and other substances were stored and used on the Land.

**32.2 SUGAR CANE AND OTHER AGRICULTURAL OPERATIONS.** Each Owner and every other Interested Person understands, acknowledges, agrees and accepts that (i) before and after the Land was used as an airport, it was used for farming sugar cane and for other agricultural operations, and (ii) the Project is located near or next to other land used for the same purposes. These operations include, for example, open burning, percolating, evaporating, milling, generating power, trucking, plowing, hauling, fertilizing, grading, storing, herbicide and pesticide spraying, crop dusting, water diversion, irrigating, and all other activities incidental to planting, cultivating, harvesting, and processing crops. This activity may from time to time cause surface water runoff, noise, soot, smoke, dust, light, heat, vapors, odors, chemicals, vibrations, and other substances and phenomena of every description (collectively, the "Agricultural Effects") to be discharged, emitted, or transmitted over and upon the Project. The Agricultural Effects may be a bother or a nuisance to an Owner or anyone else occupying or using the Project. Each Owner also hereby acknowledges that the Hawaii Right to Farm Act (Chapter 165 of the Hawaii Revised Statutes) and Hawaii law limit the circumstances under which farming operations may be deemed to be a nuisance.

**32.3 WAIVER OF RIGHTS.** Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any rights, claims or actions that he or she may have, now or in the future, against the Developer or the State of Hawaii, and each of their Representatives, licensees, invitees, successors and assigns arising directly or indirectly out of or from the Agricultural Effects as to the Project or from prior use of the Land as an airport and airstrip.

**32.4 SECURITY.** The Association, the Developer or the Managing Agent have the right, but not the duty to take steps designed to make the Project safer than it otherwise might be. The Association, the Developer, the Managing Agent, and each

of their Representatives, are not in any way to be considered insurers or guarantors of safety or security within the Project, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or effective safety or security measures. Neither the Association nor the Developer nor the Managing Agent make any representation or warranty that any fire protection, burglar alarm, or other safety or security system or measures, including anything intended to limit access to the Project, (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Project; or (iv) will provide the detection or protection which it is designed or intended to provide. Each Owner and every other Interested Person acknowledges, understand, and agrees that the Association, the Developer and the Managing Agent are not insurers and that each person using the Project assumes all risks of personal injury, death, or loss or damage to property resulting from the acts of third parties.

**32.5 WARRANTIES.** The Developer is developing the Project but it is not the general contractor or an affiliate of the general contractor who built the Project. The Developer makes no warranties, express or implied, about the Apartments or the Project, or about consumer products or anything else installed or contained in the Apartments or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold by the Developer "as is" and "where is", with all defects, whether visible or hidden, and whether not or not known. This means, among other things, that the Developer does not have to fix any defect no matter what causes it or when it is discovered. Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any and all rights and claims such person may have, now or in the future, against the Developer, its Representatives, successors and assigns for (i) any defects in the Apartments or the Project or any consumer products or anything else things installed or contained in the Apartments or the Project, and (ii) for injury to persons or property arising from any such defects. This means that the Developer will not have to pay for any injury or damage to people or things as a result of any defect.

Finally, without limiting the other parts of this Section, nothing in the Condominium Map is intended to be or is a representation or warranty by the Developer. For example, bathrooms may have more or fewer sinks than shown on the Condominium Map, and the bathroom tubs may be shaped differently than shown on the Condominium Map.

## **33. TRANSFER OF COMMERCIAL APARTMENTS TO ASSOCIATION.**

The Owner of any Commercial Apartment has the right (but no duty) to deed his or her Apartment and its Common Interest to the Association or to the trustee of a land trust where the Association is a beneficiary. An Owner may do this at any time after the date of substantial completion for the Apartment. The Owner must give notice to the Association at least thirty (30)

days in advance. The Association must accept the Apartment and Common Interest or the beneficial interest in a land trust. If the Owner requests it, the Association must sign the deed or, in case of a land trust, any document required to establish the trust or to transfer the beneficial interest to the Association. This section cannot be amended without the consent of all Owners of Commercial Apartments in the Project and each Lender having a Mortgage on a Commercial Apartment.

#### **34. AMENDMENT AND RESTATEMENT OF DECLARATION.**

##### **34.1 GENERAL.**

A. **GENERAL RULE.** This Declaration may be amended by vote or written consent of Owners of Apartments to which at least seventy-five percent (75%) of the Common Interests are appurtenant. An amendment will take effect only after it is signed by the proper officers of the Association and is recorded. The rules in this Subsection 34.1A apply except where this Declaration or the Condominium Property Act provide otherwise.

B. **SUPER-MAJORITY VOTE.** Despite what Subsection 34.1A says, the percentage of the voting power necessary to amend a specific clause or provision will not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if this Declaration says that eighty percent (80%) of the Owners must approve a proposal not to repair or rebuild the Project after it is damaged, then the vote of eighty percent (80%) of the Owners is necessary to amend that provision despite what Subsection 34.1A says.

**34.2 CHANGES BY THE DEVELOPER OR AN OWNER.** Despite what Section 34.1 says, the Owner(s) of any Apartment(s) who changes or alters the Apartment(s), the Common Elements and/or the Limited Common Elements pursuant to Section 17.2A may amend this Declaration and/or the Condominium Map as permitted by Section 17.4. The same rules apply to changes made by the Developer pursuant to Section 17.2A.

##### **34.3 DEVELOPER'S RESERVED RIGHTS TO AMEND.**

A. Despite what Section 34.1 says, the Developer's Reserved Rights include the right to change the Condominium Documents as follows:

1) It may change them in any way and for any purpose before the date when the Developer first records a deed transferring an Apartment or a Vacation Ownership Interest to someone other than the Developer or its Lenders.

2) It may change them to file the "as-built" statement (with plans, if necessary or convenient) required by Section 514A-12 of the Condominium Property Act. The Developer may do this each time a phase or increment of the Project, or any New Improvement is completed. It may also do this at any other time required by law or permitted by this Declaration. The Developer does not need the consent of

anyone else who owns an Apartment or Vacation Ownership Interest or any other Interested Person.

3) It may change them to comply with the real estate laws of any place (for example, the State of Hawaii) or the requirements of any government agency (such as the Hawaii Real Estate Commission or the California Department of Real Estate) in connection with the registration of the Project, or any Vacation Ownership Plan (or any Adjacent Project), to permit the sale of Apartments or Vacation Ownership Interests (or any apartments, time share interests, or fractional ownership interests in an Adjacent Project) there.

4) It may change them to satisfy requests for changes made by any institutional lender loaning money to the Developer or by any title company licensed to do business in the State of Hawaii.

5) It may change them to correct any misstatements of fact in the Condominium Documents. For example, the Developer can correct a mistake in the legal description of the Land.

B. The Developer may use these rights at any time and it may use them more than once. The Developer may sign, record and deliver amendments in its own name and/or in the name of Owners or other Interested Persons pursuant to its power of attorney under Section 28.3.

##### **34.4 LIMITS ON AMENDMENTS.**

A. **CHANGES TO APARTMENT BOUNDARY, COMMON INTEREST OR USES.** Despite what Sections 34.1, 34.3A.3) and 34.3A.4) say, and except as otherwise provided in this Declaration, no amendment may change: (1) the boundaries of any Apartment or change any exclusive easement rights appurtenant to the Apartment, (2) the Common Interest of any Apartment, or (3) the permitted uses and restrictions on the use of any Apartment or its Limited Common Elements. This rule does not apply to Apartments where the Owner and each Lender having a Mortgage on the Apartment sign the amendment. The Developer cannot use its power of attorney under Section 28.3 to give this consent on behalf of an Owner or its Lender.

B. **CHANGES TO DEVELOPER'S RESERVED RIGHTS.** Regardless of anything else stated in the Condominium Documents, no amendment to the Condominium Documents that changes, terminates, or otherwise adversely impacts any of the Developer's Reserved Rights, or any other rights of the Developer under the Condominium Documents, will be effective unless the Developer signs it and it is recorded.

##### **34.5 REASSIGNMENT OF PARKING STALLS.**

A. **GENERALLY.** Despite what Section 34.1 says, the Owners have the right to change the designation of parking stalls that are Limited Common Elements appurtenant to their Apartments from time to time.

**B. HANDICAP PARKING STALLS.** Despite what Sections 34.1 and 34.4A say, if a parking stall designated or designed for handicap use (a "handicap stall") is a Limited Common Element to an Apartment, then the Owner of that Apartment must exchange the handicap stall for a stall that is not a handicap stall if all of these conditions are met:

1) A person with a disability (a "disabled person") owns or intends to buy an Apartment that does not have a handicap stall as a Limited Common Element.

2) Without a handicap stall, the disabled person's disability would interfere with the his or her full use and enjoyment of his or her Apartment.

3) The Owner of the Apartment that has a handicap stall as a Limited Common Element does not have a disability that requires the availability of a handicap stall.

4) The handicap stall to be exchanged is the closest handicap stall to the Apartment owned or to be owned by the disabled person.

5) The disabled person must assign a parking stall that is a Limited Common Element of the disabled person's Apartment to the Owner of the Apartment having the handicap stall. If the disabled person's Apartment has more than one parking stall, the disabled person must assign to the other Owner the stall closest to the other Owner's Apartment unless they both agree on a different stall.

**C. REQUIREMENTS FOR AMENDMENT.** Owners who want or have to change the designation of the parking stalls appurtenant to their Apartments as Limited Common Elements must sign and record an amendment of this Declaration. To the extent required by law or the Land Court, they must also amend the deeds to each of their Apartments. The amendment does not have to be signed by anyone except for the Owners of the Apartments whose parking stalls are being changed and their Lenders, if any. The amendment will take effect only if it is recorded. The Owners must give a copy of the amendment to the Board within fifteen (15) days after it is recorded. Any reassignment of parking stalls is subject to all laws and regulations that may apply. No reassignment will be effective unless at all times at least one (1) parking space is appurtenant to each Resort Apartment in the Project as a Limited Common Element.

**34.6 RESTATEMENT.** No matter what else the Condominium Documents say, the Association has the authority under the Condominium Property Act to do these things:

A. It may restate this Declaration and the Bylaws, and all amendments to either of them.

B. It may amend this Declaration and the Bylaws as required to conform with the provisions of the Condominium Property Act or any other law or regulation adopted by a governmental authority.

The Association may do this if the Board adopts a resolution authorizing it. No other vote of the Association is necessary. No restated or amended Declaration or Bylaws will be effective unless it is recorded.

### **35. MISCELLANEOUS.**

**35.1 OWNERS MAY INCORPORATE.** The Apartment Owners may form a non-Hawaii profit corporation to serve as the Association. If so, the corporation will have all of the rights, powers, obligations and duties of the Association as stated in the Condominium Documents or the Condominium Property Act. The fact that a corporation is formed to be the Association does not change any of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws. The corporation must adopt the Bylaws as the bylaws of the corporation. The Articles of Incorporation and Bylaws of the corporation will be controlled by this Declaration (or, in legal terms, "subordinate to this Declaration"). If the corporation takes any action that violates all or any part of this Declaration or the Bylaws of the Association, the action will not be effective. It will be void.

**35.2 SPECIAL POWER OF ATTORNEY.** Whenever this Declaration or the Bylaws provides that a person gives the Association or an Owner a "power of attorney" or appoints the Association or an Owner as "attorney-in-fact", the following rules apply (unless a particular section, like Section 28.3, says something different):

A. The power of attorney appointment is permanent (in legal terms, it is *coupled with an interest*, it is *irrevocable*, is a *durable power of attorney*, and it will not be affected by the disability of the person who gives it).

B. The person gives the power of attorney whether or not it expressly says so in the deed or other legal document by which he or she obtained any interest in the Project.

C. It is a "special power of attorney". This means that the person appointed as the attorney-in-fact has the power to do only the things stated or intended by the Condominium Documents. This includes, however, the power to do anything else necessary or convenient to accomplish the stated or intended goal, or incidental thereto. Ambiguities must be resolved in favor of giving, not denying, the attorney-in-fact the power to act.

D. The person appointed as the attorney-in-fact has "*full power of substitution*". This means that the attorney-in-fact may let someone else act in his or her place as a substitute attorney-in-fact.

E. If asked by the attorney-in-fact, the person who is giving the special power of attorney must promptly deliver a signed and notarized special power of attorney in the form requested by the attorney-in-fact.

**35.3 EFFECT OF INVALID PROVISIONS.** The provisions of this Declaration are "severable". This means that if any part of it is

not legal or valid, that part can be ignored. But the rest of this Declaration will remain in effect and everyone must obey it.

### 35.4 DISPUTE RESOLUTION.

#### A. BACKGROUND.

1) Everyone knows that disputes between the (i) Developer and (ii) the Association or the Owners, can arise over the interpretation of the Condominium Documents.

2) Everyone also knows that construction is complex and that people often disagree about whether the work was done right. Disputes may arise about whether a defect exists and, if there is a defect, who must pay to fix it.

3) It is in the best interest of the Owners, the Association, and the Developer to resolve all disputes and claims without time-consuming, emotionally distressing, and costly litigation.

**B. MEDIATION.** For these reasons, the Association, the Developer and each Owner agrees to try to resolve all claims and disputes involving the Project using mediation or other alternative dispute resolution methods. To foster the amicable resolution of disputes, the Board (with the consent of the Developer until the expiration of the Development Period) may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures is voluntary and will remain confidential. If any party decides that the discussions have become unproductive or unwarranted, then the parties may proceed with litigation, subject to the requirements of Section 35.4C.

**C. LITIGATION/ARBITRATION.** The Board shall not incur or commit the Association to incur legal fees and costs of more than \$10,000 in a dispute with the Developer or any company related to the Developer, nor start or prosecute any lawsuit or any other arbitration or other legal proceeding against the Developer or any company related to the Developer, unless it first meets each of these requirements:

1) The Board must obtain the following information from at least two Hawaii law firms:

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

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

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

(d) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on.

In a trial or arbitration of the Association's claims, the Developer cannot use the opinions of the law firms as evidence that the Association's claims are not valid.

2) The Board must call a Special Meeting of the Association.

3) The Board must provide a copy of the list of claims and estimates to each Owner together with the notice of the Special Meeting of the Association.

4) At the Special Meeting, Owners owning at least a majority of the Common Interests of the Project (not counting the Common Interests appurtenant to Apartments and Vacation Ownership Interests owned by the Developer) must authorize the Board to start and prosecute the lawsuit or any other arbitration or other legal proceeding.

D. The rule in Subsection 35.4C does not apply to suits against the Developer filed solely to collect Assessments that are past due or to enforce the Condominium Documents.

E. The \$10,000 ceiling contained in Subsection 35.4C will rise or fall each year on a C.P.I. Adjusted basis.

**35.5 CHANGES IN THE LAW.** If any law that applies to the Project changes after this Declaration and the Bylaws are recorded, the change in law will control over the provisions of the Declaration or the Bylaws only to the extent the legislative body that enacted the change in law expressly provides that the changes in law will control over inconsistent provisions in existing condominium documents.

**35.6 CAPTIONS; INTERPRETATION.** The Developer has tried to divide this Declaration into useful sections and to provide captions describing each section. The captions are here for convenience only. They do not completely or adequately explain each section or the entire document. Owners must read with care each and every part of this Declaration, not just the captions.

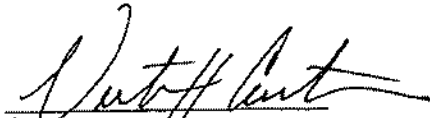
Some sections of the Condominium Documents use language such as "for example", "among other things", and similar phrases. The effect of those sections is not limited to the examples given unless it clearly says so.

**35.7 EFFECT OF FAILURE TO ENFORCE.** A violation of any part of the Condominium Documents by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of the Condominium Documents. Any failure to enforce any provision of this Declaration does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked.

The Developer signed this Amended and Restated Ocean Resort Villas Declaration of Condominium Property Regime on August 6, 2003 2003, on behalf of itself and also as attorney-in-fact for the Association, all Owners, their Lenders, and all other Interested Persons pursuant to the powers of attorney contained in Section .28.3 of the Original Declaration and the deed of each Vacation Ownership Interest.

SVO PACIFIC, INC.

By



Name: Victoria H. Carter

Title: Vice President

(Manage #51761v.8 (8-5-03))

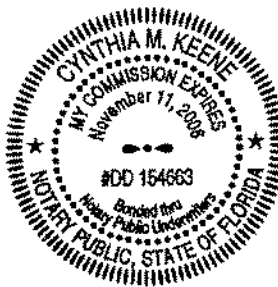
STATE OF FLORIDA       )  
                                  ) ss:  
COUNTY OF ORANGE     )

On this 16 day of August, 2003, before me personally appeared VICTORIA H. CARTER, 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.

Name: Cynthia M. Keene  
Cynthia M. Keene

Notary Public, State of Florida  
My Commission expires: 11/11/2006

51761\_6.DOC



## EXHIBIT A

(To Declaration of Condominium Property Regime)

All of that certain parcel of land situate at Hanakao and Honokowai, Kaanapali, Lahaina, District of Lahaina, Island and County of Maui, State of Hawaii, described as follows:

LOT 98, area 13.998 acres, as shown on map 86, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited.

Saving and Excepting the portion thereof lying seaward of the debris line.

Together with a perpetual nonexclusive easement for access of vehicular and pedestrian traffic and for underground utility to and from Honoapiilani Highway over and across Lot 34, area 1.428 acres, as shown on Map 7, as set forth by Land Court Order No. 110015 and Land Court Order No. 138359, and also set forth in that certain Grant of Easement and Covenant to Share Costs dated December 6, 2000, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2668971.

Being the real property conveyed to SVO PACIFIC, INC., a Florida corporation, by Warranty Deed dated December 6, 2000, filed December 6, 2000, in the Office of the Assistant Registrar of the Land Court, as Document No. 2668968, and noted on Transfer Certificate of Title No. 569,700.

Being the land described in the Transfer Certificates of Title listed in Exhibit 1 to this Exhibit A.

SUBJECT, HOWEVER, TO:

1. The lien of real property taxes not yet due and owing.
2. Reservation of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 29, 1960, as contained in that certain instrument dated January 29, 1960, recorded in the Office of the Registrar of Conveyances in Book 3822, page 37.
3. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
4. Designation of Easement "42", for road, utility and pedestrian purposes, as shown on Maps 15 and 74, as set forth by Land Court Order No. 29190, filed November 7, 1968.
5. Easement dated March 9, 1970, filed as Document No. 498923 for a right of way over

EXHIBIT A

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Easement "42".

6. Subdivision Agreement (Large Lots) dated August 6, 1990, filed August 20, 1990, as Land Court Document No. 1756822, and recorded August 20, 1990, as Document No. 90-127827.
7. Private Water System Agreement dated October 2, 1991, recorded October 7, 1991, as Document No. 91-136263 as amended by Amendment to Agreement dated October 14, 1992, recorded October 20, 1992, as Document No. 92-169921 (Not noted on Transfer Certificate of Title No. 569,700).
8. Restriction of Access Rights, as shown on Maps 2 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
9. A 40 foot Building Setback, as shown on Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
10. Designation of Easement "172" (area 4,432 square feet), for sewer force purposes, as shown Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
11. Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions, (North Beach Shoreline Setback Area) dated December 29, 1998 (effective December 14, 1998), filed January 13, 1999, as Land Court Document No. 2513420, and recorded January 13, 1999, as Document No. 99-005138, as amended by instrument dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668965, and recorded December 6, 2000, as Document No. 2000-170916.
12. Designation of Easement "246" (area 1.072 acres), for roadway (bikeway and trolley included) and utility purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
13. Designation of Easement "247" (area 2.057 acres), for shoreline setback purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
14. Designation of Easement "248" (area 0.252 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
15. Designation of Easement "250" (area 0.037 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
16. Designation of Easement "251" (area 0.262 acre), for wetland purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
17. Designation of Easement "252" (area 0.387 acre), for slope preservation, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.

18. Restriction of Vehicular Access Rights, as shown on Map 86, as set forth by Land Court Order no. 138359, filed May 8, 2000.
19. Reservations of the State of Hawaii, as set forth in Land Court Order No. 138359, filed May 8, 2000, including matters relating to the following: (a) Claims, if any, of native tenants, (b) Claims, if any, to any historic, religious and archaeological sites, (c) Claims, if any, to rights of access through public highways, trails and pathways and historical uses on and across the parcels to the shoreline be determined, protected and not restricted; (d) Claims, if any, to waters having their source upon or flowing under the parcels.
20. Encroachments shown on survey map dated May 17, 2000, prepared by James R. Thompson, Licensed Professional Land Surveyor.
21. Declaration of Covenants, Conditions, Easements and Restrictions for Ka'napali North Beach dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917. Designation of Successor Declarant and Assignment of Declarant's Rights and Interest, dated December 21, 2000, filed February 20, 2001, as Land Court Document No. 2684122, and recorded February 20, 2001, as Document No. 2001-022804. Designation of Successor Declarant and Assignment of Declarant's Rights and Interests Under Declaration of Covenants, Conditions, Easements and Restrictions for Ka'napali North Beach dated January 28, 2003, filed January 28, 2003, as Land Court Document No. 2885398, and recorded January 28, 2003, as Document No. 2003-015949.
22. Grant of Easement and Agreement (Roadway and Utility Purposes) dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668969.
23. Easement dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668970 for roadway, bikeway, pedestrian and utility purposes.
24. Grant of Easements and Covenants to Share Costs (Roadway Lot 34 -Lots 98 and 101) dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668971.
25. Unilateral Declaration of Restrictions; Joinder Agreement (North Beach Unit Count and Drainage), dated February 15, 2001, filed February 16, 2001, as Land Court Document No. 2683897, and recorded February 16, 2001, as Document No. 2001-022448.
26. Declaration of Restrictions (Unit Count), dated February 15, 2001, filed March 8, 2001, as Land Court Document No. 2688326, and recorded March 8, 2001, as Document No. 2001-032604.
27. Designation of Easement "261", as shown on Map 87, as set forth by Land Court Order No. 142094, filed May 25, 2001.
28. Declaration of Merger of Condominium Phases of Ocean Resort Villas dated August 28,

**EXHIBIT A**  
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2001, filed August 31, 2001, as Land Court Document No. 2734237.

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## **EXHIBIT B**

(To Declaration of Condominium Property Regime)

### **Description Of The Apartments**

#### **A. RESORT APARTMENTS:**

The Resort Apartments are divided into the following apartment types:

1. Two Bedroom Villa: The Two Bedroom Villa and Two Bedroom Villa Oceanfront apartments have one master bedroom, one combination bedroom and living area, two bathrooms, a combination living room and dining room, a kitchen, and two lanais. Two Bedroom Villa Reverse apartments contain the same rooms and areas, and are the mirror image of Two Bedroom Villa apartments. The Two Bedroom Villa Accessible apartments contain the same rooms and areas but have been modified to accommodate persons with certain disabilities.

2. Two Bedroom Deluxe Villa: The Two Bedroom Deluxe Villa apartments have one master bedroom, one combination bedroom and living area, two bathrooms, a combination living room and dining room, a kitchen, and two lanais. Two Bedroom Deluxe Villa Reverse apartments contain the same rooms and areas, and are the mirror image of Two Bedroom Deluxe Villa apartments. The Two Bedroom Deluxe Villa Accessible apartments contain the same rooms and areas but have been modified to accommodate persons with certain disabilities.

3. One Bedroom Villa: The One Bedroom Villa apartments have one bedroom, one bathroom, a combination living room and dining room, a kitchen, a foyer, and a lanai. The One Bedroom Villa Reverse apartments contain the same rooms and areas, and are the mirror image of One Bedroom Villa apartments. The One Bedroom Villa Accessible apartments contain the same rooms and areas but have been modified to accommodate persons with certain disabilities.

#### **B. COMMERCIAL APARTMENTS:**

1. Arcade Apartment: The Arcade Apartment (Apartment 102) is located in the basement of the Kahakai Building. It consists of loft space that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of one (1) room having a net living area of approximately 699 square feet. It has no lanai.

2. Gazebo Apartment: The Gazebo Apartment (Apartment 103) is located in a separate structure called the Gazebo Building as shown on the Condominium Map. It consists of covered loft space that currently has no perimeter walls but the Owner may

**EXHIBIT B**

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change this from time to time. The initial configuration consists of no enclosed rooms and has a net living area of approximately 504 square feet. It has no lanai.

3. Commercial Apartment 101: Commercial Apartment 101 is located partly in the basement of the Halekipa Building and Kahakai Building, partly on the first floors of those buildings, partly in the Snack Bar Building, and partly on the ground floor of the Makani Kai Building. The portion of Commercial Apartment 101 on the ground floor of the Makani Kai Building has a lanai. It consists of the following:

(a) A loft space in the basement of the Halekipa Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of one (1) room but the Owner may change this from time to time. The net living area is approximately 533 square feet.

(b) A loft space in the basement of the Halekipa Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of twelve (12) rooms but the Owner may change this from time to time. The net living area is approximately 2,688 square feet.

(c) A loft space in the basement of the Halekipa Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of four rooms and a storage room but the Owner may change this from time to time. The net living area is approximately 5,309 square feet.

(d) A loft space in the basement of the Kahakai Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of one (1) room but the Owner may change this from time to time. The net living area is approximately 1,164 square feet.

(e) A loft space on the first floor of the Halekipa Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration contains twenty-nine (29) rooms but the Owner may change this from time to time. The net living area is approximately 22,080 square feet.

(f) A loft space on the first floor of the Kahakai Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration contains twelve (12) rooms but the Owner may change this from time to time. It has a net living area of approximately 6,887 square feet.

(g) A loft space in the Snack Bar Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration contains one room surrounded by covered loft space that currently has no perimeter walls. The net living area is approximately 1,656 square feet.

(h) A loft space on the ground floor of the Makani Kai Building that the Apartment Owner may divide into such number of rooms as it desires. The initial configuration consists of two (2) rooms and a lanai, but the Owner may change this from time to time. The net living area is approximately 909 square feet, with a lanai of approximately 87 square feet.

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**IMPORTANT NOTE:** THE FLOOR AREAS FOR RESORT AND COMMERCIAL APARTMENTS AS SHOWN IN THIS EXHIBIT ARE ALL APPROXIMATE. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACTUAL AREA OF ANY PARTICULAR APARTMENT. THE AREAS OF PARTICULAR APARTMENTS ARE LIKELY TO VARY.

The following pages list the Apartments by apartment number and show the apartment type, net interior floor area, net lanai floor area, net living area, valuation, common interest and assigned parking stall:

EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME

Apartment No.	Apartment Type	Net Interior Floor Area	Net Land Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>KAHAKAI BUILDING</b>							
<b>First Floor</b>							
2108/10	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	67
2108/11	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	68
2112/14	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	69
2113/15	Two Bedroom Villa (Accessible)	1,380	96	1,476	52,000.00	0.003382575	70
2116/18	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	71
2117/19	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	72
2120/22	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	73
2121/23	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	74
2124	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.002853946	75
2125	One Bedroom Villa	909	87	996	43,873.44	0.002853946	76
2126/28	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.004661000	77
2127/29	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004661000	78
2130/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	52,000.00	0.003382575	79
<b>Second Floor</b>							
2200/02	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	80
2201	One Bedroom Villa	909	87	996	43,873.44	0.002853946	81
2205	One Bedroom Villa	909	87	996	43,873.44	0.002853946	82
2204/06	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	83
2205/07	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	84
2208/10	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	85
2209/11	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	86
2212/14	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	87
2213/15	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	88
2216/18	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	89
2217/19	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	90
2220/22	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003382575	91
2221/23	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003382575	92
2224	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.002853946	93
2225	One Bedroom Villa	909	87	996	43,873.44	0.002853946	94
2226/28	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.004661000	95
2227/29	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004661000	96
2230/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	52,000.00	0.003382575	97

The floor, lateral and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of particular apartments are likely to vary.

**EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME**

Apartment No.	Apartment Type	Net Interior Floor Area	Net Land Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>KAHAKAI BUILDING</b>							
<b>Third Floor</b>							
2300/02	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	96
2301	One Bedroom Villa	909	87	996	43,873.44	0.002853946	99
2303	One Bedroom Villa (Accessible)	906	87	993	43,873.44	0.002853946	100
2304/06	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	101
2305/07	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	102
2308/10	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	103
2309/11	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	104
2312/14	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	105
2313/15	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	106
2316/18	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	107
2317/19	Two Bedroom Villa (Accessible)	1,380	96	1,476	52,000.00	0.003982575	108
2320/22	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	109
2321/23	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	110
2324	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.002853946	111
2325	One Bedroom Villa	909	87	996	43,873.44	0.002853946	112
2328/28	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.004681000	113
2327/29	Two Bedroom Deluxe Villa (Accessible)	1,550	256	1,806	71,653.10	0.004681000	114
2330/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	52,000.00	0.003982575	115
<b>Fourth Floor</b>							
2400/02	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	116
2401	One Bedroom Villa	909	87	996	43,873.44	0.002853946	117
2403	One Bedroom Villa	909	87	996	43,873.44	0.002853946	118
2404/05	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	119
2405/07	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	120
2408/10	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	121
2409/11	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	122
2412/14	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	123
2413/15	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	124
2416/18	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	125
2417/19	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	126
2420/22	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982575	127
2421/23	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982575	128
2424	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.002853946	129
2425	One Bedroom Villa	909	87	996	43,873.44	0.002853946	130
2426/28	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.004681000	131
2427/29	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004681000	132
2430/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	52,000.00	0.003982575	133

The floor, land and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of particular apartments are likely to vary.

**EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME**

Apartment No.	Apartment Type	Net Interior Floor Area	Net Lanai Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>KAHAKAI BUILDING</b>							
<b>Fifth Floor</b>							
2500/02	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	1340
2501	One Bedroom Villa (Corner)	908	101	1,010	43,873.44	0.002853946	1350
2503	One Bedroom Villa	908	101	1,010	43,873.44	0.002853946	1360
2504/06	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	1370
2506/07	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	1380
2508/10	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	1390
2509/11	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	1400
2512/14	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	141
2513/15	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.003982575	142
2516/18	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	143
2517/19	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	1440
2520/22	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	145
2521/23	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	146
2524	One Bedroom Villa (Reverse)	904	101	1,005	43,873.44	0.002853946	147
2525	One Bedroom Villa	909	101	1,010	43,873.44	0.002853946	148
2528/28	Two Bedroom Deluxe Villa (Reverse)	1,547	271	1,818	71,653.10	0.004661000	149
2527/29	Two Bedroom Deluxe Villa	1,547	271	1,818	71,653.10	0.004661000	150
2530/31	Two Bedroom Villa (Ocean Front)	1,371	334	1,705	52,000.00	0.003982575	151
<b>Sixth Floor</b>							
2600/02	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	152
2601	One Bedroom Villa (Corner)	909	101	1,010	43,873.44	0.002853946	153
2603	One Bedroom Villa	909	101	1,010	43,873.44	0.002853946	154
2604/06	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	155
2606/07	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	156
2608/10	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	157
2609/11	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	158
2612/14	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	159
2613/15	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.003982575	160
2616/18	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	161
2617/19	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	162
2620/22	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.003982575	163
2621/23	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.003982575	164
2624	One Bedroom Villa (Reverse)	904	101	1,005	43,873.44	0.002853946	165
2625	One Bedroom Villa	909	101	1,010	43,873.44	0.002853946	166
2628/28	Two Bedroom Deluxe Villa (Reverse)	1,547	271	1,818	71,653.10	0.004661000	167
2627/29	Two Bedroom Deluxe Villa	1,547	271	1,818	71,653.10	0.004661000	168
2630/31	Two Bedroom Villa (Ocean Front)	1,371	334	1,705	52,000.00	0.003982575	169

The floor, lanai and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of particular apartments are likely to vary.

**EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME**

Apartment No.	Apartment Type	Net Interior Floor Area	Net Land Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>Commercial Apartments</b>							
Arcade	Commercial	699	None	699	6,133.63	0.000333940	170
Gazebo	Commercial	504	None	504	224.25	0.000250097	171
<b>Unassigned Parking Stalls</b>							
Apt. 101	Commercial	41,507	None	41,507	311,158.11	0.020006158	1, 30, 810, 86, 10, 12, 14, 180, 17, 18, 19, 20th, 21, 22th, 23, 24c, 25th, 26, 27, 28, 29, 30, 31, 32c, 33, 34, 35, 36, 37, 38, 39, 400, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 405, 407, 408, 409, 410, 410A, 411, 412, 412A, 413, 414, 414A, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437
<b>NOTE:</b>							
c- compact							
h- handicapped							
A- Refers to the back (less accessible) stall of a pair of inline stalls							
Because the Project will be used as a time share resort, time share owners or occupants may be allowed to use any parking stall belonging to a time share apartment or not otherwise specifically identified as being reserved. Also, the developer, commercial apartments, and the Ocean Resort Villas Master Association each have an assessed for the use of unassigned parking stalls for their own use or for use by prospective purchasers, members, guests, and other persons for various purposes including, among others, use in connection with sales activities. Parking Stall assignments are also subject to Section 54.6 of the Declaration relating to reassignment of parking stalls.							

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**EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME**

Apartment No.	Apartment Type	Net Interior Floor Area	Net Lanai Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>First Floor</b>							
3102	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	183
3104/05	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	194
3108/10	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	195
3112/14	Two Bedroom Villa (Accessible)	1,380	96	1,476	62,000.00	0.3382575%	183
3116/18	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	197
3120/22	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	198
3124	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	199
3126/28	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.4661000%	200
3130/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	62,000.00	0.3382575%	201
3127/29	Two Bedroom Deluxe (Reverse)	1,547	256	1,803	71,653.10	0.4661000%	202
3125	One Bedroom Villa (Reverse)	909	87	996	43,873.44	0.2863946%	203
3121/23	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	204
3117/19	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	205
3113/15	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	206
3109/11	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	207
3105/07	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	208
3101/03	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	209
<b>Second Floor</b>							
3200	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	210
3202	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	211
3204/06	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	212
3208/10	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	213
3212/14	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	214
3216/18	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	215
3220/22	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3382575%	216
3224	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	217
3226/28	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.4661000%	218
3230/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	62,000.00	0.3382575%	219
3227/29	Two Bedroom Deluxe (Reverse)	1,547	256	1,803	71,653.10	0.4661000%	220
3226	One Bedroom Villa (Reverse)	909	87	996	43,873.44	0.2863946%	221
3224/23	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	222
3217/19	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	223
3213/15	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	224
3209/11	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	225
3205/07	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	226
3201/03	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3382575%	227

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EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME

Apartment No.	Apartment Type	Net Interior Floor Area	Net Lanal Floor Area	Net Lving Area	Valuation	Common Interest	Parking Stall No.
MAKANI KAI BUILDING							
Third Floor							
3300	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	228
3302	One Bedroom Villa (Accessible)	906	87	993	43,873.44	0.2863946%	229
3304/06	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	230
3308/10	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	231
3312/14	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	232
3316/18	Two Bedroom Villa (Accessible)	1,380	96	1,476	62,000.00	0.3982575%	233
3320/22	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	234
3324	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	235
3328/28	Two Bedroom Deluxe Villa (Accessible)	1,550	256	1,806	71,653.10	0.4681000%	236
3330/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	62,000.00	0.3982575%	237
3327/29	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.4681000%	238
3325	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.2863946%	239
3321/23	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	240
3317/19	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	241
3313/15	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	242
3308/11	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	243
3306/07	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	244
3301/03	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	245
Fourth Floor							
3400	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	246
3402	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	247
3404/06	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	248
3408/10	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	249
3412/14	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	250
3416/18	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	251
3420/22	Two Bedroom Villa	1,383	96	1,479	62,000.00	0.3982575%	252
3424	One Bedroom Villa	909	87	996	43,873.44	0.2863946%	253
3426/28	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.4681000%	254
3430/31	Two Bedroom Villa (Ocean Front)	1,371	330	1,701	62,000.00	0.3982575%	255
3427/29	Two Bedroom Deluxe Villa (Reverse)	1,547	256	1,803	71,653.10	0.4681000%	256
3425	One Bedroom Villa (Reverse)	904	87	991	43,873.44	0.2863946%	257
3421/23	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	258
3417/19	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	259
3413/15	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	260
3409/11	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	261
3405/07	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	262
3401/03	Two Bedroom Villa (Reverse)	1,370	96	1,466	62,000.00	0.3982575%	263

The floor, lanal and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of particular apartments are likely to vary.

**EXHIBIT B TO THE  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME**

Apartment No.	Apartment Type	Net Interior Floor Area	Net Lateral Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>MAKANI KAI BUILDING</b>							
<b>Fifth Floor</b>							
3500	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	284
3502	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	285
3504/06	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.33982575%	286
3508/10	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.33982575%	287
3512/14	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.33982575%	288
3516/18	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.33982575%	289
3520/22	Two Bedroom Villa	1,363	110	1,493	52,000.00	0.33982575%	270
3524	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	271
3528/28	Two Bedroom Deluxe Villa	1,547	271	1,818	71,653.10	0.46610007%	272
3530/31	Two Bedroom Villa (Ocean Front)	1,371	334	1,705	52,000.00	0.33982575%	273
3527/29	Two Bedroom Deluxe Villa (Reverse)	1,547	271	1,818	71,653.10	0.46610007%	274
3525	One Bedroom Villa (Reverse)	904	104	1,008	43,873.44	0.2863946%	275
3521/23	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	276
3517/19	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	277
3519/15	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	278
3509/11	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	279
3505/07	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	280
3501/03	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	281
<b>Sixth Floor</b>							
3600	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	282
3602	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	283
3604/06	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.33982575%	284
3608/10	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.33982575%	285
3612/14	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.33982575%	286
3616/18	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.33982575%	287
3620/22	Two Bedroom Villa	1,383	110	1,493	52,000.00	0.33982575%	288
3624	One Bedroom Villa	909	101	1,010	43,873.44	0.2863946%	289
3626/28	Two Bedroom Deluxe Villa	1,547	271	1,818	71,653.10	0.46610007%	290
3630/31	Two Bedroom Villa (Ocean Front)	1,371	334	1,705	52,000.00	0.33982575%	291
3627/29	Two Bedroom Deluxe Villa (Reverse)	1,547	271	1,818	71,653.10	0.46610007%	292
3625	One Bedroom Villa (Reverse)	904	104	1,008	43,873.44	0.2863946%	293
3621/23	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	294
3617/19	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	295
3613/15	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	296
3609/11	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	297
3605/07	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	298
3601/03	Two Bedroom Villa (Reverse)	1,370	110	1,480	52,000.00	0.33982575%	299

**NOTE:**

Because the Project will be used as a time share resort, time share owners or occupants may be allowed to use any parking stall belonging to a time share apartment or not otherwise specifically identified as being reserved. Also, the developer, commercial apartment, and the Ocean Resort Villas Master Association each have an easement for the use of unassigned parking stalls for their own use or for use by prospective purchasers, members, guests, and other persons for various purposes including, among others, use in connection with sales activities. Parking Stall assignments are also subject to Section 34.5 of the Declaration relating to reassignment of parking stalls.

The floor, lateral and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of the various apartments are likely to vary.

EXHIBIT B TO THE  
AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM PROPERTY REGIME

Apartment No.	Apartment Type	Net Interior Floor Area	Net Land Floor Area	Net Living Area	Valuation	Common Interest	Parking Stall No.
<b>First Floor</b>							
4100001	Two Bedroom Villa (End Unit)	1,383	96	1,479	52,000.00	0.003982576	300
4102004	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	301
4102008	Two Bedroom Villa (Reverse)	1,383	96	1,479	52,000.00	0.003982576	302
4114016	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982576	303
4118020	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	304
4122023	Two Bedroom Villa (End Unit)	1,383	96	1,479	52,000.00	0.003982576	305
4119021	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	306
4115017	Two Bedroom Villa (Accessible)	1,383	233	1,613	52,000.00	0.003982576	307
4107009	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982576	309
4103005	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	309
<b>Second Floor</b>							
4200001	Two Bedroom Villa (End Unit)	1,383	193	1,479	52,000.00	0.003982576	310
4202004	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	311
4206008	Two Bedroom Villa (Reverse)	1,370	193	1,466	52,000.00	0.003982576	312
4214016	Two Bedroom Villa (Reverse)	1,370	193	1,466	52,000.00	0.003982576	313
4218020	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	314
4222023	Two Bedroom Villa (End Unit)	1,383	193	1,479	52,000.00	0.003982576	315
4219021	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	316
4215017	Two Bedroom Villa	1,383	193	1,479	52,000.00	0.003982576	317
4213	One Bedroom Villa	909	153	1,062	43,873.44	0.002859948	318
4211	One Bedroom Villa	909	153	1,062	43,873.44	0.002859948	319
4207009	Two Bedroom Villa	1,383	193	1,479	52,000.00	0.003982576	320
4203005	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	321
<b>Third Floor</b>							
4300001	Two Bedroom Villa (End Unit)	1,383	96	1,479	52,000.00	0.003982576	322
4302004	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	323
4306008	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982576	324
4314016	Two Bedroom Villa (Reverse)	1,370	96	1,466	52,000.00	0.003982576	325
4318020	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	326
4322023	Two Bedroom Villa (End Unit)	1,383	96	1,479	52,000.00	0.003982576	327
4319021	Two Bedroom Deluxe Villa (Accessible)	1,547	256	1,803	71,653.10	0.004651000	328
4315017	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982576	329
4313	One Bedroom Villa	909	87	996	43,873.44	0.002859948	330
4311	One Bedroom Villa	909	87	996	43,873.44	0.002859948	331
4307009	Two Bedroom Villa	1,383	96	1,479	52,000.00	0.003982576	332
4303005	Two Bedroom Deluxe Villa	1,547	256	1,803	71,653.10	0.004651000	333

The floor, land and living areas shown are all approximate. The Developer makes no representations or warranties as to the actual area of any particular apartment. The areas of particular apartments are likely to vary.

EXHIBIT "C"

RETURN BY MAIL ( ) PICKUP ( ) TO:

This document contains  
\_\_\_\_\_ pages

TMK No. (2) 4-4-14-3 CPR No.: \_\_\_\_\_

ID No.(s): \_\_\_\_\_

Certificate of Title No. \_\_\_\_\_

Apartment No. \_\_\_\_\_

SPECIAL POWER OF ATTORNEY

By signing below, you appoint \_\_\_\_\_, with its principal place of business and post office address at \_\_\_\_\_ (the "Developer"), as your true and lawful attorney-in-fact to do any and all acts and things which the Developer deems necessary or convenient to the exercise by the Developer of the Developer's Reserved Rights under the Condominium Documents, the Master Association Documents, and/or the Vacation Plan Documents.

I. DEFINITIONS.

A. RECORD. In this document, "record", "recorded" and "recording" refer to recording in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or the Bureau of Conveyances of the State of Hawaii, whichever is appropriate. All document numbers are Land Court Document numbers unless otherwise stated.

B. CONDOMINIUM. In this document, "Condominium" means the Ocean Resort Villas condominium.

C. CONDOMINIUM DOCUMENTS. The Condominium Documents consist of: (1) the "Declaration of Condominium Property Regime of Ocean Resort Villas" recorded as Document No. \_\_\_\_\_ (the "Condominium Declaration"); (2) the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded as Document No. \_\_\_\_\_; (3) any Rules and Regulations of the Association of Apartment Owners of Ocean Resort Villas; (4) the "Declaration of Merger of Condominium Phases of Ocean Resort Villas" recorded as Document No. \_\_\_\_\_; and (5) any amendments and supplements to any of those documents. The description of the "Land" contained in the Condominium Declaration, as it may be amended from time to time, is hereby made a part of this document.

McCOMBISTON MILLER, MERAT MACKEHON  
Attorneys at Law

Copyright © August 31, 2001, Charles E. Pear, Jr.

**D. MASTER ASSOCIATION DOCUMENTS.** The Master Association Documents consist of: (1) the "Declaration of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association" recorded as Document No. \_\_\_\_\_; (2) the Articles of Incorporation of the Ocean Resort Master Association; (3) the Bylaws of the Ocean Resort Master Association; (4) any Rules and Regulations of the Ocean Resort Master Association; and (5) any amendments and supplements to any of those documents.

**E. VACATION PLAN DOCUMENTS.** The Vacation Plan Documents consist of: (1) the "Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership" recorded as Document No. \_\_\_\_\_; (2) the Articles of Incorporation of the Ocean Resort Villas Vacation Owners Association; (3) the Bylaws of the Ocean Resort Villas Vacation Owners Association; (4) any Rules and Regulations of the Ocean Resort Villas Vacation Owners Association; and (5) any amendments and supplements to any of those documents.

**2. DESCRIPTION OF RESERVED RIGHTS.** The Developer's Reserved Rights include all of the following rights:

**A. RIGHTS RESERVED UNDER THE CONDOMINIUM DOCUMENTS.** The term "Developer's Reserved Rights" is defined in the Condominium Documents. That description is made a part of this power of attorney. The Developer's Reserved Rights include, among other things, the right: (1) to subdivide the land of the Condominium into two or more lots (see section 20 of the Condominium Declaration); (2) to delete from the Condominium any part of the land designated in the Condominium Declaration for possible deletion (see section 21); (3) to add to the Condominium any "Adjacent Parcel" as that term is defined in the Condominium Declaration (section 22); (4) to consolidate the land of the Condominium and any Adjacent Parcel into a single lot (section 20); (5) to design, develop, build, add, and complete additional buildings and improvements on the land of the Condominium or on any Adjacent Parcel (sections 19 and 23); (6) to create additional apartments, or to expand apartment 101, in any additional buildings and improvements constructed on the land or on any Adjacent Parcel added to the Condominium (section 18); (7) to merge the Condominium with any condominium project located on an Adjacent Parcel (section 23); (8) to create new apartments and/or common elements from the limited common elements of any commercial apartment (section 24); (9) to convert apartments to limited common elements, or to convert apartments or limited common elements to common elements (section 25); (10) to divide any commercial apartment into two or more apartments, and to combine two or more commercial apartments into one apartment (section 17.2); (11) to remove any wall, floor or ceiling between two adjacent commercial apartments; (12) to change the ownership share (in legal terms, the "common interest") of each apartment when apartments are created, divided, or combined; (13) to change the Condominium as needed or helpful to comply with law or with certain governmental permits, approvals or zoning requirements (sections 26 and 27); (14) to create, grant, accept or otherwise deal with any easements over, under, across or through the common elements or in favor of the Condominium or its land, or to accept any easements or licenses over, under, across or through any part of the land of the Condominium being deleted from the Condominium project (section 7.4); (15) to change the Condominium Documents in certain circumstances (sections 18 - 26, 34.2 and 34.3); (16) to conduct sales and related activities on the Condominium (sections 7.11 and 9.7); (17) to enter the Condominium and to permit its employees, agents, contractors, and so on, to do so; (18) to make noise, dust, vibrations and do other annoying things when using the Developer's Reserved Rights as described in the Condominium Documents; and (19) to hire the first Managing Agent for the Master Association.

**B. RIGHTS RESERVED FOR ADDITION OF NEW IMPROVEMENTS.** The Developer's Reserved Rights under section 19 of the Condominium Declaration include, among others, the exclusive right to control, manage and conduct the design, development, construction, addition and completion of any new improvements on the Condominium even after it deeds vacation ownership interests or whole apartments to other persons. The Developer's Reserved Rights are described in more detail in section 19.2 of the Condominium Declaration. They include, among others, the right: (1) to develop, construct and complete the buildings and other improvements; (2) to construct a fence around the construction area, and to have exclusive possession of the construction area, and to exclude all owners from it until the construction is finished and the County of Maui issues a certificate of occupancy; (3) to dedicate any part of the common elements of the Condominium to the appropriate public authorities or governmental bodies; (4) to file the notice of substantial completion under Chapter 507, Part II, H.R.S.; (5) to seek and obtain temporary and/or permanent certificates of occupancy from the County of Maui; (6) to exercise all rights and make all decisions of the "owner" or the "developer" or similar contracting party with respect to all contracts (such as contracts for architectural or engineering services, construction, equipment, supplies, insurance, bonds, labor, materials or services) now or later signed in connection with the design, development, construction, addition and/or completion of the Condominium,

including but not limited to all rights and decisions relating to litigation, arbitration and compromise of claims arising under or in connection with those contracts; (7) to coordinate the work and activities of the contractors, subcontractors, architects, engineers, laborers, suppliers, and others to complete the Condominium in accordance with the Developer's objectives on time, costs and quality; (8) to review and approve necessary or desirable changes and requests for changes to the Condominium; (9) to obtain all permits, licenses, and approvals necessary or convenient to the design, development, construction, addition, completion, and/or operation and use of the Condominium; (10) to approve and direct the replacement of any improvements that are damaged by fire or other cause during construction; and (11) to do anything else necessary or convenient to the design, development, construction, addition, and/or completion of any new improvements on the Condominium.

**C. RIGHTS RESERVED UNDER THE MASTER ASSOCIATION DOCUMENTS.** The term "Developer's Reserved Rights" is defined in the Master Association Documents. That description is made a part of this power of attorney. The Developer's Reserved Rights include, among other things, the right: (1) to use the Common Property during any Use Period reserved by it; (2) to establish concession stands in the Courtyard of the Condominium, or on the grounds of the Common Area; (3) to conduct receptions on the Common Property for Members and prospective Members of the Master Association and for their Guests; (4) to change the name of the Master Association; (5) to protection with respect to the names of the Members of the Master Association; (6) to hire the first Managing Agent for the Master Association; (7) to add property to, or to remove property from, the Master Project; and (8) to change the Master Association Documents in certain circumstances.

**D. RIGHTS RESERVED UNDER THE VACATION PLAN DOCUMENTS.** The term "Developer's Reserved Rights" is defined in the Vacation Plan Documents. That description is made a part of this power of attorney. The Developer's Reserved Rights include, among other things, the right: (1) to add Apartments into and remove Apartments from the Vacation Ownership Plan; (2) to create new Unit Types and new kinds of Event Weeks; (3) to change the features of a Vacation Ownership Interest by issuing a new First Deed for it; (4) to hire the first Plan Manager for the Vacation Owners Association; and (5) to change the Vacation Plan Documents in certain circumstances.

**E. LIMITATIONS ON DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights with respect to the Condominium are subject to the limitations stated in the Condominium Documents. The Developer's Reserved Rights with respect to the Master Association or the Master Project are subject to the limitations stated in the Master Association Documents. The Developer's Reserved Rights with respect to the Ocean Resort Villas Vacation Ownership Plan are subject to the limitations stated in the Vacation Plan Documents. This power of attorney is subject to the same limits.

**F. TRANSFER OF RESERVED RIGHTS.** The Developer may transfer its rights as the "Developer" under the Condominium Documents, the Master Association Documents, or the Vacation Plan Documents. If so, you: (i) agree and consent to the transfer of the special rights of the "Developer", and (ii) agree to recognize the person to whom the rights are transferred as a "Developer" to the extent provided in the recorded document transferring those rights; and (iii) agree to recognize such person as the "Developer" under this power of attorney.

### 3. NATURE OF THE POWER OF ATTORNEY.

You give and grant to the Developer full power, authority and discretion to do and perform any and all acts and things whatsoever that the Developer alone may deem necessary or convenient in connection with the exercise of the rights reserved by the Developer under the Condominium Documents, the Master Association Documents, and/or the Vacation Plan Documents, all as fully for all intents and purposes as you might or could do if you were personally present. You here and now approve, ratify and confirm all that the Developer lawfully does or causes to be done using this power of attorney.

Without limiting the general description of the Developer's powers and authority, you expressly give the Developer full power to sign, deliver and record all documents that the Developer deems necessary or convenient to the exercise of the Developer's Reserved Rights. This includes but is not limited to signing and recording one or more amendments to the Condominium Documents, the Master Association Documents, the Vacation Plan Documents, or to any deed. It also includes signing and recording documents that designate, grant, lease, convey, transfer, cancel, relocate or otherwise deal with any easements over, under, across or through the common elements of the Condominium, or that transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Condominium or its land, or to accept any easements or licenses over,

under, across or through any part of the land that is being deleted from the Condominium. It also includes adding a property description to this document and making other changes to this power of attorney if necessary or convenient to have it recorded.

This power of attorney will be effective when you sign it. It is coupled with an interest and cannot be revoked. It will not be affected by your disability. If more than one person signs as "you", it will not be affected by the disability of any or all of them. You give the Developer "full power of substitution." This means that the Developer may substitute someone else for the Developer as your attorney-in-fact.

By signing below, you agree to all of the things stated above.

---

---

"You"

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_, 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.

Notary Public, State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

Certified to be a true and correct copy of the document  
recorded on 8/27/03 at 10:00 AM  
in the Office of the Assistant Registrar of the Land Court,  
State of Hawaii, as Document No. 2983215

Island Title Corporation

By SM

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL ☒ ]

PICK-UP ☐ ]

McCorriston Miller Mukai MacKinnon LLP (CEP)  
Five Waterfront Plaza, Suite 400  
500 Ala Moana Blvd.  
Honolulu, Hawaii 96813

This Document Contains 21 Pages

TMK No. (2) 4-4-14-3  
CPR Nos.: [Not assigned yet]  
TCT No. [See Exhibit A]

## *Ocean Resort Villas*

### FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF OCEAN RESORT VILLAS

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
PROPERTY REGIME OF OCEAN RESORT VILLAS (this "Amendment") is made this 25 day of  
August, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND INFORMATION

A. The Developer is or was the owner in fee simple of Lot 98 as shown on Map 86 of Land  
Court Application No. 1744, as more particularly described on the Transfer Certificates of Title listed in  
Exhibit A (the "Land").

B. To create a condominium project which consists of the Land and the improvements on it,  
the Developer recorded a document called the "Declaration of Condominium Property Regime of Ocean  
Resort Villas" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("Land  
Court") as Document No. 2734238 on August 31, 2001. That document is called the "Original  
Declaration" in this Amendment.

C. The Original Declaration has been revised by the following documents:

1. First Amendment to Declaration of Condominium Property Regime of Ocean Resort Villas. It is dated March 12, 2003, and was recorded as Land Court Document No. 2920781.

2. Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas. It is dated August 6, 2003, and was recorded as Land Court Document No. 2974209.

In this Amendment, the Original Declaration, as amended by these documents, is called the "Declaration. All terms defined in the Declaration will have the same meaning in this Amendment.

C. The Developer is developing a Vacation Ownership Plan in the Project. The name of the plan is "Ocean Resort Villas Vacation Ownership Plan" (the "Plan").

D. The Developer has filed an application to register the Plan in the State of California. The California Department of Real Estate has required that the Developer make certain changes to the Declaration as a condition to the registration of the Plan. The Declaration authorizes the Developer to change the Declaration in connection with the registration of the Plan in California.

#### AMENDMENT

THE DEVELOPER HERE AND NOW AMENDS THE DECLARATION as follows:

1. Section 7.1 J. is amended to add a new subsection 3), to read as follows:

3) The Developer must pay to the Association an amount equal to (i) the actual cost of maintenance and housekeeping expenses to the Association attributable to the Developer's use of its rights under this Section 7.1 J., and (ii) the cost to repair or replace any Common Elements damaged by the Developer, its Representatives, licensees, or invitees when using its rights under this Section 7.1 J.; provided that the Developer does not have to pay any amount for damages covered by insurance except for the amount of any deductible actually paid by the Association. The Developer must pay the amounts due under this Section 7.1 J. promptly after it receives a bill from the Association itemizing these charges. If the Developer disputes the amount, then the matter will be determined by arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Board will represent the Association in the arbitration.

2. Section 19.2 B. of the Declaration is amended to read as follows:

B. It can remove, change or add Common Elements. This right is limited to the development, construction, and completion of the improvements of any new phase or increment of the Condominium or any Adjacent Parcel, or the construction of New Improvements in the exercise of the Developer's Reserved Rights as elsewhere expressly provided in this Declaration.

3. Section 19.2 G. 7) of the Declaration is amended to read as follows:

7) It has the right to approve and direct the replacement of any Improvements that are under construction and that are damaged by fire or something else. This includes the right to settle any insurance claims made under any insurance policy that the Developer buys or arranges. If the Board so requests, and if it agrees to pay the resulting fees and expenses of doing so, then the proceeds of any such insurance must be paid to a bank or trust company authorized to do business in Hawaii and chosen by the Developer to have custody and control of the insurance proceeds (the "Insurance Trustee"). The proceeds will be used to pay the cost of replacement of the Improvements as the work progresses. Subsections 14.5 B. - E., and G. will apply to disbursement of proceeds by an Insurance Trustee under this Section 19.2 G. 7), just as if those provisions were repeated here; provided that the reference to the "Board" in Subsection 14.5B 2) will be changed to refer to the Developer.

4. Section 20 of the Declaration is deleted in full.
5. Section 32.5 of the Declaration is deleted in full.
6. Section 34.3 A. 4) of the Declaration is deleted in full.
7. Section 34.3 is amended to add a new Subsection C., to read as follows:

C. No amendment under Subsections 34.3A.3) or 4) will be effective unless:

1. The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental authorities) having authority over the Project as a result of the registration of the Project or any Vacation Ownership Plan or Adjacent Project with that governmental authority, and

2. The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

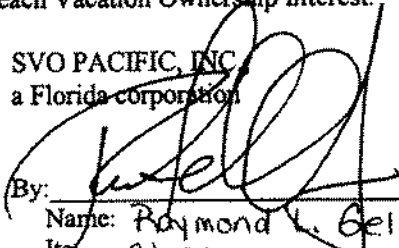
An amendment made by the Developer under this Section 34.3 will take effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

The Declaration, as amended by this Amendment, is here and now ratified and confirmed and remains in full force and effect.

THE DEVELOPER signed this Amendment effective as of the date stated on page one. The Developer signed this Amendment on behalf of itself and also as attorney-in-fact for the Association, all Owners, their Lenders, and all other Interested Persons pursuant to the power of attorney contained in Section 28.3 of the Declaration and the deed of each Vacation Ownership Interest.

Developer:

SVO PACIFIC, INC.  
a Florida corporation

By:   
Name: Raymond L. Gellein, Jr.  
Its: Chairman

STATE OF FLORIDA       )  
                                  ) ss:  
COUNTY OF ORANGE    )

On this 25 day of August, 2003, before me personally appeared Raymond L. Gellein, Jr. 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.

Sabrina C. Churchwell

Name: SABRINA C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006

45321.4





Certified to be a true and correct copy of the document  
on 8-8-07 at 1:10 pm  
in the Office of the Assistant Registrar of the Land Court,  
State of Hawaii, as Document No. 2974210

Island Title Corporation

By [Signature]

RETURN BY MAIL ( ) PICK-UP ( ) TO:  
Charles E. Pear, Jr.  
McCorriston Miller Mukai MacKinnon  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Phone No. (808) 529-7300

170 198298

This document contains 45 pages.

Tax Map Key: 2<sup>nd</sup> Div., 4-4-14-3

AMENDED AND RESTATED  
BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS

OF

*Ocean Resort Villas*

MCCORRISTON MILLER MUKAI MACKINNON LLP  
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Attorneys at Law

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AMENDED AND RESTATED  
BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS  
OF  
OCEAN RESORT VILLAS

THESE BYLAWS are made by SVO PACIFIC, INC., a Florida corporation (the "Developer") pursuant to the Condominium Property Act.

BACKGROUND

- I. The Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001 (the "Original Declaration"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii (the "Land Court") as Document No. 2734238, together with Condominium Map No. 1431 filed in the Land Court (the "Original Condominium Map"), created and established the "OCEAN RESORT VILLAS" condominium project in accordance with the provisions of the Hawaii Condominium Property Act (Chapter 514, Hawaii Revised Statutes, as amended).
- II. The Original Declaration was later amended by First Amendment to Declaration of Condominium Property Regime of Ocean Resort Villas. It was dated March 12, 2003, and filed in the Land Court as Document No. 2920781.
- III. At the same time that the Original Declaration was filed the Developer adopted and filed the Bylaws of the Association of Apartment Owners of Ocean Resort Villas dated August 24, 2001 (the "Original Bylaws") in the Land Court as Document No. 2734239. The Original Declaration, as so amended, and the Original Bylaws are all currently noted on the Transfer Certificates of Title listed in Exhibit 1 to Exhibit A which is attached to this document.
- IV. Pursuant to the Developer's Reserved Rights in the Original Declaration and the provisions of Section 12.4B of the Original Bylaws, and in order to make the Bylaws easier to read, the Developer has chosen to restate the entire Bylaws. This document completely replaces the Original Bylaws, as follows.

INTRODUCTION

- A. The Developer is the owner in fee simple of the land described in Exhibit "A" which is attached to and is part of this document.
- B. The Developer intends to construct or place certain buildings and other improvements on that land.
- C. The Developer intends to establish a condominium that consists of the land and the improvements on it.
- D. These Bylaws are one of the documents required by law to create the condominium. The Developer, acting as the present Association, here and now adopts these Bylaws as the Bylaws of the Association of Apartment Owners of Ocean Resort Villas.

1. DEFINITIONS; SCOPE

1.1 **DEFINITIONS.** Terms defined in the Declaration of Condominium Property Regime of the Ocean Resort Villas recorded just before these Bylaws will have the same meaning in these Bylaws unless the context clearly indicates otherwise.

1.2 **SUBMISSION TO BYLAWS; COVENANTS TO RUN WITH THE LAND.** The Developer declares that:

A. The Declaration, these Bylaws, and the Condominium Property Act will govern the Project. This

includes, for example, the ownership, use, enjoyment, management, operation, upkeep, repair, and improvement of the Project. In legal terms, the Property will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the Condominium Documents and the Condominium Property Act. Anyone who occupies or uses any Apartment or any other part of the Project must obey them.

B. The Condominium Documents are binding on the Property. They will also be binding on, and are intended to benefit these persons:

1) The Developer.

2) Anyone else who owns the Property or any Apartment or other interest in it, now or in the future. This includes, for example, all present and future Apartment Owners and their Lenders.

3) Anyone who, by law or by agreement, stands in the place of the persons listed in items 1) and 2). Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people have the right to enforce the Condominium Documents in any way permitted by the Condominium Property Act or the Condominium Documents.

In legal terms, the Condominium Documents "constitute equitable servitudes, liens and covenants running with the land" which are binding on and for the benefit of all of the persons described in this Subsection.

C. The Bylaws are intended to further the plan for the ownership, use, enjoyment, management, operation, upkeep, and repair of the Project described in the Declaration. They are also intended to increase the value, desirability, and enjoyment of each Apartment and the Common Elements.

**1.3 WHO MUST OBEY THE CONDOMINIUM DOCUMENTS.**

The Condominium Documents apply to all Owners and all other Interested Persons and each of their Representatives, licensees and invitees. This includes, for example, the Developer, all present and future Apartment Owners and their Lenders. They also apply to anyone who occupies any Apartment. When an Owner or any other Interested Person acquires any interest in the Project or occupies any part of the Project, by doing so he or she also automatically accepts, ratifies and agrees to comply with the Condominium Documents.

**1.4 CONFLICTS AMONG THE DOCUMENTS.** The Declaration controls over any inconsistent provision of these Bylaws. If any part of the Condominium Documents is inconsistent with any law that applies, the law will control.

**2. ASSOCIATION OF APARTMENT OWNERS**

**2.1 COMPOSITION OF THE ASSOCIATION.** All Owners of Apartments, including Owners of Vacation Ownership Interests, constitute the Association.

**2.2 POWERS AND DUTIES:** Except as limited by the Declaration, these Bylaws, or the Condominium Property

Act, the Association has and may exercise any or all of these powers and has each of these duties and obligations:

- ❖ The powers, duties, and obligations granted to or imposed on the Association in the Declaration or in these Bylaws;
- ❖ The powers, duties, and obligations granted to or imposed on the Association in the Condominium Property Act or in the Condominium Regulations;
- ❖ Any other powers, duties and obligations necessary or helpful to carry out the functions of the Association under the Declaration or these Bylaws, or that otherwise promote the general benefit of the Owners.

**2.3 QUALIFICATIONS FOR MEMBERSHIP.** Anyone who is an Owner of an Apartment (including an Owner of a Vacation Ownership Interest) automatically is a Member of the Association. If more than one person is the Owner of an Apartment or Vacation Ownership Interest, each of them is a Member of the Association. A person will continue to be a Member so long as he or she is an Owner. A person's membership ends automatically when he or she is no longer an Owner. This would happen when, for example, an Owner deeds his or her Apartment to someone else.

**3. ASSOCIATION MEETINGS**

**3.1 ANNUAL MEETINGS.** The first annual meeting of the Association will be held not later than one hundred eighty (180) days after the first Apartment conveyance is recorded, provided that prior to that meeting forty percent (40%) or more of the Project has been sold and recorded. If forty percent (40%) of the Project is not sold and recorded at the end of one year after the first Apartment conveyance is recorded, an annual meeting will be called if ten percent (10%) of the Apartment Owners request it. After the first annual meeting, the Association will hold annual meetings on a date that the Board chooses. If the Board does not choose a meeting date by the first day of September of each year, then the meeting will be held at the condominium at 10:00 a.m. on the third Wednesday in October. The Developer may set the date and time for the first annual meeting.

**3.2 SPECIAL MEETINGS.** A special meeting of the Association may be called at any time for any one or more purposes. It may be called by (a) the President, (b) a majority of the Directors, or (c) the Developer, or (d) a petition signed by at least five percent (5%) of the Apartment Owners and presented to the Secretary or to the Managing Agent. A special meeting to remove and replace Directors, however, may be called only by the President or by a petition that is (i) signed by at least twenty-five percent (25%) of the Apartment Owners and (ii) presented to the

Secretary or to the Managing Agent. The Members may transact only that business the general nature of which is stated in the notice of the special meeting.

**3.3 PLACE OF MEETINGS.** The Association will hold its meetings at the Project unless the Board chooses another place in the State of Hawaii.

**3.4 NOTICE OF MEETINGS.**

**A. NOTICE REQUIRED.** Notice must be given for each meeting of the Association whether it is an annual or special meeting.

**B. CONTENTS.** The notice must:

- ❖ Be in writing;
- ❖ State the authority for calling the meeting;
- ❖ State the place, date and time of the meeting;
- ❖ State whether it is an annual or special meeting; and
- ❖ List the items on the agenda. The agenda must include anything that, as of the day when the notice is prepared: (i) the Board expects to present; or (ii) a Member expects to present, but only if the Member has given written notice of it to the Board. Note: A Member may still present any other proper business at any annual meeting unless notice of that business is specifically and expressly required by another part of the Condominium Documents or by law.

**C. STANDARD PROXY FORM.** The Board may include with the notice a standard proxy form authorized by the Association, if any. It may also include any other necessary or helpful information.

**D. WHEN NOTICE MUST BE SENT.** Notice of each annual and special meeting must be given to each Owner at least fourteen (14) days before the date of the meeting. It must not be given more than fifty (50) days before the date of the meeting; provided that if the Condominium Property Act permits it and the Board adopts a resolution permitting it, the notice may be given up to ninety (90) days before the date of the meeting.

**E. WHO MUST SEND NOTICE.** The Secretary will give the notice except when these Bylaws provide otherwise. The Secretary may delegate this task to the Managing Agent. If neither the Secretary nor the Managing Agent sends the notice within fourteen (14) days after the Secretary or the Managing Agent receives the request or petition for a meeting, the persons requesting the meeting may give the notice.

**F. WHO IS ENTITLED TO NOTICE.** Notice must be sent to each person entitled to vote as of the Record Date. Notice must also be sent to each holder, insurer or guarantor of a Mortgage on an Apartment or Vacation Ownership Interest if, as of the Record Date, it has made a proper request for notices under Section 10.2.

**G. DELIVERY OF NOTICE.** The notice must be given: (a) by delivering it personally; or (b) by mailing it by first-class mail, postage prepaid; or, (c) if the Condominium Property Act explicitly permits it, by posting notice on a world wide web site or by sending it by email. Any notice given by mail or email must be sent to the address listed in the Association's record of ownership.

**1) CHANGE IN ADDRESS.** Each Owner and anyone who holds, insures or guarantees a Mortgage must inform the Association of any change in address at once.

**2) MULTIPLE OWNERS.** If an Apartment is part of a Vacation Plan, notice to all Owners of a Vacation Ownership Interest may be given by providing notice to any one of the co-owners of that Vacation Ownership Interest. If an Apartment is not part of a Vacation Plan, notice to all Owners of that Apartment may be given by providing notice to any co-Owner of that Apartment.

**H. NOTICE DOES NOT HAVE TO BE RECEIVED.** If notice is given in the manner required by this Section 3.4, (i) nobody entitled to notice may object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, invalidate the meeting or any proceedings at the meeting.

**I. WAIVER OF NOTICE.**

**1) ATTENDANCE.** Anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

**2) WRITTEN WAIVER.** A Member may waive notice of any Association meeting by signing a document (i) that waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. All such documents must be filed with the Association's records and made a part of the minutes of the meeting.

**3) WAIVER BY INACTION.** A Member automatically waives notice of any Association meeting if he or she does not file a written objection with the Secretary or the Managing Agent within fifteen (15) days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

4) **EFFECT OF WAIVER.** If a Member waives notice under this Section 3.41, the fact that notice was not given to that Member will not, by itself, invalidate the meeting or any proceedings at the meeting.

J. **WHO MAY OBJECT TO NOTICE.** A person entitled to receive notice may object if notice was not sent to him or her. A person cannot object that notice was not sent to someone else.

### 3.5 RECORD DATE FOR NOTICES AND VOTING.

A. **PURPOSE OF THE RECORD DATE.** The "Record Date" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The Record Date is also used to determine who may object to and waive lack of notice and exercise other such rights for or as a Member.

B. **SETTING THE RECORD DATE.** The Board may choose the Record Date. The Record Date for a meeting may not be more than ninety (90) days before the meeting date. The Record Date for action without a meeting may not be more than thirty (30) days before the ballot or request for consent or approval is sent. Unless the Board chooses another date, the Record Date will be the date and time when the mailing list is prepared, or, if notice is waived, the last business day before the day of the meeting. If a meeting is adjourned and a new notice must be given, then a new Record Date must be set.

C. **EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only the Members of Record on that date (or someone authorized to act for them) have the right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of an Apartment or Vacation Ownership Interest in the records of the Association after the Record Date. A person who is the Owner of an Apartment or Vacation Ownership Interest as of the Record Date is considered to be the "Member of Record". A person who becomes a Member after the Record Date can, of course, act for the Member of Record by simply obtaining a proxy from the Member of Record. When these Bylaws refer to the "Owner" or "Member" with respect to notice (including waivers of notice) and voting, it means the Member of Record or someone authorized to act for the Member of Record.

3.6 **QUORUM.** The term "quorum" refers to the number or percentage of Owners who must be present at a meeting to conduct business. For all meetings of the Association, fifteen percent (15%) of the Owners must be present to have a quorum unless a different number is required or allowed by law, the Declaration or another part of these Bylaws.

A. **WHEN A MEMBER IS "PRESENT".** Members are "present" at a meeting if: (i) they attend it in person, or (ii) their Proxy Holder attends it for them, or (iii) someone else permitted by these Bylaws attends it for them.

3.7 **ASSOCIATION ACTION.** At any Association meeting at which a quorum is present, the acts and decisions of a Majority of the Owners Voting will be regarded as the acts and decisions of the Association, and will be binding on all Apartment Owners for all purposes, unless a different percentage vote is required or allowed by law or in the Declaration or these Bylaws.

3.8 **RULES FOR CONDUCTING ASSOCIATION MEETINGS.** All meetings of the Association must be conducted in accordance with the latest available edition of Robert's Rules of Order.

3.9 **ADJOURNING ASSOCIATION MEETINGS.** Any meeting of the Association may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a Majority of the Owners Voting, whether or not a quorum is present. If a meeting is adjourned for thirty (30) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 3.4. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Association may do anything that it could have done at the meeting as originally called.

### 3.10 INSPECTORS FOR VOTING AND PROXIES.

A. **APPOINTMENT.** At least ten (10) days before any meeting of the Association or before any ballot is sent to the Members pursuant to Section 3.15, the Board will appoint inspectors of the voting at the meeting, including voting for the election of Directors. The Board may appoint either one or three inspectors of voting. If the Board fails or chooses not to do so, then the Managing Agent will be the inspector of the voting.

B. **DUTIES.** The voting inspectors will: (i) determine the authenticity, validity and effect of proxies, Pledges, and other documents purporting to give any person the right to represent, act and vote for a Member; (ii) receive votes, ballots and consents; (iii) hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes; (iv) count and tabulate all votes and consents; (v) decide when the polls will close; (vi) determine the results of all votes and elections; and (vii) do anything else appropriate to conduct the vote or election fairly as to all Members. The decision, act or certificate of a majority of inspectors, if there are three, or of a single inspector, if there is only one, will be effective. Any facts stated in any effective report or certificate are presumed to be accurate.

### 3.11 VOTING.

A. **VOTES.** Each Apartment is entitled to a vote equal to the percentage of the Common Interest assigned to that Apartment in the Declaration.

#### B. WHO MAY VOTE.

1) **GENERALLY.** Votes may be cast in person or by proxy by an Owner listed in the Association's records of ownership or by anyone lawfully acting for or on behalf of the Owner.

2) **LEGAL REPRESENTATIVES.** Sometimes an Apartment or Vacation Ownership Interest may be owned or controlled by a person acting as a personal representative, guardian, or trustee. At any meeting of the Association, that person may cast the vote of each Apartment or Vacation Ownership Interest held by him or her in this capacity. He or she may vote in person or by proxy. It does not matter whether the Association's record of ownership shows that the personal representative, guardian, or trustee owns or controls the Apartment or Vacation Ownership Interest. He or she may vote so long as if he or she presents evidence satisfactory to the Secretary that he or she owns or controls it in that capacity.

3) **AGREEMENT OF SALE.** A person buying an Apartment under a recorded agreement of sale has the rights of an Owner. This includes the right to vote except on matters where, under the agreement of sale and as permitted by law, the seller expressly retains the right to vote.

4) **PLEDGES.** Except as otherwise limited by law, an Owner may transfer or pledge the Owner's voting rights to someone else in a Mortgage or any other lawful document. Or a court order may transfer an Owner's voting rights to someone else. For simplicity, these arrangements are called a "Pledge" in this Section and the person to whom the voting rights are transferred is called the "Proxy Holder". If a true copy of a document containing a Pledge is filed with the Secretary before the Record Date for a meeting, only the Proxy Holder may vote in person or by proxy at that meeting. The Proxy Holder may, however, substitute someone else to vote for it as the Proxy Holder. The Proxy Holder will have the right to vote at all later meetings until someone files with the Secretary satisfactory evidence that the Pledge has ended or has been released.

5) **OWNERS OF VACATION OWNERSHIP INTERESTS.** Without limiting Section 3.11B.4), the board of directors of a Vacation Owners Association or an agent appointed by it, in either case acting pursuant to a special power of attorney and/or proxy granted to it in the Vacation Plan Documents, may cast the vote of any Apartment included in the Vacation Plan in the manner provided in the

Vacation Plan Documents; provided that if for any reason the means provided for casting votes provided in the Vacation Plan Documents is determined to be invalid, then the vote of any Apartment included in the Vacation Plan will be cast in accordance with Section 3.14. It is the purpose and intent of this Subsection to assure that the operation of the Association is not hindered by the likelihood that the Owners of Vacation Ownership Interests may not vote or participate as actively in Association affairs as Owners who use their Apartments as a principal residence and as the Condominium Property Act may contemplate or require.

C. **COMMON ELEMENTS.** Votes allocated to any area that constitutes a Common Element under Section 514A-13(h) of the Condominium Property Act shall not be cast at any meeting of the Association.

3.12 **PROXIES.** An Owner may appoint someone else to represent the Owner at meetings of the Association. Except as otherwise provided in Sections 3.11B.4) or 3.11B.5):

A. **PROXY REQUIREMENTS.** To be effective, the appointment must be stated in a document (a "proxy") signed by the Owner and filed as required by Section 3.12B. The proxy must contain at least: the name of the Association, the date of the meeting of the Association, the printed names and signatures of the Owner or Owners giving the proxy, the Apartment or Apartments for which the proxy is given, the printed name of the person to whom the proxy is given (the "Proxy Holder"), the date that the proxy is given, and any other information required by law.

B. **FILING OF PROXY.** A proxy, to be valid, must be filed with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day before the date of the meeting; provided that if the Condominium Property Act permits it, the Board may require that proxies be filed at an earlier date not to exceed seven (7) business days before the date of the meeting.

C. **USE OF DUPLICATES OF PROXIES.** A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction must be a complete reproduction of the entire original proxy.

D. **DURATION; LIMITATIONS.** A proxy is only valid for the meeting to which the proxy pertains and its adjournments. It may designate any person as proxy. It may be limited as the Owner desires and indicates. No proxy may be irrevocable unless it is coupled with a financial interest in the Apartment, including but not limited to a financial interest in one or more Vacation Ownership Interests.

**E. PROXY COUPLED WITH AN INTEREST.** The requirements of Sections 3.12A, 3.12B, and 3.12D do not apply to voting rights transferred by an agreement of sale pursuant to Section 3.11B.3) or a Pledge pursuant to Section 3.11B.4) or pursuant to Section 3.11B.5). These kinds of transfers are "coupled with a financial interest" and so special rules apply to them.

### 3.13 SOLICITATION OF PROXIES.

**A. DIRECTORS.** Neither the Board nor any Director may use Association funds to solicit proxies except for the distribution of proxies as set forth in Section 3.13C. This does not prevent an individual Director from soliciting proxies as an Owner under Section 3.13C.

**B. RESIDENT MANAGER OR MANAGING AGENT.** No resident manager or Managing Agent may solicit, for use by the resident manager or Managing Agent, any proxies from any Apartment Owner of the Association that employs that resident manager or Managing Agent. Neither the resident manager nor Managing Agent may cast any proxy vote at any Association meeting except for the purpose of establishing a quorum.

**C. SOLICITATION BY DIRECTORS AND OWNERS.** Any Board that intends to use Association funds to distribute proxies, including the standard proxy form referred to in Section 3.4C, must first post notice of its intent to distribute proxies in prominent locations within the Project at least thirty (30) days before it distributes the proxies; provided that if the Board receives within seven (7) days of the posted notice a request by any Owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all Owners either:

1) A proxy form containing either the names of all Owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

2) A proxy form containing no names, but accompanied by a list of names of all Owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement may not exceed one hundred words, indicating the Owner's qualifications to serve on the Board of Directors and reasons for wanting to receive proxies.

**3.14 CO-OWNERS.** The entire vote for any Apartment owned of record by two (2) or more persons may be exercised by any one of them present at any meeting in the absence of an objection or an inconsistent vote by another Owner of that Apartment or a co-Owner's Proxy Holder. A proxy given by an Owner of an Apartment owned of record by two (2) or more persons may be exercised to cast the

entire vote for that Apartment in the absence of an objection or an inconsistent vote by another Owner of that Apartment or a co-Owner's Proxy Holder. In all other cases, the entire vote allocated to that Apartment will be cast as follows:

**A.** If the co-Owners hold title to the Apartment as tenants in common (whether or not the undivided interest of any particular co-tenant may be held in some other tenancy such as joint tenants), then the entire vote allocated to that Apartment will be cast in the manner determined by the vote of the holders of a majority of the undivided interests voting (in person or by proxy) with respect to that Apartment. If there is a tie vote, however, then one-half of the vote allocated to the Apartment will be counted in favor of and one-half against the issue at hand.

**B.** If co-Owners of an Apartment do not hold title as tenants in common, then the entire vote allocated to that Apartment will not be counted.

**3.15 ACTION WITHOUT A MEETING.** Except as otherwise limited by law, any action that may be taken at a meeting of the Members (such as, for example, electing directors) also may be taken without a meeting and without advance notice if:

**A.** A written ballot is sent to each Member entitled to vote. The ballot must be sent as though it were a notice of meeting and the rules of Section 3.4G will apply;

**B.** The ballot form:

- ❖ States the proposed action and provide a way for the Member to indicate whether he or she approves or disapproves the proposal;
- ❖ States the deadline by which the ballot must be returned to count; and
- ❖ Provides a reasonable time for the ballot to be returned.

**C.** The number of ballots cast before the deadline for returning ballots equals or exceeds the quorum required to be present at a meeting authorizing the action; and

**D.** The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots cast.

An Owner may cancel or change his or her ballot by sending a letter or other document to the Association. It will take effect when the Secretary receives it, and only if it is received before the deadline for returning ballots.

#### 4. BOARD OF DIRECTORS.

4.1 **NUMBER OF DIRECTORS.** The Board will consist of nine (9) persons unless not less than sixty-five percent (65%) of all Owners vote by mail ballot, or at a special or annual meeting, to reduce the number of Directors.

4.2 **POWERS AND DUTIES OF THE BOARD.** Except as limited by law or by the Condominium Documents, the Board may exercise all powers of the Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Condominium Documents, must be taken, authorized or approved by the Members of the Association, or by some part or percentage of them. The Board may delegate its powers to the officers of the Association or to one or more professional managers hired by the Association, including but not limited to the Managing Agent. This authority is subject to any limits contained in the Declaration or these Bylaws. Until the first Board is elected, the Developer may, but is not obligated to, exercise some or all of the powers of the Board.

#### 4.3 **QUALIFICATIONS OF DIRECTORS.**

A. All Directors must be Owners, co-Owners, purchasers under an agreement of sale, or an officer of any corporate Owner of an Apartment or, in the case of fiduciary Owners, the fiduciary or officers of corporate fiduciaries. For purposes of this Section:

- ❖ The partners in a general partnership and the general partners of a limited partnership will be deemed to be the Owners of an Apartment owned by their partnership.
- ❖ To the extent permitted by law, the partners of a limited liability partnership will be deemed to be the Owners of an Apartment owned by their partnership.
- ❖ To the extent permitted by law, the managers of a manager-managed limited liability company will be deemed to be the Owner of an Apartment owned by such a company.
- ❖ To the extent permitted by law, the members of a member-managed limited liability company will be deemed to be the Owner of an Apartment owned by such a company.

B. So long as the Condominium Property Act prohibits it, there can be no more than one representative on the Board from any one Apartment.

C. No resident manager of the Project is allowed to serve on the Board.

D. No person may serve as a Director for more than six (6) years in a row. No person may be elected or

appointed as a Director if serving out his or her full term as a Director would result in a violation of the rule against serving more than six years in a row. This subsection 4.3D does not apply to officers, directors, employees, or agents of the Developer who serve as Directors.

#### 4.4 **ELECTION OF DIRECTORS.**

A. **ELECTION.** The initial Directors will be elected at the first annual meeting of the Association. At each annual meeting of the Association after the first meeting, and at any special meeting called for that purpose, the Members will elect a new Director to replace each Director whose term has expired or to fill any vacancy caused by any increase in the number of Directors. Directors will be elected by secret ballot.

B. **CUMULATIVE VOTING** When electing Directors, an Owner may cumulate his or her votes. This means the Owner can give to one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors being elected multiplied by the number of votes which that Owner has the right to cast. The candidates who receive the highest number of votes, up to the number of available positions, are elected.

C. **INDEPENDENT DIRECTOR** So long as the Developer holds a majority of the voting power of the Association, at least one Director will be elected solely by the vote of Owners other than the Developer. At the first annual meeting of the Association, one Director will be elected solely by Owners other than the Developer. At each later election of Directors, one Director will be elected solely by Owners other than the Developer if there is then no such Director remaining on the Board. The Developer here and now gives up any right it has under the Condominium Act to vote for that Director. The election of this Director will be handled according to these special election procedures:

1) The notice of the meeting must state that one Director will be elected by Owners other than the Developer.

2) Owners other than the Developer will then elect that Director by written ballot before the regular election of the remaining Directors. The rest of the Directors will then be elected by all Owners according to the regular election procedures set forth in these Bylaws.

D. **ADMINISTRATIVE MERGER.** The Declaration of Merger permits the Developer to merge the Project with an Adjacent Condominium for administrative purposes. If the Developer does this, and if the association of apartment owners of the Adjacent Condominium has already elected a board of directors, then the Board must call a special meeting within sixty (60) days after the merger takes effect.

At the meeting, the Association must elect a new Board. The Association will do so using the same procedures used to elect the first Board at the Association's first annual meeting.

1) If the Board has nine Directors, then the term of office of the five (5) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining four (4) Directors will end when the next annual meeting ends.

2) If the Board has seven Directors, then the term of office of the four (4) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining three (3) Directors will end when the next annual meeting ends.

3) If the Board has five Directors, then the term of office of the three (3) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining two (2) Directors will end when the next annual meeting ends.

#### 4.5 NOMINATIONS.

**A. BY THE BOARD.** Each year, the Board will nominate Members for election to the Board at the annual meeting. The Board must do so before the Secretary gives notice of the annual meeting. The Secretary will send to each Member, with the notice of meeting required by Section 3.4, a list of the Members nominated.

**B. FLOOR NOMINATIONS.** Any Member may nominate one or more candidates during an Association meeting.

#### 4.6 TERM OF OFFICE OF ELECTED DIRECTORS.

**A.** The Association will elect all nine (9) Directors at the initial annual meeting. The term of office of the five (5) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining four (4) Directors will end when the next annual meeting ends.

**B.** After the term of office of each of the initial Directors expires, each replacement Director will hold office until the end of the second annual meeting after his or her election. This should be a term of about two (2) years.

**C.** Regardless of the rules stated in Sections 4.4D.1) to 4.4D.3), 4.6A and 4.6B, each Director will continue to have the powers and duties of the office until someone else is elected or appointed to replace him or her.

#### 4.7 REMOVAL OF DIRECTORS.

**A. GENERAL.** The Association may remove and replace Directors only in accordance with the Condominium Property Act and all applicable requirements and procedures in these Bylaws for removing and replacing Directors, including any provisions relating to cumulative voting.

##### B. BY VOTE OF OWNERS.

1) The Association may remove any one or more Directors from office, with or without cause, at any regular meeting or at any special meeting called for that purpose. Any Director whose removal is proposed must have an opportunity to be heard at the meeting. A Director will be removed if a Majority of the Owners Voting vote to remove him or her; provided that:

(a) Unless the entire Board is removed, no individual Director may be removed if the votes cast against removal would be sufficient to elect a Director if voted cumulatively (see Section 4.4B) at an election at which the same number of votes were cast and the entire number of Directors authorized to be elected at the most recent election of the Directors were then being elected; and

(b) A Director who was elected solely by the votes of Owners other than the Developer according to the special election procedure set forth in Section 4.4C, may be removed only by the vote of Owners other than the Developer.

2) If a Director is removed, the Association must then and there elect a replacement Director. The replacement will hold office for the rest of the term of the person replaced.

**C. BY VOTE OF THE DIRECTORS.** If any Director misses three (3) regular Board meetings in a row, the Board, by a vote of a majority of the other Directors, may remove him or her. The Board may do this at the third or any later meeting. But if the Director attends a Board meeting before being removed, the Director must miss at least three (3) more regular meetings in a row before the Board can remove him or her.

**D. PROCEDURES.** Except as otherwise provided in the Condominium Property Act, any meeting for the removal and replacement of Directors must be scheduled, noticed and conducted in accordance with these Bylaws.

#### 4.8 VACANCIES.

**A. FILLING VACANCIES.** Vacancies in the Board caused by any reason other than removal of a Director by the Association may be filled by vote of a majority of the remaining Directors, even though they may be less than a

quorum. A vacancy exists when any authorized position of Director is not filled. For example, a vacancy exists when:

- ❖ A Director dies or resigns. Unless required by its terms, a resignation does not have to be accepted by the Board to be effective. Instead, it will take effect as of the time stated. If no time is stated, it will take effect when the Board receives it. If a resignation will take effect at a later date, a majority of the remaining Directors can elect a replacement to take office when the resignation takes effect.
- ❖ A Director is removed by the other Directors pursuant to Section 4.7C.
- ❖ A Director is no longer qualified to serve as a Director. See Section 4.2.
- ❖ The Owners increase the authorized number of Directors but the Owners fail to fill the new positions at the same meeting; or
- ❖ An authorized position is not filled for any other reason by a duly elected Director.

**B. TERM OF OFFICE OF APPOINTED DIRECTORS.** A replacement Director will hold office for the rest of the term of the person replaced. A Director appointed because the Owners fail to elect a Director will hold office for the term that he or she would have held it if he or she had been elected by the Owners.

**4.9 ANNUAL MEETING.** The Board must meet at least once each year. Immediately after each annual meeting of the Association, the Board will hold a regular meeting at the same place. This meeting will be held to organize the Board. The Board must also elect any required officers at this meeting. The Board may transact any other business. Except as otherwise required by law, no call or notice of this meeting is necessary.

#### **4.10 OTHER REGULAR MEETINGS.**

**A. MEETING REQUIREMENTS.** In addition to the annual meeting, the Board must hold other regular meetings. The number of meetings and the time and place of these meetings will be set from time to time by a majority of the Directors.

**B. NOTICE.** Notice of regular Board meetings must be given to each Director. The notice may be given personally or by mail, email, telephone, fax, or messenger service. It must be given at least thirty (30) days before the date of the meeting. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given

upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records.

**C. WHEN NOTICE MUST BE RECEIVED.** If notice is not given in writing, then it must actually be received to be effective. In all other cases, if notice is given in the manner required by this Section, (i) Directors cannot object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, invalidate the meeting or any proceedings at the meeting.

#### **4.11 SPECIAL MEETINGS.**

**A. HOW CALLED.** The President or any two Directors may call a special Board meeting for any purpose and at any reasonable time.

**B. NOTICE.** Except in an emergency, as determined by the President, notice of special meetings of the Board must be given in the same manner as notice of a regular meeting except that: (i) it must be given at least fifteen (15) days, instead of thirty days, before the meeting date, and (ii) the notice must state the nature of the special business to be considered. The provisions of Subsection 4.10C will also apply to notices of special meetings.

**4.12 ADDITIONAL NOTICE OF BOARD MEETINGS.** Whenever practicable, the resident manager or a Director will post notice of all Board meetings in prominent locations within the Project at least seventy-two (72) hours before the meeting or simultaneously with notice to the Board.

#### **4.13 WAIVER OF NOTICE.**

**A. ATTENDANCE.** Any Director who attends a meeting, in person or by proxy, gives up (in legal terms "waives") any right to claim that notice was not given properly unless, when the meeting begins, that Director objects to holding it because notice was not given properly.

**B. IN WRITING.** A Director may waive notice of any Board meeting by signing a document that (i) waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. If this happens, the fact that notice was not given to that Director will not, by itself, invalidate the meeting or any proceedings at the meeting. All such documents must be filed with the Association records and made a part of the minutes of the meeting.

**4.14 QUORUM.** When referring to the Board, "quorum" means the number or percentage of Directors who must be present at a meeting for the Board to conduct business. A majority of all Directors will be a quorum of the Board. "All

Directors" means all the authorized number of Directors, even if a position is not filled.

A. WHEN A DIRECTOR IS "PRESENT". Directors are "present" at a Board meeting if they attend it in person or by telephone or other similar equipment as provided in Section 4.18.

4.15 DECISIONS OF THE BOARD. At any Board meeting at which a quorum is present, the acts and decisions of a majority of the Directors voting will be regarded as the acts and decisions of the Board unless a different percentage is required or allowed by law or by the Declaration or these Bylaws.

4.16 RULES FOR CONDUCTING BOARD MEETINGS. All meetings of the Board must be conducted in accordance with the latest available edition of Robert's Rules of Order.

4.17 MEMBERS MAY ATTEND MOST BOARD MEETINGS.

A. OPEN MEETINGS. All Board meetings are open to all Members of the Association. Members who are not on the Board may participate in any deliberation or discussion unless a majority of the Directors present vote not to let them do so. If there is not enough room for all the Members wishing to attend at the place of the meeting, the Board must adjourn and reconvene the meeting as soon as possible in a place that has enough room. Any Member may ask to be connected to any meeting being held by telephone conference call or similar device. If the number of Members asking to be connected makes the meeting impractical or impossible, the meeting may not be held by telephone conference or similar device.

B. PRIVATE MEETINGS. The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in "executive session". This means that only Board Members and persons invited by the Board may attend. In executive session the Board may discuss and vote on personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved, and other matters of a similar nature. The nature of any and all business to be considered in executive session must first be announced in open session.

4.18 TELEPHONE MEETINGS. Regardless of any other provision of these Bylaws, and unless the law provides otherwise, one or more Directors may take part in any meeting by telephone or other communications equipment. They may do so only if everyone authorized to participate in and actually participating in the meeting (including Owners who are not on the Board and who may listen and/or participate pursuant to Section 4.17A) can hear and be heard by each other. The Board may carry on all business within the Board's authority as if everyone participating by

telephone or other communications equipment were physically present at the meeting.

4.19 ADJOURNING BOARD MEETINGS. Any meeting of the Board may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the Directors voting, whether or not a quorum is present. If a meeting is adjourned for fifteen (15) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Sections 4.10B or 4.11B, and 4.12. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Board may do anything that it could have done at the meeting as originally called.

4.20 ACTION WITHOUT A BOARD MEETING. Except as otherwise provided by law, any action that the Board is required or permitted to take, by law or by the Declaration or these Bylaws, also may be taken without a meeting if all Directors consent in writing to that action. Any written consent or consents must be filed with the minutes of the meetings of the Board, and have the same force and effect as a unanimous vote of the Directors.

4.21 PROXY VOTE. Except as otherwise permitted by law, a Director shall not cast any proxy vote at any Board meeting.

4.22 CONFLICT OF INTEREST. A Director who has a conflict of interest on any issue before the Board must disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting. The minutes of the meeting must record the fact that a disclosure was made. Except to the extent permitted by law, a Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest. If there is any disagreement as to whether or not a conflict of interest exists, a majority of the non-interested Directors will decide whether a conflict of interest exists as to a particular Director or Directors. Their decision will be conclusive and binding on all parties.

4.23 PAYMENTS TO DIRECTORS. No Director will receive any compensation from the Association for acting as a Director unless that compensation is specifically authorized by vote of a Majority of the Owners Voting (not counting the votes of the Developer) at an Association meeting. This does not prohibit the Association from reimbursing Directors for actual expenses incurred in the course of acting as a Director.

A. TRAVEL EXPENSES. Except as otherwise permitted by law, Directors may not spend Association funds for their travel and per diem, unless the Owners are informed and a Majority of the Owners approve of these expenses.

**B. DIRECTOR EDUCATION.** Directors may spend Association funds, which will not be deemed to be compensation to the Directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as Directors; provided that the approved annual operating budget includes these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, economy travel expenses, and any other expenses allowed by law. Except for economy travel expenses within the State, all other travel expenses incurred under this Section 4.23B shall be subject to the requirements of Section 4.23A.

**C. OTHER WORK.** Nothing in these Bylaws prevents any Director from serving the Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

**4.24 LIABILITY OF THE BOARD OF DIRECTORS AND OFFICERS.** The Directors and officers of the Association will not be liable to the Association or to the Owners or any other Interested Person for any mistake of judgment or otherwise except for their own gross negligence or willful misconduct.

## **5. OFFICERS**

### **5.1 OFFICERS.**

**A. REQUIRED OFFICERS.** The Association must have a President, a Vice President, a Secretary and a Treasurer.

**B. OTHER OFFICERS.** The Association may have any other officers deemed necessary. The Board will determine the title, term of office, authority and duties of these officers.

**5.2 QUALIFICATIONS OF OFFICERS.** Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President must be a Director. The Vice President, Secretary and Treasurer may be Directors but it is not required. An Owner may not act as an officer of the Association and an employee of the Managing Agent.

**5.3 APPOINTMENT OF OFFICERS.** The Board will appoint the officers required by Section 5.1A at the annual meeting of the Board. The Board may appoint any other officers permitted by Section 5.1B, or it may authorize the President or another officer to do so. Officers may be appointed at any meeting of the Board by vote of a majority of the entire Board.

**5.4 TERM OF OFFICE.** All officers will take office when they are appointed. They will hold office only for so long as the Board desires.

**5.5 REMOVAL OF OFFICERS.** The Board may remove any officer, with or without cause, by vote of a majority of the Directors at any regular meeting of the Board or at any Special meeting called for that purpose. Removal of an officer will not affect any contract rights of the officer.

**5.6 VACANCIES.** If any required officer resigns or dies, or if his or her office otherwise becomes vacant, then the Board must appoint a replacement at once. A majority of the remaining Directors may appoint a replacement even if there are not enough Directors remaining to have a quorum.

**5.7 PRESIDENT.** The President is the chief executive officer of the Association. The President has these powers and duties:

- ❖ The President supervises, directs and controls the business and affairs of the Association subject, however, to the control of the Board.
- ❖ The President chairs all meetings of the Association and all meetings of the Board.
- ❖ The President is a member of all committees.
- ❖ The President has the general powers and duties of management usually authorized for the office of president of a Hawaii corporation. This includes, among others, the power to appoint committees from among the Owners from time to time as the President alone deems appropriate to assist in conducting the affairs of the Association.
- ❖ The President has any and all other powers and duties assigned to the President by the Declaration, these Bylaws or the Board.

**5.8 VICE PRESIDENT.** If the President is absent or unable to act, or if that office is vacant, the Vice President performs all the duties of the President. When doing so, the Vice President has all the powers and duties of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

**A. OTHER TEMPORARY REPLACEMENT OF THE PRESIDENT.** If the Vice President is also absent or unable to act, or if that office is also vacant, the Board must appoint another of its members to take the place of the President temporarily. The Board must do so even if there are not enough Directors remaining to have a quorum. The Director

who is so appointed and acting will also have all of the powers and duties of, and is subject to all the restrictions on, the President.

**5.9 SECRETARY.** The Secretary has these powers and duties:

- ❖ The Secretary must keep the minutes of all meetings of the Association, the Board and all committees. For this purpose, the Secretary is a member of all committees.
- ❖ The Secretary must give all required notices of those meetings.
- ❖ The Secretary must keep a list of (i) all Owners, and (ii) anyone who is holding, insuring or guaranteeing a Mortgage and who has requested copies of all notices or other Association information pursuant to Section 10.2.
- ❖ The Secretary must keep all other books, records and documents of the Association except for financial records kept by the Treasurer.
- ❖ The Secretary must keep the minute book in which resolutions will be recorded.
- ❖ The Secretary has the general powers and duties of management usually authorized for the office of secretary of a Hawaii corporation.
- ❖ The Secretary has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

The duties of the Secretary may be delegated to and performed by the Managing Agent or any other person appointed for that purpose. If the Secretary is absent or unable to act at any meeting, or if the office is vacant, another person must be appointed to act as the Secretary at least temporarily.

**5.10 TREASURER.** The Treasurer is the chief financial officer of the Association. The Treasurer has these powers and duties:

- ❖ The Treasurer must keep full and accurate financial and books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.
- ❖ The Treasurer must deposit all money and other valuables in the name and to the credit of the Association with the depositories (such as a bank) chosen by the Board.

- ❖ The Treasurer must pay out the funds of the Association as ordered by the Board.

- ❖ The Treasurer must prepare all financial statements and reports requested by the President or the Board.

- ❖ The Treasurer has the general powers and duties of management usually authorized for the office of treasurer of a Hawaii corporation.

- ❖ The Treasurer has any other powers and performs any other duties assigned to him or her by the President, the Board, the Declaration, or these Bylaws.

The duties of the Treasurer may be delegated to and performed by the Managing Agent, accountants, or other suitable persons providing professional financial services. If the Treasurer is unable to act or if the office is vacant, another person must be appointed to act as the Treasurer at least temporarily.

#### **5.11 PAYMENTS TO OFFICERS.**

**A. PAYMENT; EXPENSES.** No officer will receive any compensation from the Association for acting as an officer unless that compensation is specifically authorized by vote of a Majority of the Owners Voting (not counting the votes of the Developer) at an Association meeting. This does not prohibit the Association from reimbursing officers for actual expenses incurred in the course of acting as an officer.

**B. OTHER WORK.** Nothing in these Bylaws prevents any officer from serving the Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

#### **6. INDEMNIFICATION.**

**6.1 DEFINITIONS.** For the purpose of this Section 6:

**A. "Agent"** means any person who is or was a Director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, limited liability company, trust or other company;

**B. "Proceeding"** means any threatened, pending, or completed action or proceeding (such as a lawsuit). It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding;

C. "Expenses" includes, but is not limited to, attorneys' fees, costs, judgments, fines, settlements and other amounts actually and reasonably incurred.

**6.2 THE ASSOCIATION WILL INDEMNIFY (REIMBURSE) ITS AGENTS.** To the extent allowed by law, the Association must indemnify (that means it will pay) any Expense incurred by any Agent in any Proceeding. Section 415B-6 of the Hawaii Revised Statutes defines how, when, and under what conditions an agent of a Hawaii non-profit corporation can make those payments. The Association must indemnify its Agents to the same extent that a Hawaii non-profit corporation would be able to indemnify its Agents. These Bylaws authorize and require the Association to indemnify its Agents to the full extent allowed by law. If available, the Association must buy insurance to provide those payments and the Association may, but is not required to, buy insurance that provides for reimbursement under circumstances where the Association could not reimburse the Expense directly.

## **7. MANAGEMENT**

**7.1 MANAGEMENT AND OPERATION OF THE PROJECT.** Subject to the limits described in Section 4.2, the Board will manage and operate the Project, and its powers and duties include, but are limited to, the following:

**A. OPERATION AND MAINTENANCE OF COMMON ELEMENTS.** The Board will operate, maintain, repair, replace, and make improvements to the Common Elements, except for:

1) Limited Common Elements that are expressly made by the Declaration or these Bylaws the responsibility of individual Apartment Owners, or

2) Limited Common Elements the administration and maintenance of which is assumed by the Owners of the Apartments to which they are appurtenant as allowed in the Declaration.

**B. MAINTENANCE AND REPAIR OF APARTMENTS.** The Board may perform maintenance and repairs on any Apartment or Limited Common Element if:

1) It is necessary to protect the Common Elements or any other Apartment, and

2) The Owner of the Apartment fails or refuses to perform the maintenance or repair within a reasonable time after the Board delivers written notice to him or her describing the maintenance and repairs needed.

The Board will charge a Special Assessment to that Apartment for the cost of the maintenance or repair and any

attorneys' fees and other expenses incurred in charging and collecting the Special Assessment.

**C. RESTORATION OF PROJECT.** The Board will rebuild, repair and restore the Project in accordance with the provisions of the Declaration and these Bylaws after it is damaged or destroyed by a fire or other casualty or as a result of a condemnation.

**D. EMPLOYMENT OF PERSONNEL.** The Board may designate, employ, train, supervise and dismiss any personnel necessary or useful to maintain, repair, replace, rebuild or restore the Common Elements or to operate the Project.

**E. DELEGATION OF POWERS.** The Board may delegate its powers to committees, agents, officers, representatives and employees.

**F. ENFORCEMENT OF CONDOMINIUM DOCUMENTS.** The Board will enforce the Condominium Documents, the Condominium Property Act, and the Condominium Regulations.

**G. PENALTIES AND FINES.** The Board may set penalties and fines, and charge interest on them if they are not paid, as it deems appropriate to enforce the Condominium Documents, the Condominium Property Act, and the Condominium Regulations. This includes, for example, penalties and fines, and any interest on them, for failure or refusal to pay to the Association on demand all costs, expenses, Common Expenses and Assessments (special or otherwise) required to be paid by law or under the Condominium Documents. Any penalties and fines must not be inconsistent with law or the Condominium Documents. The Board may also terminate the Apartment's access to the Common Elements and stop supplying the Apartment with any and all services normally supplied or paid for by the Association.

1) **HEARING.** The Board must hold a meeting and permit the Owner to present his or her case before it fines the Owner or imposes a penalty or takes any other disciplinary action. This rule does not apply, however, when an Owner is fined or penalized for failing to pay any Assessment on time. The Board must give the Owner written notice of the meeting at least 15 days in advance in the case of a fine or penalty, or 60 days in case of termination of access, services and supplies. The notice must state the purpose of the meeting and the reason for seeking the fine or penalty. The Owner has the right to appear and to explain why the fine or penalty should not be imposed or access and services terminated. The Board will decide whether the Owner's defense will be oral or written. A majority of the Directors present will decide whether to impose the fine or penalty or to terminate access and

services. The Directors, however, cannot act unless a quorum is present and the meeting is held as provided in these Bylaws.

**2) WHEN THE FINE OR SUSPENSION TAKES EFFECT.** The Board must give the Owner written notice of any disciplinary action taken and the reasons for it. Any disciplinary action will take effect on the date that the notice is given.

**3) WHEN SERVICES WILL BE RESTORED.** The Board will restore an Owner's access and services when the Owner pays all amounts due.

**4) THE MANAGING AGENT'S ROLE.** The Board may delegate to the Managing Agent the power to carry out any disciplinary actions imposed by the Board.

**H. KA'ANAPALI NORTH BEACH DOCUMENTS.** The Board must observe and perform all of the limitations, covenants, conditions and restrictions to be observed and performed under the Ka'anapali North Beach Documents.

**L. BUDGET.** Each year, the Board must prepare and adopt a budget of Common Expenses of the Association and determine the amounts of Regular and Special Assessments.

**J. ASSESSMENTS.** The Board must charge and collect Regular and Special Assessments of the Common Expenses and other charges payable by the Apartment Owners. This includes but is not limited to amounts charged under the Ka'anapali North Beach Documents.

**K. BANK ACCOUNTS.** The Board must open bank accounts on behalf of the Association. It must also designate who must sign checks and other documents relating to the accounts.

**L. ASSOCIATION FUNDS.** The Board has custody and control of all funds of the Association. It must keep full and accurate books of account and records of the Association's funds. It must also prepare regular financial reports.

**M. BORROWING MONEY.** Subject to any approval requirements and spending limitations contained in these Bylaws or in the Declaration, the Board may authorize the Association to borrow money to be used for the repair, replacement, maintenance, operation, or administration of the Common Elements of the Project, or to make any additions, alterations and improvements to them. The cost of this borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to this borrowing, will be a Common Expense. Before borrowing money, the Board must obtain any consent of the Owners that is required under the Condominium Property Act.

**N. PAYMENT OF COMMON EXPENSES.** As agent of the Owners, the Board will pay all Common Expenses authorized by the Board.

**O. INSURANCE AND BONDS.** The Board will buy and keep in effect any insurance and bonds required or permitted by the Declaration or these Bylaws.

**P. SERVICES.** The Board will obtain any legal, accounting, and consulting services necessary or proper for the administration and operation of the Project or to interpret, enforce or implement the Condominium Property Act, the Condominium Regulations, the Condominium Documents, the Ka'anapali North Beach Documents, and any other material documents or decisions affecting the Project.

**Q. PROVISION OF UTILITIES TO APARTMENTS.** The Board will provide to each Apartment and its Limited Common Elements all water, sewer, electricity, and any other utility services and utilities that the Board deems necessary. The cost of the utilities will be charged either to the Apartment or as a Common Expense or limited Common Expense, as the Board decides in accordance with these Bylaws and the Declaration.

**R. PROVISION OF COMMON ELEMENT UTILITIES.** The Board will provide all water, sewer, electricity, and any other services and utilities required for the Common Elements or as the Board deems necessary.

**S. PURCHASE OF GOODS.** If required by the Condominium Documents or by law, or if it is necessary or proper, in the Board's opinion, to operate the Project or to enforce the Condominium Documents, the Board may:

- 1) Buy, lease or otherwise procure any other materials, equipment, supplies, furniture, labor and services,
- 2) Make repairs and structural alterations, and
- 3) Pay taxes and assessments and other Common Expenses.

If any materials, equipment, supplies, furniture, labor, services, repairs, structural alterations, insurance, taxes or assessments are required because of the acts, misuse, or negligence of the Owner or occupant of a particular Apartment, the Board will charge the costs of it as a Special Assessment to that Apartment to the extent permitted by Section 8.3B.2).

**T. DISCHARGE OF LIENS.** The Board may pay any amount necessary to discharge, directly or by bond, any lien or encumbrance levied against the entire Project or any part of it that may, in the Board's opinion, constitute a lien against the Project or against the Common Elements rather

than merely against the interest of particular Owners. If one or more Owners are responsible for the existence of any such lien, they will be jointly and severally liable for the cost of discharging it or bonding against it, and the costs incurred by the Board by reason of such lien.

**U. PURCHASING APARTMENTS.** The Board may buy, lease or otherwise acquire any Apartment, or any Vacation Ownership Interest, on behalf of the Association. It may take title in the name of the Association or the Board may have someone else, such as a trustee, hold title.

**V. LEGAL PROCEEDINGS.** The Board may begin, defend, settle, or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters relating to (i) enforcement of the Condominium Documents; (ii) damage to the Common Elements to the extent that the Association is obligated to maintain and repair it; (iii) damage to any part of any Apartment to the extent that the Association is obligated to maintain and repair it; or (iv) damage to the Apartments which arises out of, or is integrally related to, damage to any the Common Elements or to any part of any Apartment to the extent that the Association is obligated to maintain and repair them.

## 7.2 MANAGING AGENT.

**A. MANAGING AGENT.** The Association must hire and at all times it must have a Managing Agent.

**B. QUALIFICATIONS.** The Managing Agent must be properly registered with the Real Estate Commission of the State of Hawaii as a real estate broker or condominium property manager. The Managing Agent may be the Developer or an affiliate of the Developer.

**C. SELECTION.** The Developer has the right to choose and employ the first Managing Agent for the Project. (At the outset, the Developer is the only Member of the Association.) If the first Managing Agent must be replaced for any reason, the Board will choose the replacement. The Board must use its best efforts to hire and keep a responsible company as the Managing Agent.

**D. MANAGEMENT CONTRACT.** The Managing Agent must sign a written contract (the "Management Contract"). Subject to the requirements of the Condominium Property Act:

**1) POWERS AND DUTIES.** The Management Contract may delegate to the Managing Agent any of the Board's powers and duties except those that, by law or under the Condominium Documents, it cannot delegate. It may also permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper. In all cases, the Managing Agent

and any sub-agents will be subject to the direction of the Board and to the limits listed in Section 7.4.

### 2) TERM. The Management Contract:

(a) May provide for an initial term of not more than one year from the Starting Date. The "Starting Date" is the date on which the Managing Agent must begin its performance. Unless otherwise provided in the Management Contract, the Starting Date will be the later of (i) the first date on which a deed of an Apartment or Vacation Ownership Interest is recorded, or (ii) the first date on which the County of Maui issues a temporary or permanent certificate of occupancy for an Apartment in the Project.

(b) May provide that after the first term and each later term ends, the contract will be renewed automatically unless a written notice canceling the Management Contract is sent by either party at least sixty (60) days before the renewal date. The Management Contract may provide that the Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(1) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice; and

(2) A decision not to renew the Management Contract cannot be made by the Board alone; the Board has no power or authority to do so; and

(3) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice before a Majority of the Owners vote not to renew the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**E. CANCELLATION BY THE ASSOCIATION.** The Management Contract must give the Association the right to cancel in each of the following situations:

**1) FOR CAUSE.** The Association must have the right to cancel the Management Contract whenever the Managing Agent violates a material part of it and fails to cure its violation within the time permitted by the Management Contract;

**2) WITHOUT CAUSE.** The Association must have the right to cancel the Management Contract on not more than sixty (60) days' written notice. The Management

Contract may provide that the Association cannot give this notice of cancellation unless a Majority of the Owners vote to do so at an annual or special meeting of the Association. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is an affiliate of or a person affiliated with the Developer then (i) the Developer must abstain from the vote, and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice of cancellation;

(b) A decision to cancel cannot be made by the Board alone; the Board has no power or authority to do so; and

(c) Neither the Board nor any officer, Director, employee or agent of the Association can give the notice of cancellation before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Association. Any notice sent before then will be void.

**F. CANCELLATION BY THE MANAGING AGENT.** The Management Contract must provide that Managing Agent has the right to cancel the Management Contract on not more than sixty (60) days' written notice.

**G. FEES.** The Management Contract must specifically state the fees to be paid to the Managing Agent by the Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project's Common Expenses or to cost plus a percentage profit.

**H. BOND.** From time to time, the Managing Agent must provide evidence satisfactory to the Board that the Managing Agent is bonded under a fidelity bond in the minimum amount required by the Condominium Property Act or any higher amount as the Board may reasonably require. The bond must meet the requirements of Section 13.6 of the Declaration.

**7.3 EMPLOYMENT OF RESIDENT MANAGER.** The Board may also employ a resident manager or may cause the Managing Agent to do so. In either case, the Board will set the compensation of any resident manager. The Board may delegate to the resident manager any its powers and duties except those that, by law or under the Condominium Documents, it cannot delegate.

**7.4 LIMITATIONS ON AUTHORITY TO ENTER INTO CONTRACTS.** Neither the Association nor the Managing Agent may enter into a contract with someone else to furnish goods or services for the Common Elements or to the Association for a period longer than one year unless authorized by the vote or written consent of a Majority of the

Owners Voting. The Developer must abstain from this vote. This rule does not apply, however, to:

❖ **The Management Contract**

❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term the supplier will accept at the regulated rate.

❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.

❖ A lease of laundry room fixtures and equipment for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the company leasing the fixtures and equipment.

❖ Agreements for cable television, satellite television, and/or internet services and equipment for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.

❖ Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services for five years or less provided that neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.

❖ Any other contract for three years or less so long as the Association can cancel it after no more than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

**7.5 LIMITS ON ASSOCIATION AUTHORITY.** Unless authorized by the vote or written consent of a Majority of the Owners Voting (not counting the Developer's votes), the Association shall not sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year; or

**7.6 RENTING OR SELLING APARTMENTS BY ASSOCIATION EMPLOYEES.** An employee of the Association may not engage in renting or selling Apartments in the Project except for Apartments owned by the Association, unless such activity is approved by vote of the Owners as required by the Condominium Property Act.

**7.7 RULES AND REGULATIONS.** The Board may adopt, publish and enforce fair and reasonable Rules and Regulations governing details of the operation and use of the Common Elements; provided, however, that the Rules and Regulations will not apply to the Commercial Apartments or the Limited Common Elements appurtenant to them unless the Owners of those Apartments consent in writing. The Developer may adopt the initial Rules and Regulations. The Board may revise the Rules and Regulations from time to time. The Rules and Regulations must be consistent with the Declaration, these Bylaws, the Condominium Property Act, and the Condominium Regulations.

**7.8 STOPPING VIOLATIONS BY APARTMENT OWNERS.**

**A. THE BOARD MAY STOP CERTAIN ACTIVITIES.** In addition to any other rights they may have, the Board and the Managing Agent may stop ("abate") any activity or condition or remove anything that:

- 1) Violates the law or the Condominium Documents;
- 2) Is unauthorized, harmful, offensive, or potentially dangerous to others or their property; or
- 3) Threatens the property, rights or welfare of others.

**B. THE BOARD MAY ENTER AN APARTMENT.** The rights of the Board and the Managing Agent under Section 7.8A include the right and power to enter any Apartment at any time and to use any means and as much force as is reasonable under the circumstances. Neither the Board nor the Managing Agent will be liable to the Apartment Owner or occupant for doing so. This includes claims for trespass or anything else. The Board and the Managing Agent can use these rights only when the violation threatens an immediate, substantial and undeniable threat to life, safety or property of any Apartment Owner, Member of his family, tenant, guest or invitee.

**C. THE BOARD MAY FILE A LAWSUIT.** The rights of the Board and the Managing Agent under Section 7.8A also include the right and power to file a lawsuit or other legal proceedings. For example, the Board may obtain a court order or "injunction" ordering the Apartment Owner to stop its activity or to abate any unsafe condition. The Apartment Owner must pay to the Association on demand all costs of any such lawsuit or other legal proceedings, including attorneys' fees.

**7.9 ABANDONED PROPERTY.** "Personal property" is a legal term. It generally means any kind of property except for land or anything built on, growing on or attached to land. For example, a car, a coat, a camera, and similar things are

personal property. If anyone abandons any personal property in or on the Common Elements of the Project, the Board may sell it in a commercially reasonable manner, store it at the expense of its owner, donate it to a charitable organization, or otherwise dispose of it as the Board chooses. However, the Board must do so in keeping with any requirements in the Condominium Property Act. The Association may keep any money from sale of the personal property except as otherwise provided by law.

**8. COMMON EXPENSES**

**8.1 DESIGNATION OF COMMON EXPENSES.** "Common Expenses" means (i) all charges, costs and expenses incurred by the Association for or in connection with the administration, management, and operation of the Project, and (ii) all other sums designated as Common Expenses under the Condominium Property Act or the Condominium Documents. For example, the following expense are Common Expenses:

**A. TAXES AND ASSESSMENTS.** All charges for taxes and assessments. However, unless the Board determines otherwise,

- 1) Real property taxes are not Common Expenses, and
- 2) Other taxes or assessments will not be Common Expenses if they are assessed separately to each Apartment and its Common Interest, or on the personal property or any other interest of the Apartment Owner;

**B. MAINTENANCE AND REPAIR.** All costs:

- 1) To maintain, repair, rebuild, upgrade, replace and restore the Common Elements;
- 2) To make any additions and alterations to the Common Elements. This does not include, however, additions and alterations made by the Developer in the exercise of the Developer's Reserved Rights; and
- 3) For any labor, services, materials, supplies and equipment needed to do any of those things.

**C. LIABILITY.** Any liability for loss or damage arising out of or relating to the Common Elements or any accident, fire or nuisance on them;

**D. YARD AND JANITORIAL SERVICES.** All yard, janitorial or other similar services;

**E. WAGES AND FEES.** All wages, and all accounting, legal, and management fees;

**F. MAINTENANCE, MANAGEMENT AND OPERATION OF COMMON ELEMENTS.** All other necessary expenses to maintain, manage, and operate the Common Elements;

**G. PEST CONTROL.** The cost of pest control services, whether or not affecting any particular Apartment or Apartments;

**H. INSURANCE PREMIUMS.** Any premiums for insurance and bonds that the Association must or may buy;

**I. UTILITIES.** The cost of all utility services. This includes, for example, water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone and other similar services. However this does not apply to costs of such services that are separately charged to the individual Apartment Owners as provided in Section 8.16;

**J. KA'ANAPALI NORTH BEACH ASSESSMENTS.** All amounts assessed to the Association or to the Project, or to the individual Apartments Owners (including but not limited to Owners of Vacation Ownership Interests) or their Apartments (or Vacation Ownership Interests), by the Ka'anapali North Beach Association in accordance with the Ka'anapali North Beach Documents;

**K. SHORTFALLS.** Any amount that the Board deems proper to make up any shortfall in funds needed to pay the Common Expense for any prior year; and

**L. RESERVES.** All amounts that the Association collects for the fiscal year to fund the estimated replacement reserves or any other reserves established by the Board.

**8.2 BUDGET AND RESERVES.** The Board must prepare and adopt an annual operating budget and give copies of it to the Owners. The budget must contain any information required by the Condominium Property Act and the Condominium Regulations.

**A. BUDGET.** The annual operating budget must include at least the following:

- ❖ The estimated revenues and operating expenses of the Association for the coming fiscal year;
- ❖ Information as to whether the budget has been prepared on a cash or accrual basis;
- ❖ The total replacement reserves of the Association as of the date of the budget;
- ❖ The estimated replacement reserves the Association will need to maintain the property based on a reserve study performed by the Association;

❖ A general explanation of how the estimated replacement reserves are computed; and

❖ The amount the Association must collect for the fiscal year to fund the estimated replacement reserves.

#### **B. RESERVE FUNDS.**

**1) REPLACEMENT RESERVES.** The Association must establish replacement reserve funds as required by law. The Association may set up any additional replacement reserve funds that the Board determines to be necessary or prudent. The Association must compute the estimated replacement reserves in the manner required by the Condominium Property Act and the Condominium Regulations. The annual operating budget must include all sums required to fund the replacement reserves funds in accordance with the Condominium Property Act and the Condominium Regulations. It may also include any greater amounts that the Board chooses in the exercise of its reasonable business judgment.

**(a) LIMITATION ON LIABILITY.** Neither the Association, nor any Apartment Owner, Director, officer, Managing Agent, or employee of the Association who makes a good faith effort to calculate the estimated replacement reserves for the Association will be liable if the estimate later proves incorrect.

**2) OTHER RESERVES.** The Association may establish working capital reserve funds and any other reserve funds that the Board determines to be necessary or prudent in the exercise of its reasonable business judgment.

**3) OWNERS' INTEREST IN RESERVES.** Except as provided in the Declaration of Merger or upon termination of the condominium property regime created by the Declaration, the interest of any Apartment Owner in the reserves of the Association:

**(a)** Cannot be withdrawn or assigned separately, and

**(b)** Will be transferred automatically with each transfer of the Apartment (or Vacation Ownership Interest in the case of an Apartment included in a Vacation Plan), whether or not the deed or other transfer document expressly says so.

**4) USE OF RESERVE FUNDS.** Money in the reserve funds for Capital Improvements may only be used to pay for Capital Improvements.

### 8.3 ALLOCATION OF COMMON EXPENSES.

A. **GENERAL RULE.** Except as otherwise provided by law or in the Declaration or elsewhere in these Bylaws, the Common Expenses will be charged to the Apartment Owners in proportion to the Common Interests appurtenant to their respective Apartments. The share for each Apartment will be equal to the total amount of the Common Expenses multiplied by this fraction:

The Common Interest of that Apartment  
The sum of the Common Interests of all Apartments

In making this calculation, only Apartments for which Assessments have begun, as provided in Section 8.4A, will be considered.

B. **EXCEPTIONS.** Regardless of the rule in Section, 8.3A:

1) **LIMITED COMMON EXPENSES.** All costs and expenses of any Limited Common Element will be charged to the Owner of the Apartment to which the Limited Common Element is appurtenant. This includes, for example, all costs of maintenance, repair, replacement, additions and improvements to a Limited Common Element.

(a) If a Limited Common Element is appurtenant to more than one Apartment, each of those Apartments will be liable for a share of the costs and expenses of that Limited Common Element. The share for each Apartment will be equal to the total of the cost and expenses multiplied by this fraction:

The Common Interest of that Apartment  
The sum of the Common Interests of all Apartments to which that Limited Common Element is appurtenant

In making this calculation, only Apartments for which Assessments have begun, as provided in Section 8.4A, will be considered.

(b) Apartment 101 includes part of the basement and first floor of the Kahakai Building, and a part of the first floor of the Makani Kai Building. As a result, a share of the cost and expenses of the Resort Limited Common Elements will be charged to Apartment 101. For purposes of this Subsection 8.3B.1(b) and Subsection 8.3B.1(a) only:

(1) Apartment 101 will be treated as if the Resort Limited Common Elements were also appurtenant to it; and

(2) Apartment 101 will be treated as if it had a Common Interest equal to the sum of the Common Interests of Apartments 2200/02, 2201, 2203, 2204/06 and

2205/07 (these apartments are located directly above the part of the Kahakai Building occupied by Apartment 101) and the Common Interest of Apartment 3200 (this apartment is located directly above the part of the Makani Kai Building occupied by Apartment 101). This sum is called the "Deemed Common Interest" of Apartment 101.

Any amendment to the Declaration that subdivides Apartment 101 may also divide the Deemed Common Interest among the Apartments created from Apartment 101. However, the total of the Deemed Common Interests of the newly subdivided Apartments must be equal to the sum of the Common Interests of Apartments 2200/02, 2201, 2203, 2204/06, 2205/07, and 3200.

(c) Costs and expenses relating to parking stalls that are Limited Common Elements may be (i) divided into equal shares for each stall, (ii) allocated based on a comparison of relative square footage (using actual areas, or estimated areas, or estimated average stall sizes), or (iii) allocated in some other fair and equitable manner determined by the Board from time to time with the consent, during the Development Period, of the Developer.

#### 2) SPECIAL ASSESSMENTS AGAINST OWNERS.

(a) The Association will charge a Special Assessment to an Apartment to pay for all charges, costs and expenses incurred by the Association due to the negligence, misuse or neglect of the Apartment Owner or an occupant of the Owner's Apartment, or any person under either of them. Any Special Assessment charged under this Subsection 8.3B.2(a) will be secured by the lien of the Association described in Section 8.8.

(b) Despite what Subsection 8.3B.2(a) says, an Owner will not be liable for the act or neglect of: (i) the Owner of another Vacation Ownership Interest in the Vacation Plan who reserves the use of the Apartment pursuant to the Vacation Plan Documents, or (ii) a person whose use of such Owner's Apartment is arranged through an exchange program, or (iii) any guest or other occupant of a person entitled to use an Apartment in the circumstances described in (i) or (ii), above.

### 8.4 ASSESSMENTS.

A. **WHEN ASSESSMENTS BEGIN.** Accounting for Common Expenses for an Apartment will start on the date when the County of Maui issues a temporary or permanent certificate of occupancy for that Apartment. The first installment of Common Expenses will be prorated for each Apartment from the date that the certificate of occupancy is issued. After that, Assessments of Common Expenses will be payable in advance in monthly installments on the first

day of each month, or at any other time that the Board chooses.

#### B. AMOUNT OF ASSESSMENTS.

1) **REGULAR ASSESSMENT.** Each year the Board will set the amount of the Regular Assessments of Common Expenses for each Apartment based on the budget and the requirements of the Condominium Documents. Until the first Board is elected at the first annual meeting of the Association, the Developer will set the amount of the Regular Assessments. The Board may increase the amount of the Regular Assessments during the year.

2) **SPECIAL ASSESSMENTS.** If for any reason the Regular Assessments for Common Expenses are, or will be, inadequate to pay all Common Expenses, the Board must estimate the shortfall. The Board must then (i) increase the next year's budget, or (ii) charge a Special Assessment. The Board may also charge a Special Assessment in any other circumstances permitted by law or by these Bylaws or the Declaration. For example, the Board may charge a Special Assessment to a single Apartment under Section 8.3B.2).

3) **NOTICE OF ASSESSMENTS.** Any time that the Board increases the Regular Assessment or charges a Special Assessment, it must give written notice of the increase or Special Assessment to each Owner. The notice must state the amount of the increase or of the Special Assessment for the Owner or the Owner's Apartment. The Board must send the notice at least thirty (30) days before the increase or Special Assessment takes effect.

4) **LIMITS ON ASSESSMENTS.** The Board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates, except in emergency situations. Before it charges or collects an Assessment under this Subsection:

(1) The Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process; and

(2) The Board must distribute the resolution to the Members with the notice of Assessment.

The limitations of this Subsection do not apply to an increase in the budget caused when the Developer creates Additional Apartments that are not covered by the budget so long as the Assessments for any Apartment covered by the budget does not increase by more than twenty per cent during the fiscal year covered by the budget.

C. **JOINT BILLINGS.** The Association or Managing Agent may join with any Vacation Owners Association

and/or the Master Association to send a single bill covering assessments due under the Condominium Documents and under the Master Association Documents and/or the Vacation Plan Documents. The Association may permit the Master Association or the Vacation Owners Association to collect the assessments and turn them over to the Association or the Managing Agent provided that they have adequate fidelity insurance or bonds. The Association may also agree with the Master Association or the Vacation Owners Association to act as their agent in collecting amounts due under the Master Association Documents or the Vacation Plan Documents.

D. **TREATMENT OF ASSESSMENTS.** Any part of an Owner's Assessments used or to be used by the Association for Capital Improvements or any other capital expense will be treated as a capital contribution by the Owner. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or to the Owners.

#### 8.5 HANDLING AND PAYMENT OF ASSOCIATION FUNDS.

A. The funds in the general operating account of the Association must not be commingled with funds of other activities such as lease rent collections and rental operations (except to the extent permitted by §514A-97 of the Condominium Property Act). The Managing Agent must not commingle any Association funds with the Managing Agent's own funds.

B. All funds collected by the Association, or by the Managing Agent, must be deposited, held, transferred, invested, and paid out in accordance with the requirements of the Condominium Property Act.

8.6 **PAYMENT AS AGENT.** Each Owner, as principal, is liable for and must pay his share of the Common Expenses. The amount an Owner must pay will be set in accordance with the Declaration and these Bylaws. Except as otherwise provided in these Bylaws or in the Declaration, on behalf of the Owners the Board will pay all Common Expenses or cause them to be paid. The Board may require the Managing Agent to assist it in these duties. The Board and the Managing Agent will transmit the payments made by the Owners to third persons to whom the payments must be made by the Owner. Neither the Board nor the Managing Agent, however, is liable for payment of Common Expenses as principal but only as the agent of the Owners.

#### 8.7 DUTY TO PAY; INTEREST AND LATE CHARGES.

A. **PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay, on time, all Regular and Special Assessments charged to the Owner or to his or her Apartment. If an Apartment is owned by more than one

person, each of them will be jointly and severally liable for the Assessments. "Jointly and severally" is a legal term. In general, it means that each Co-Owner of an Apartment is obligated to pay the full amount of the Assessment, not just a share of it. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. By acquiring an Apartment or a Vacation Ownership Interest, an Owner promises to pay all Assessments charged to him or her, or to his or her Apartment.

**B. INTEREST AND LATE CHARGES.** All sums not paid within thirty (30) days after the due date will be subject to (i) interest at a rate set by the Board or, if no rate is set, then at one percent (1%) per month from the due date until paid; (ii) a late charge not exceeding the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount due. An Owner must also pay all costs of collection and reasonable attorneys' fees.

**C. HOW PAYMENTS WILL BE APPLIED.** Payments will be applied as the Board provides in the Rules and Regulations. If the Rules and Regulations do not say how payments will be applied, then they will be applied first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment.

## 8.8 ENFORCEMENT.

**A. ASSOCIATION LIEN.** The Association has a lien on each Apartment for all Assessments charged to that Apartment or to its Owner. This means that the Apartment is collateral for the Owner's obligation to pay Assessments, including late charges, interest, costs of collection and reasonable attorneys' fees. If the Owner fails to pay these amounts, the Association may "foreclose" its lien. This means that the Apartment will be sold and the money from the sale will be used to pay the amounts owed. The Association's lien is prior to all other liens, except only:

- 1) Liens for taxes and assessments lawfully imposed by governmental authority against the Apartment and which, by law, have priority over the Association's lien, and

- 2) The lien for sums unpaid (plus costs and expenses including attorneys' fees provided in the Mortgage) on any Mortgage that is recorded before the Association records a Notice of Lien.

**B. ASSOCIATION REMEDIES.** If an Owner fails to pay any amount assessed to him or her, or to his or her Apartment, then in addition to any other remedies the Board may have, the Board may enforce the obligation to pay those amounts as follows:

- 1) **FORECLOSURE OF LIEN.** The Board or the Managing Agent, acting on behalf of the Association, may

foreclose the Association's lien in a manner like a mortgage foreclosure. They may do so by filing a lawsuit for foreclosure. They may also foreclose using the non-judicial or power of sale foreclosure procedures authorized by law. The Board or the Managing Agent must give to the Owner at least ten (10) days prior written notice of the Association's intent to foreclose. It must send this notice by registered mail. The Managing Agent, acting on behalf of the Association and as directed by the Board, may bid on the Apartment at the foreclosure sale and may acquire, hold, lease, Mortgage, and convey the Apartment. The Association may offset the Owner's debt against the amount bid at the sale. The Association may also accept a deed of the Apartment to the Association (or to someone else like a trustee holding title for the Association) in place of foreclosure.

- 2) **SUIT.** The Association may file one or more lawsuits to enforce an Owner's obligation to pay Assessments. The Association may file a lawsuit to recover a money judgment for the unpaid Common Expenses without foreclosing or giving up (in legal terms, "waiving") its lien for those expenses. The Association may not file a lawsuit unless a majority of the Board authorizes it at a regular or special Board meeting. The Board may file the suit on behalf of the Association. The Managing Agent may file the suit on behalf of the Association if the Board authorizes it to do so in writing.

- 3) **NOTICE OF LIEN.** At any time after an Owner defaults, the Board or the Managing Agent may give a notice to the defaulting Apartment Owner. The notice must state the amount owed and the date when it became due. If this amount is not paid within ten (10) days after the notice is delivered, the Board or the Managing Agent may record a "Notice of Lien" against the Owner's Apartment. The Notice of Lien must be signed and acknowledged by any two (2) or more Directors or officers of the Association, the attorney for the Association, or the Managing Agent. Whether or not a Notice of Lien is recorded, the Board will have all remedies provided in these Bylaws, the Declaration and the Condominium Property Act on account of the default. Each default will be a separate basis for a Notice of Lien. But a single Notice of Lien may cover more than one default, and may include defaults between the date of the Notice of Lien and the date of the sale.

- (a) **CANCELLATION OF NOTICE OF LIEN.** On behalf of the Board, any two (2) Directors or officers of the Association or the Managing Agent, will sign, acknowledge and deliver to the Owner a document canceling a Notice of Lien if:

(1) The Board receives payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees), and

(2) The Owner asks for the cancellation document and pays a reasonable fee for it.

**8.9 VACATION OWNERSHIP INTERESTS.** If an Apartment is part of a Vacation Ownership Plan, then to the extent permitted by law, the Board may, but does not have to, treat each Vacation Ownership Interest just as if it was a separate Apartment for such purposes as the Board chooses. This means, among other things, that:

A. Each Owner of a Vacation Ownership Interest will be liable only for Assessments charged to the Owner or to his or her Vacation Ownership Interest;

B. Owners of other Vacation Ownership Interests in the same Apartment will be liable only for Assessments charged to their own Vacation Ownership Interest. They will not, however, be jointly and severally liable for Assessments charged to the Owners of other Vacation Ownership Interests in the same Apartment. Co-Owners of a single Vacation Ownership Interest will be jointly and severally liable for all Assessments charged to their Vacation Ownership Interest;

C. Under Section 8.8A, the Association will have a lien on each Owner's Vacation Ownership Interest for the amount of any Assessments charged to that Owner's Vacation Ownership Interest. The lien on one Vacation Ownership Interest will be separate from the lien on any other Vacation Ownership Interest in the same Apartment;

D. The Association may foreclose its lien on one Owner's Vacation Ownership Interest without foreclosing its lien on any other Vacation Ownership Interest in the same Apartment;

E. The Association may file a lawsuit against the Owner of one Vacation Ownership Interest without filing a lawsuit against the Owners of any other Vacation Ownership Interests in that same Apartment; and

F. The Association may file a Notice of Lien on one Vacation Ownership Interest without filing a Notice of Lien on any other Vacation Ownership Interests in that same Apartment.

**8.10 WAIVER.** In one or more cases, the Board may not insist on strict performance of or compliance with the covenants of an Owner under the Condominium Documents, or may not use some or all of rights and powers that the Board has to enforce compliance. This does not mean,

however, that the Board has given up (in legal terms, "waived") the right to do so. Instead, the covenants of each Owner will remain in full force and effect and the Board will continue to have all of its rights and powers to enforce them despite any failure to do so in the past. Whether or not the Board knows that an Owner has violated the Condominium Documents, it may receive and accept any money paid by the Owner without waiving the Owner's breach. The Board will not be deemed to have waived any provision of the Condominium Documents, expressly or by implication, unless the Board says so in a document that is signed by an officer of the Association who is authorized to do so by a resolution of the Board.

#### **8.11 ASSESSMENT DISPUTES.**

A. **STATEMENT OF UNPAID AMOUNTS.** No Apartment Owner may withhold any Assessment claimed by the Association. An Apartment Owner who disputes the amount of an Assessment may request a written statement clearly indicating (1) the amount of Common Expenses included in the Assessment, including the due date of each amount claimed; (2) the amount of any penalty, late fee, lien filing fee, and any other charge included in the Assessment; and (3) the amount of attorneys' fees and costs, if any, included in the Assessment. Upon receipt of such a request, the Association, or the Managing Agent on behalf of the Association, must provide a written statement disclosing this information and anything else required by the Condominium Property Act or the Condominium Regulations.

B. **ASSESSMENT DISPUTES.** An Apartment Owner who pays the Association the full amount claimed by the Association may still contest the Assessment in the manner provided in the Condominium Property Act.

**8.12 LIABILITY OF ANYONE WHO ACQUIRES TITLE THROUGH FORECLOSURE.** In this Section, "New Owner" means a Lender or anyone else obtains title to an Apartment as a result of the foreclosure of a Mortgage. A New Owner and its successors and assigns are not liable for the share of the Common Expenses or Assessments charged to the Apartment and which became due before the New Owner took title. Instead, those amounts will be Common Expenses collectible from all of the Apartment Owners, including the New Owner and his or her successors and assigns. A New Owner will be deemed to acquire title and is required to pay the Apartment's share of Common Expenses and Assessments beginning at the time stated in the Condominium Property Act or, if not stated, then on the earlier of: (1) thirty-six (36) days after the order confirming the sale to the purchaser has been filed with the court; (2) sixty (60) days after the hearing at which the court grants the motion to confirm the sale to the purchaser; or (3) the date when the deed is recorded.

### 8.13 LIABILITY FOR UNPAID COMMON EXPENSES.

A. In this Section 8.13, "Existing Owner" means the Owner who transfers an Apartment, and "New Owner" means the person to whom the Apartment is transferred. If an Apartment is transferred voluntarily, the New Owner will be jointly and severally liable with the Existing Owner for all unpaid Assessments against the Existing Owner for his or her share of the Common Expenses up to the time of the transfer. This does not limit (in legal terms "prejudice") the New Owner's right to recover from the Existing Owner the amounts paid by the New Owner for these unpaid Assessments.

B. Both the Existing Owner and the New Owner have the right to ask the Managing Agent or the Board for a letter listing any unpaid Assessments against the Existing Owner or his or her Apartment. Within twenty (20) days after receiving the request, the Board or the Managing Agent must provide the letter. The letter must state the amount of the unpaid Assessments against the Existing Owner. The New Owner is not liable for, and the Apartment will not be transferred subject to a lien for, any unpaid Assessments against the Existing Owner in excess of the amount stated in the letter except for the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-day period immediately preceding the date of the letter.

**8.14 ABANDONMENT OF APARTMENT; DEED TO BOARD.**  
An Owner cannot avoid liability for Assessments by not using or by abandoning his or her Apartment (or Vacation Ownership Interest) or by giving up (in legal terms, "waiving") his or her rights to use or enjoy the Common Elements. Any Apartment Owner may deed his Apartment and its Common Interest (or his or her Vacation Ownership Interest) to the Association (or to someone else like a trustee holding title for the Association) on behalf of all of the Apartment Owners. The Owner will not be liable for any Common Expenses charged after the deed takes effect.

### 8.15 TAXES AND ASSESSMENTS.

A. Each Owner (i) must take reasonable steps to see that the government assesses any taxes on his or her Apartment and its Common Interest separately from taxes on other Apartments, and (ii) must pay those taxes. The Owner must do the same thing for any taxes on any personal property or any other interest of the Owner.

B. If, in the opinion of the Board, any taxes or assessments may be a lien on the entire Project or any part of the Common Elements, the Board may pay those taxes or assessments as part of the Common Expenses. Each Owner must pay to the Board his proportionate share of any Assessment by the Board for any such taxes or assessments

paid by the Board; provided that the amount of any lien that results from the act or inaction of the Owner of an individual Apartment may be specially assessed to that Owner in the manner provided in Section 8.3B.2). The Owners must make these payments at the time and in the manner that the Board directs. Any Assessments charged by the Board under this Section 8.15 will be secured by the Association's lien under Section 8.8.

C. Each Owner must sign any documents and take any action that the Board reasonably requires to facilitate dealing with the proper governmental authority regarding taxes and assessments.

### 8.16 UTILITY EXPENSES.

#### A. RESORT APARTMENTS.

1) If the cost of utility services to the Resort Apartments and/or their Limited Common Elements are separately metered or check metered, then:

(a) If the utility company provides separate bills for each Apartment and/or its Limited Common Elements, the Owner of an Apartment must pay the bill for his or her Apartment directly to the utility company.

(b) Otherwise, the cost of the utility services to an Apartment and/or its Limited Common Elements will be added to that Apartment's Assessment for Common Expenses.

2) For all utility expenses to the Resort Apartments and/or their Limited Common Elements that are not separately metered or check metered, the Board will allocate a share of the utility expenses to each of the Resort Apartments as a Common Expense. The share for each Resort Apartment will be equal to the total of the cost of the utility service multiplied by this fraction:

The Common Interest of that Apartment

The sum of the Common Interests of all Resort Apartments.

In making this calculation, only Resort Apartments for which Assessments have begun, as provided in Section 8.4A, will be considered.

3) The Board may collect charges for utilities under Subsections 8.16A.1)(b) and 8.16A.2) in the same manner as other Common Expense Assessments.

4) If a Limited Common Element is appurtenant to more than one Resort Apartment, then cost of the utility services to that Limited Common Elements will be divided as required by Section 8.3B.1).

## B. COMMERCIAL APARTMENTS.

1) The Board may authorize the installation of sub-meters or check meters to determine the actual use of utilities by certain or each of the Commercial Apartments and/or their Limited Common Elements.

2) If the cost of utility services to the Commercial Apartments or their Limited Common Elements are separately metered or check metered, then:

(a) If the utility company provides separate bills for each Apartment and/or its Limited Common Elements, the Owner of an Apartment must pay the bill for his or her Apartment and/or its Limited Common Elements directly to the utility company.

(b) Otherwise, the cost of the utility service to an Apartment or its Limited Common Elements will be added to that Apartment's Assessment for Common Expenses.

3) For all utility expenses to the Commercial Apartments and/or their Limited Common Elements that are not separately metered or check metered the Board will fairly and equitably allocate among the Commercial Apartments the cost of utility services that are not separately metered or check metered based upon estimated consumption and cost of utilities. If the Owner of any Commercial Apartment disputes the Board's allocation, the Owner may require that the matter be submitted to arbitration. If the arbitrator's allocation is not more than ten percent (10%) different from the Board's allocation, then the Owner must pay the costs of the arbitration and the Board's legal fees and costs. Otherwise, the Association must pay the costs of the arbitration and the Owner's legal fees and costs.

4) The Board may collect charges for utilities under Subsections 8.16B.2)(b) and 8.16B.3) in the same manner as other Common Expense Assessments.

C. COMMON ELEMENTS. The cost of utility services for Common Elements is a Common Expense. The Owners will pay this as provided in Section 8.3 for other Common Expenses, subject to the requirements of Section 8.3B.1) with respect to Limited Common Elements.

D. METERED UTILITIES. The Assessments charged to each Apartment will be adjusted as necessary to avoid any duplication of charges for the cost of metered utilities.

8.17 VACATION PLAN. Regardless of what Sections 8.15 and 8.16 say, if any Apartment is included in a Vacation Plan, the Board will collect and pay taxes, assessments and costs of utility services in the same manner as Common Expenses and will continue to do so unless the Vacation

Owners Association asks it not to do so. The Board will do so in this way:

A. All such sums paid for or on account of the Resort Apartments included in the Vacation Plan will be charged to the Owners of those Apartments. The charge for each Owner of a Vacation Ownership Interest will be set according to the formula or method for allocating expenses among Owners of Vacation Ownership Interests stated in the Vacation Plan Documents.

B. All such sums paid for or on account of the Resort Apartments that are not included in the Vacation Plan will be charged to those Apartments. The Owner of each of those Apartments must pay the amounts actually charged to his or her own Apartment in the manner provided in Section 8.16A.

C. All such sums paid for or on account of the Commercial Apartments will be charged to the Owners of the Commercial Apartments. The Owner of each Commercial Apartment must pay the amounts actually charged to its Apartment. To the extent that the taxes or assessments are separately assessed or utility services separately metered or check metered, instead of having the Association collect and pay those amounts, the Board may direct or permit the Owner of a Commercial Apartment to pay those costs in the manner provided in Sections 8.15 and 8.16B.2).

D. If the Board collects and pays charges for taxes, assessments and costs of utilities as provided in this Section 8.17, each Owners' Assessments must be adjusted as necessary to avoid any duplication of charges to the Owners for the cost of taxes separately assessed and utilities that are separately metered or check metered.

8.18 COLLECTION FROM TENANT. An Owner may rent or lease his or her Apartment to someone else (a "tenant"). If an Owner does so and if the Owner is in default for thirty (30) days or more in the paying the Apartment's share of the Common Expenses, then for so long as the default continues, the Board may demand in writing and receive from the Owner's tenant any rent due up to the full amount owed by the Owner to the Association, including interest, if any. Of course, the Association may not demand that the tenant pay more than the amount of rent due from the tenant to the Owner under the lease or rental arrangement. Any amount paid by the tenant under this Section will discharge that amount of payment from the tenant's rent obligation. Even if the Board demands and receives any rent from a tenant, this will not release or discharge (i) any obligations of the Owner remaining unpaid or unperformed, (ii) any other duties of the Owner, or (iii) any rights of the Association under the Condominium Documents. The Board must

comply with the requirements of the Condominium Property Act when exercising its rights under this Section.

**8.19 AUDITS.** Except as otherwise permitted by the Condominium Property Act, each year the Association must have a public accountant or accounting firm conduct an audit of the Association's financial accounts and at least one (1) unannounced verification of the Association's cash balance. The Association will furnish to the Owners copies of the audit and any other financial statements at the times and in the manner stated in the Condominium Property Act.

#### **8.20 FINANCIAL REPORTS.**

**A. FINANCIAL STATEMENTS.** The Association must prepare and send the following statements to each Owner:

1) **THE BUDGET.** At least 45 and not more than 60 days before the fiscal year starts the Association must send to the Owners the approved budget for that year.

2) **THE ANNUAL REPORT.** The Association must send an annual report to each owner within 120 days after the end of each fiscal year. It must include:

(a) A balance sheet showing the assets, liabilities and net worth of the Association at the end of the fiscal year;

(b) An operating (income) statement for the fiscal year;

(c) A statement of the net changes in the financial condition of the Association for the fiscal year;

(d) The name, mailing address and phone number of each Director; and

(e) Any other information required by the law of any place (for example, another state) where the Project is registered for public sale.

3) **ANNUAL STATEMENT.** Not more than 60 days before the start of each fiscal year, the Association must send to the Owners a statement describing the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments of Common Expenses, including recording Notices of Liens and foreclosing the Association's lien against Owners' Apartments or Vacation Ownership Interests. This statement may be mailed with the budget information required in subsection 8.20A.1).

#### **9. MAINTENANCE, REPAIR AND USE**

**9.1 USE.** Subject to the Developer's Reserved Rights and to the provisions of the Declaration:

A. Each Apartment may be used only for the purposes expressly permitted in the Declaration.

1) No matter what else the Condominium Documents say, the Resort Apartments may be used as time share units in a time share plan or units in a fractional ownership plan if the Developer creates the plan or if the Developer authorizes or otherwise consents to that use in a recorded document.

2) No matter what else the Condominium Documents say, any part of Apartment 101 located in a building containing Resort Apartments (and any Apartments that were originally part of Apartment 101 and that are located in a building containing Resort Apartments) may be configured for use as Resort Apartments and then used as time share units in a time share plan or units in a fractional ownership plan if the Developer creates the plan or if the Developer authorizes or otherwise consents to that use in a recorded document.

B. The Common Elements may be used only for their respective purposes as designed or as described in the Declaration, subject to:

1) The right of the Board to change the use of the Common Elements or to lease or otherwise use the Common Elements for the benefit of the Association. The Board may only do so upon the terms and subject to the limits contained in the Condominium Property Act. See, for example, Section 514A-13(d) of the Condominium Property Act. However, no such lease, use or change in use may be made before the Development Period ends unless the Developer consents to it in writing.

2) The right of the Developer to use, change the use of, or otherwise deal with the Common Elements and Limited Common Elements in the exercise of the Developer's Reserved Rights.

C. Every Owner and occupant must at all times keep his or her Apartment in a strictly clean and sanitary condition and in a condition that is consistent with a first class destination resort.

D. No Owner or occupant may make or suffer any strip or waste or unlawful, improper, or offensive use of his or her Apartment or the Project. No Owner or occupant may alter or remove any furniture, furnishings, or equipment of the Common Elements.

E. All Apartment Owner and occupants must use extreme care to avoid making any noise that will unreasonably disturb the Owners or occupants of other Apartments.

F. No Owner or occupant may throw, place, or keep any refuse, garbage, or trash of any kind on any Common Elements of the Project other than in the trash disposal facilities. All Owners and occupants must comply with any rules adopted by the Association regarding the sorting and disposal of various types of refuse, garbage and trash.

G. These are the rules about having animals in the Project.

1) Definitions:

(a) "Specially trained animals" means certified guide dogs, signal dogs, service animals and other animals specially trained to assist handicapped people.

(b) "Guide dog" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and rigid handle grasped by the person." This definition will change as the law changes.

(c) "Signal dog" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any dog trained to alert a deaf person to intruders or sounds." This definition will change as the law changes.

(d) "Service animal" has the meaning stated in Section 515-3(8), Hawaii Revised Statutes. The current definition is "any animal that is trained to provide those life activities limited by the disability of the person." This definition will change as the law changes.

2) No livestock, poultry, or other animals of any kind are allowed on or may be kept in any part of the Project except for (i) specially trained animals, or (ii) animals that must be permitted on the Project pursuant to the Americans with Disabilities Act.

3) Regardless of anything else stated in these Bylaws, specially trained animals are permitted on the Project pursuant to Chapter 515, Hawaii Revised Statutes, provided that:

(a) Specially trained animals may not be kept, bred, or used at the Project for any commercial purpose.

(b) Specially trained animals must be kept on a leash when they are on the Common Elements, including but not limited to any recreation areas.

(c) Any specially trained animal causing a nuisance or an unreasonable disturbance to any other occupant of the Project must be permanently removed from the Project promptly after the Board or the Managing Agent gives notice to the person using the specially trained animal. The notice must give the person a reasonable period within which to obtain a replacement specially trained animal. The animal causing a nuisance or disturbance need not be removed before the time stated in the notice unless the Board believes that the animal poses an imminent and serious threat of physical harm to other occupants of the Project.

(d) The Board may from time to time include in the Rules and Regulations reasonable restrictions or prohibitions relating to specially trained animals. Any such restrictions or prohibitions must be consistent with any laws protecting the civil rights of persons using specially trained animals.

H. Nothing may be allowed, done or kept in any Apartment or Common Element of the Project if it would:

1) Overload or impair the floors, walls or roofs.

2) Cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance on the Project maintained by or for the Association unless the Owner of the Apartment agrees to pay the increased cost and the Board approves it.

I. It is intended that the buildings will have a uniform exterior appearance that is consistent with a first class destination resort. To that end, without the prior written consent of the Board, no Owner or occupant (other than the Developer and the Master Association) may do anything that changes the exterior appearance of the Project. For example,

1) No Apartment Owner may tint the windows to his or her Apartment if it may affect the exterior appearance of it.

2) No Owner can install draperies if the exterior side is anything but an unpatterned, uniform white color or any other color and texture approved by a resolution of the Board.

3) Nobody can hang clothing, rugs, or anything else from the windows, lanais, or otherwise on the Project exterior.

4) Lanai furniture visible from outside of an Apartment must meet the design and color standards adopted by the Board.

5) No Apartment Owner or occupant may install or have any electrical or telephone wiring, television or other

antenna, machines, air-conditioning units, or other equipment or accessories of any kind on the exterior of the Project or that stick out of the walls, windows, or roof of the Project.

6) No Apartment Owner or occupant may install awnings, shades, blinds, screens, louvers, or other similar objects on the lanai of any Apartment, or any exhaust vents, wind baffles, or drains.

J. No Owner of a Resort Apartment may paint, resurface, enclose or make any structural modifications, changes, additions or alterations to his or her lanai.

K. No Owner or other occupant of a Resort Apartment may post any advertisement, bill, poster, or other sign on or in the Project. Regardless of anything else stated in this Section 9.1 or elsewhere in these Bylaws (except for Section 9.1H.2), which always applies), the Owner of a Commercial Apartment may, subject to all applicable laws and necessary government approvals:

1) Install and display signs in the windows of its Apartment;

2) Install and display signs on the exterior side of any boundary wall of its Apartment that faces an interior corridor, lobby, or other common area in the Halekipa Building;

3) Conduct its business operations in its Apartment even if they can be seen from outside of the Apartment.

During the Development Period, a Commercial Apartment Owner must get written approval from the Developer before doing any of these things. After the Development Period ends, a Commercial Apartment Owner must get written approval from the Board before doing any of these things.

L. No Owner or occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit the Owners of the Commercial Apartments from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them from loading docks, loading ramps, or other loading areas, to the Commercial Apartments or to storage areas that are Limited Common Elements appurtenant to one or more Commercial Apartments. Any such loading, unloading, and transportation must be completed promptly.

M. Access to the roofs of the Project is limited to anyone authorized by the Board to perform any necessary inspections, maintenance or repairs on the roofs. The Board

may likewise restrict access to other parts of the Common Elements such as elevator mechanical rooms, electrical equipment rooms, and other areas that would not ordinarily be open to the public in an apartment building or hotel.

**9.2 MAINTENANCE AND REPAIR OF APARTMENTS.** Except as otherwise provided by law or in these Bylaws or in the Declaration:

**A. OWNERS' RESPONSIBILITIES.** At his or her own expense, an Apartment Owner must maintain and repair his or her Apartment and keep it in good order and condition at all times.

1) This duty includes, for example, the obligation to repair and maintain:

(a) The interior decorated or finished surfaces of all walls, floors, and ceilings of the Apartment, and

(b) All installations for water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights, and all other fixtures and accessories. This applies only to installations, fixtures and accessories that are part of the Owner's Apartment.

2) An Apartment Owner is liable for all loss or damage caused by his or her failure to perform any such work diligently. If the Owner fails to do it after reasonable notice from the Association, the Association may do it. The Association may then charge the cost of doing it to the Owner pursuant to Section 8.3B.2)(a).

**B. DAMAGE TO COMMON PROPERTY.** Every Apartment Owner and occupant:

1) Must reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the Common Elements or any furniture, furnishings, and equipment owned by the Association caused by that Owner or occupant or by any person under either of them (except for normal wear and tear and except for damage caused by an unavoidable accident), and

2) Must give to the Managing Agent notice of any such loss or damage or other defect in the Project promptly after discovering it.

**C. EXTERIOR PAINTING AND REPAIRS.** It is intended that the exterior of the buildings will have a uniform appearance and that the Project will be maintained as a first class destination resort. To that end, the Board alone may arrange for painting or repair of the lanais, lanai ceilings, patios, outside doors, windows, trim, walls, railings and other exterior parts of any buildings, even if they are Limited Common Elements or part of the Apartments. The Board

may also choose the type and color of paint to be used. The Board may assess each Owner for his or her proportionate share of the painting and repairs or the Board may pay for it using the reserve funds. However, the cost of painting and repairs due to negligence, misuse or neglect of an Owner or other occupant, or someone under either of them, may be charged as a Special Assessment pursuant to Section 8.3B.2)(a).

1) This Section does not apply to the Master Association Apartment or to its Limited Common Elements. The Master Association will maintain, repair, and repaint them or arrange for someone else to do so. Until the Development Period ends, however, the Master Association must obtain the written consent of the Developer to any painting or repairs that may change the exterior appearance of the Project.

2) This Section also does not apply to the Limited Common Elements of the other Commercial Apartments to the extent that the Owners of those Commercial Apartments choose to do the painting and repairs themselves as authorized in the Declaration. Until the Development Period ends, however, the Owners of any such Apartments must obtain the written consent of the Developer to any painting or repairs that may change the exterior appearance of the Project.

### 9.3 MAINTENANCE AND REPAIR OF COMMON ELEMENTS.

**A. COMMON ELEMENTS OTHER THAN LIMITED COMMON ELEMENTS.** Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Common Elements that are not Limited Common Elements will be made only by or at the direction of the Board. The cost will be charged to all the Owners as a Common Expense.

**B. LIMITED COMMON ELEMENTS APPURTENANT TO RESORT APARTMENTS.** Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the Resort Apartments, whether located inside or outside of the Apartments, will be made only by or at the direction of the Board.

**C. LIMITED COMMON ELEMENTS APPURTENANT TO COMMERCIAL APARTMENTS.** Except as otherwise provided in these Bylaws or in the Declaration, all maintenance, repairs and replacements of Limited Common Elements appurtenant to the Commercial Apartments, whether located inside or outside of the Apartments, will be made by or at the direction of the Board. Except as otherwise required by law, however, this rule does not apply to Limited Common Elements appurtenant to Commercial Apartments whose

Owners choose to conduct such maintenance, repairs and replacements themselves as authorized in the Declaration.

### 9.4 ALTERATIONS AND ADDITIONS BY OWNERS.

**A. PERMITTED ALTERATIONS.** An Apartment Owner may make additions, alterations or improvements solely within his Apartment or within a Limited Common Element appurtenant to and for the exclusive use of his Apartment:

1) At his sole cost and expense,

2) With the approval of the Board in the case of a Resort Apartment or, to the extent required by the Condominium Property Act, in the case of a Commercial Apartment, and

3) In accordance with the requirements of the Declaration and the Condominium Property Act.

**B. PROHIBITED ALTERATIONS.** Subject to the provisions of the Declaration and the Condominium Property Act, no Owner may, without the prior written approval of the Board (in the case of a Resort Apartment and, to the extent required by the Condominium Property Act, in the case of a Commercial Apartment) and the Developer (until the Development Period ends), make any alteration or addition: (i) to his Apartment that adversely affects the Common Elements or changes the exterior or appearance of the Project; or (ii) to any of the Common Elements including, without limitation, Common Elements within, encompassing or adjacent to his Apartment. Except as otherwise required by law, however, Board approval is not necessary for alterations or additions made to any Limited Common Elements appurtenant to the Master Association Apartment.

**C. BOARD APPROVAL.** An Owner must not begin work on any alterations, additions or improvements that require Board approval until after:

1) The Owner submits a written request for Board approval. The request must include plans and specifications if the Board asks for them, and

2) The Board (or a subcommittee of the Board) approves the request in writing or the Board is deemed to have approved the request as provided in Section 9.4D.

**D. TIME LIMIT FOR BOARD RESPONSE.** The Board must respond to a request for approval within sixty (60) days after it receives it. The request will be approved automatically unless, within the sixty-day period, the Board either (i) disapproves the request, or (ii) asks the Owner to make changes. This automatic approval, however, does not apply to work that will affect the Common Elements, the

exterior appearance of the Project or the rights of any other Owner.

**E. CONDITIONS TO APPROVAL.** The Board may impose reasonable conditions on its approval of any such request. For example, the Board might require (i) changes to the request or the plans, (ii) that the work be supervised by an architect, engineer, or other construction professional, or (iii) that a licensed contractor be used to do any construction.

**F. UNAUTHORIZED WORK.** The Board may inspect the work from time to time. It may require the removal or correction of any work (i) not authorized by the Board, or (ii) that may adversely affect the Common Elements, the exterior of the Project or the rights of any other Apartment Owner.

**G. DEVELOPER'S RESERVED RIGHTS.** Despite the requirements of this Section 9.4, the Developer does not need Board approval when exercising the Developer's Reserved Rights.

**9.5 ALTERATION OF THE PROJECT.** Except for Limited Common Elements to be maintained by the Owners of Commercial Apartments to which they are appurtenant, whenever in the judgment of the Board, the Common Elements need additions or alterations, the Board can make the additions or alterations. Until the Development Period ends, however, the Board may not proceed without the written approval of the Developer. The cost will be a Common Expense, except that the cost of any such work performed on any Limited Common Elements will be charged to the Owners of the Apartments to which the Limited Common Elements are appurtenant.

**9.6 OWNER APPROVAL.** Alterations, additions, maintenance, repair or replacement of the Common Elements costing, on a C.P.I. Adjusted basis, in excess of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in any one instance may be made by the Board only after obtaining approval of a Majority of the Owners Voting and, until the end of the Development Period, the Developer. This rule does not apply to additions, alterations, maintenance, repairs or replacements:

A. Required by law or by the Declaration or these Bylaws;

B. Required due to an emergency threatening immediate and substantial damage to person or property;

C. Required to maintain or repair the Project as originally designed or constructed, or in accordance with any changes to the Project previously approved by the Association or required by law;

D. For which replacement reserve funds have been established and at least partly funded; or

E. Made by the Developer when exercising the Developer's Reserved Rights.

**9.7 DEVELOPER'S RESERVED RIGHTS.** The Developer's Reserved Rights under the Declaration include various rights such as the right: (i) to develop the Project in phases or increments by building New Improvements and creating New Apartments on the Land; (ii) to develop one or more new condominium projects on any Adjacent Parcel; (iii) to merge such new condominium or condominiums with the Project, either by amending the Declaration or through the Declaration of Merger; and (iv) to amend the Condominium Documents, without the consent of anyone else, as necessary to reflect any changes in or additions to the Project made using the Developer's Reserved Rights.

A. To ensure that the quality, integrity, uniformity and value of the Project remains substantially the same at all times before the completion of all increments, phases, or mergers contemplated or permitted by the Declaration, and regardless of any other provisions of these Bylaws, the Developer reserves the following rights as additional Developer's Reserved Rights:

1) Without the prior written approval of the Developer, nobody (including individual Apartment Owners, the Association, the Managing Agent and any employee or agent of any of them) can make any alterations of any kind that affect or may affect the appearance of all or any part of the Project. This rule does not apply to alterations made entirely inside an Apartment if they are not visible from outside of the Apartment and if they are otherwise permitted by the Condominium Documents. Alterations subject to the Developer's approval under this Subsection include for example:

(a) Painting or repainting all or any part of any Apartment (including but not limited to the lanai) or Limited Common Element. This rule does not apply to painting or repainting that is not visible from any vantage point commonly accessible to the public;

(b) Any externally visible cosmetic or structural addition to or deletion from any Apartment, any Limited Common Element or any Common Element; and

(c) Any substantial change in the landscaping of all or any part of the Project. This includes, for example, planting or removing any flowers, shrubs, trees, grass or similar ground cover on the Common Elements. It does not include changes in the landscaping that are not visible from any vantage point commonly accessible to the public.

2) The Condominium Documents may not be amended in any way that changes or otherwise affects the use or ownership of the Commercial Apartments or any Limited Common Element appurtenant to them without the prior written approval of the Developer. This rule does not apply, however, to amendments that only transfer parking stalls among Apartments.

B. The rights reserved in this Section 9.7 shall survive and remain in full force and effect until the Development Period ends.

## **10. MORTGAGES**

**10.1 NOTICE TO BOARD.** If an Apartment Owner Mortgages his or her interest in an Apartment (or in a Vacation Ownership Interest), he or she must notify the Board of the name and address of the Lender.

**10.2 REQUESTS FOR INFORMATION.** A holder, insurer or guarantor of a Mortgage may request certain information under this Section 10. To be valid, the request must be made in writing. It must state the holder's, insurer's or guarantor's name and address. It must also state the Apartment number of the Apartment upon which it has, insures or guarantees a Mortgage, and the name of the borrower.

**10.3 NOTICE TO LENDER.** A holder, insurer or guarantor of a Mortgage on an Apartment or any interest in it may request copies of:

A. Any notice of default given to the Owner of that Apartment or of a Vacation Ownership Interest in it. This would include, for example, a notice of failure to pay of Assessments.

B. Any other notice given to the Owner by the Association.

After the Board receives such a request, it must provide copies of all such notices to the person making the request. The Board may also choose to send copies of some or all of such notices to any Lender even if the Lender does not make a proper request.

**10.4 STATEMENT OF UNPAID AMOUNTS.** Any holder, insurer or guarantor of any Mortgage may ask the Board for a letter listing any unpaid Assessments against the Apartment or its Owner. Within twenty (20) days after receiving the request, the Board or the Managing Agent must provide the letter. The letter will bind the Association in favor of any holder, insurer or guarantor of any Mortgage who relies on it in good faith except as to the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-day period immediately preceding the date of such statement. The

Board may require payment of a reasonable fee before preparing the letter.

**10.5 EXAMINATION OF BUDGETS AND AUDITS.** If asked by any holder, insurer or guarantor of any Mortgage of an interest in an Apartment, the Association will provide a copy of its budgets, audited financial statements (including those for the prior fiscal year) and any other such reports prepared in connection with the Project. The Board may require payment of a reasonable fee before providing these materials.

**10.6 LENDER PROTECTION.** Regardless of anything else stated in the Condominium Documents:

A. The Condominium Documents do not give an Owner or anyone else priority over the rights of any Lender under its Mortgage in the case of a distribution to the Owner of insurance or condemnation proceeds; provided, however, that this does not change the provision of the Declaration allocating proceeds as between the Developer and the Owners with respect to the Developer's right to compensation or damages paid on account of loss of the Developer's Reserved Rights.

B. No amendment to this Section 10.6 will affect the rights of any Lender whose Mortgage is recorded before the amendment unless the Lender signs or approves (in legal terms, "joins in") the amendment.

**10.7 REQUEST FOR NOTICE.** A holder, insurer, or guarantor of a first Mortgage may ask the Association for written notice of any proposed action that requires the consent of certain Lenders or a percentage of certain Lenders. After the Board receives such a request, it must provide the notice requested whenever action requiring Lender consent is proposed.

**10.8 RELEASE OF INFORMATION.** The Board may provide any information available to it pertaining to an Apartment or the Project or a Vacation Ownership Interest to the any Lender having a Mortgage on that Apartment or Vacation Ownership Interest. Any Lender may provide any information to the Board regarding the borrower, the borrower's loan and the status of the loan.

## **11. ASSOCIATION RECORDS**

**11.1 PROJECT DOCUMENTS.** The Association must keep at the Managing Agent's office an accurate copy of the Declaration, these Bylaws, the Rules and Regulations, the Declaration of Merger, a sample original Apartment Deed, a sample original Vacation Ownership Deed, and all public reports and any amendments to them. The Managing Agent must provide copies of those documents to Owners, prospective purchasers and their agents during normal

business hours, upon payment to the Managing Agent of a reasonable charge to defray any administrative or duplicating costs. If the Project is not managed by a Managing Agent, then these requirements must be handled by a person or entity, if any, employed by the Association, to whom this function is delegated.

**11.2 DOCUMENTS FOR DIRECTORS.** The Association, at its own expense, must provide to all Directors a current copy of the Declaration, these Bylaws, the Rules and Regulations, the Declaration of Merger and, annually, a copy of the Condominium Property Act with amendments. If the Project is merged pursuant to the Declaration of Merger, the Association, at its own expense, must also provide all Directors with a current copy of the condominium declaration, bylaws, and rules and regulations of any condominium project merged with the Project.

### **11.3 MEMBERSHIP LIST.**

**A. THE ASSOCIATION MUST KEEP A LIST.** The resident manager or Managing Agent or Board must keep an accurate and current list of names and addresses of the Members of the Association. The list must include, among others, anyone who is buying an Apartment or Vacation Ownership Interest under any agreement of sale. It must also include the names and addresses of each Lender whose name and address is furnished to the Association. The list will be maintained at a place designated by the Board.

**B. THE DEVELOPER'S RIGHTS.** The Developer has certain important reasons for wanting to protect the list of Owners. For example, the list of Members is also the list of the Developer's customers. In addition, the Developer intends to develop a Vacation Ownership Plan in the Project. The Vacation Owners Association is governed by Chapter 415B, Hawaii Revised Statutes. That law contains certain provisions intended to protect the list of Members. The Developer wants to insure that these requirements are not circumvented, especially for commercial reasons by a competitor of the Developer. For these and other reasons, the Developer is expressly declared to be an intended third party beneficiary of this Section 11.3. This means that this Section 11.3 is intended to protect the Developer and that the Developer can enforce it.

### **C. RELEASE OF LIST.**

1) The Association will make the list of Members available, at cost, to any Apartment Owner who asks for it; provided that despite anything else stated in the Condominium Documents, the Association will not furnish the list of Members or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the

list or any other documents from which a list may be compiled, until after each of these conditions is satisfied:

(a) The person requesting the list must furnish to the resident manager or Managing Agent or Board a duly executed and acknowledged affidavit stating that (i) the list will be used by that Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters, and (ii) the list will not be used by that Owner or furnished to anyone else for any other purpose.

(b) The person requesting the list satisfies any other conditions to obtaining the list contained in the Condominium Property Act.

(c) All other lawful conditions adopted by the Board pursuant to Section 11.4F have been fully satisfied.

(d) The Board gives written notice of the request to the Developer. The notice must include (i) the name and address of the person requesting the list; (ii) a copy of the request for the list and any related documentation; and (iii) a copy of the affidavit submitted pursuant to Section 11.3C.1(a). The Board must give this notice to the Developer promptly after receiving the Owner's affidavit and request for the list.

(e) At least ten days have passed since the Developer received the Association's notice and the Developer has not given the Association a written notice objecting that the affidavit is improper or that the requirements of the Condominium Property Act or this Section 11.3C have not been fully satisfied.

(1) If the Association or the Member contests the Developer's objection, then the matter will be decided by appropriate legal proceedings. In such a case, the Association will not release the list until the appropriate legal authorities order it to do so.

2) If the person requesting the list or inspection is not a competitor of the Developer then the Association will furnish the list to the Member, or permit the Member to inspect the records requested, after each of the requirements of these Bylaws are met.

3) If the person requesting the list or inspection is a competitor of the Developer and each of the requirements of these bylaws are met, then unless the law requires something else, the Association will furnish the list in this way (and only in this way): The Association will provide the list in the form of mailing labels directly to a company providing mailing services chosen by the person requesting the list. The company providing mailing services: (a) cannot be a competitor; and (b) must provide to the Developer the company's written promise to the Developer that it will not:

(a) Use the list for any purpose except for the mailing;

(b) Provide a copy of the list to anyone else, including but not limited to the competitor; and

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

4) A "competitor" is a person who is:

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

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

(c) the manager of such a time share plan or fractional ownership plan;

(d) an exchange company other than the Club or the Network;

(e) any other company competing with the Developer in the time share business or the fractional ownership business;

(f) any officer, director, agent, employee, independent contractor, partner, co-venturer, attorney, or affiliate of anyone listed in Subsections (a) through (e); or

(g) a person who is collaborating with anyone listed in Subsections (a) through (f).

#### D. OWNERS' DEEDS, MORTGAGES, ETC.

1) Each Owner must promptly:

(a) Record the deed or other document conveying the Apartment or Vacation Ownership Interest to him or her,

(b) Record any Mortgage of his or her interest in his or her Apartment, and

(c) File a copy of those documents with the Board.

2) Anyone who sells an Apartment or a Vacation Ownership Interest using an agreement of sale must promptly record the agreement of sale and file a copy of it with the Board.

3) Each Apartment Owner, each seller and each buyer under an agreement of sale, and each Lender must promptly notify the Board of any changes in his, her or its

address. The Association does not have to change its membership list unless and until the Board receives satisfactory evidence of a person's interest in the Project. A current title report or a recorded copy of an apartment deed, a deed of a Vacation Ownership Interest, or a Mortgage are examples of satisfactory evidence.

4) During the Development Period, the Board must provide to the Developer a clear and readable copy of all documents and information that it receives pursuant to this Subsection 11.3D within seven (7) days after the Board receives it.

#### 11.4 MINUTES AND RECORDS; EXAMINATION.

A. CURRENT FINANCIALS AND BOARD MINUTES. The Association's most current financial statements and minutes of the Board of Directors' meetings, once approved, will be available to any Owner at no cost on twenty-four (24) hour loan, at a convenient location designated by the Board.

B. MINUTES. Minutes of all meetings will be available within seven (7) calendar days after approval, and unapproved final drafts of the minutes of a meeting will be available within sixty (60) days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session. Minutes of meetings of the Board and the Association for the current and prior year will be available for examination by Apartment Owners at convenient hours at a place designated by the Board. Minutes of meetings must include the recorded vote of each Board Member on all motions except motions voted on in executive session. If notice of a Board meeting was properly given but a Director is absent, the minutes must say so. Copies of meeting minutes will be provided to any Apartment Owner upon the Owner's request provided that the Owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

C. FINANCIAL RECORDS. Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers (or other comparable lists or schedules), insurance policies, contracts and invoices of the Association for the current and prior year and delinquencies of ninety (90) days or more will be available for examination by the Apartment Owners at convenient hours at a place designated by the Board; provided that:

1) The Board must require the Apartment Owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its Members or both; and

2) The Apartment Owners pay for administrative costs in excess of eight hours per year.

Copies of these items will be provided to any Apartment Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage and stationery and other administrative costs associated with handling the request.

**D. VOTING RECORDS.** The Apartment Owners have the right to view proxies, tally sheets, ballots, Owners' check-in lists and the certificate of election for a period of thirty (30) days following any meeting of the Association, provided that:

1) The Board must require Owners to furnish the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its Members or both; and

2) The Owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, Owners' check-in lists and the certificate of election from the most recent meeting of the Association will be provided to any Apartment Owner upon such Owner's request, provided that the Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling such request.

**E. OTHER RECORDS.** Owners may file a written request with the Board to examine other documents. The Board must give written authorization or written refusal with an explanation of the refusal within thirty (30) calendar days of receipt of the request.

**F. PROTECTION OF ASSOCIATION INFORMATION.** To the extent permitted by law, the Board may establish reasonable additional requirements and conditions to the inspection by Owners (including Directors) of the list of Owners or to furnishing information from the register or other books, papers or records of the Association especially when that information might be used to compile a list of Owners. For example, the Board may set rules governing (1) when notice must be given to the Association or Managing Agent by the person desiring to inspect the Association's records, (2) hours and days of the week when an inspection may be made, (3) payment of the cost of reproducing copies requested by the party making the inspection, to the extent not specified elsewhere in these Bylaws, and (4) the posting of a bond.

## 11.5 RECORDS; EXAMINATION; DISPOSAL

**A. RECEIPTS, EXPENDITURES, AND DELINQUENCIES.** The Managing Agent or Board must keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. The Managing Agent or Board must also keep monthly statements indicating the total current delinquent dollar amount of any unpaid Assessments for Common Expenses.

**B. LOCATION OF RECORDS.** All records and the vouchers authorizing the payments and statements will be kept and maintained at the address of the Project, or elsewhere within the State of Hawaii as the Board chooses. The records may be kept and maintained on paper or in electronic, magnetic, or other form accessible using electronic data processing equipment.

**C. DISPOSAL OF RECORDS.** The Managing Agent may dispose of records of the Association at the times and under the conditions stated in the Condominium Property Act or, if it does not address it, then at the times and under the conditions that the Board chooses.

**11.6 REQUIRED NOTICE PRIOR TO ASSESSING COSTS.** Notwithstanding any provision of these Bylaws to the contrary, no Owner who requests legal or other information from the Association, the Board, the Managing Agent, or their respective employees or agents, shall be charged for the cost of providing the information unless the Association notifies the Owner that it intends to charge the Owner for the cost. The Association shall notify the Owner in writing at least ten (10) days prior to incurring the cost of providing the information, except that no prior notice shall be required to assess the cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents. After being notified of the cost of providing the information, the Owner may withdraw the request, in writing. An Owner who withdraws a request for information shall not be charged for the cost of providing the information.

## 12. GENERAL PROVISIONS

**12.1 WHO CAN SIGN CHECKS AND SO ON.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, they must be signed by any two of the President, Vice President, Secretary or Treasurer. The same rule applies to signing and delivering other documents authorized by the Condominium Documents or by action of the Board or the Association.

**12.2 WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS.** Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents, to enter into any contract or sign any document for the Association. This authority may be general or it may be limited to specific things. Unless authorized by the Board, no officer, agent or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.

**12.3 RIGHT OF ACCESS.** The Association has the right and an easement to enter any Apartments and/or Limited Common Elements, if any, from time to time as authorized by law and/or by the Declaration.

**12.4 AMENDMENT.**

**A. AMENDMENT BY VOTE OR WRITTEN CONSENT.** Except as otherwise provided in these Bylaws or by law, these Bylaws may be amended in any respect consistent with law and the Declaration by the vote or written consent of sixty-five percent (65%) of all Apartment Owners, provided that:

1) These Bylaws must always include each item required by the Condominium Property Act to be stated in these Bylaws;

2) No amendment to these Bylaws that increases the obligations of an Owner of a Commercial Apartment or directly affects the use of a Commercial Apartment or its Limited Common Elements will be effective without the consent of the Owner of that Commercial Apartment; and

3) Regardless of anything else stated the Condominium Documents, no amendment to the Condominium Documents that changes, terminates, or otherwise adversely impacts any of the Developer's Reserved Rights, or any other rights of the Developer under the Condominium Documents, will be effective unless the Developer signs it and it is recorded.

**B. DEVELOPER'S RESERVED RIGHTS TO AMEND.** Despite what Section 12.4A says, the Developer acting alone has the right to amend these Bylaws at the times and under the circumstances stated in the Declaration. Those rights are some of the Developer's Reserved Rights.

**C. RECORDING.** An amendment to these Bylaws will take effect only after (i) it is signed by the proper officers of the Association and/or by the Developer, as required in these Bylaws or in the Declaration, and (ii) it is recorded.

**D. PROPOSAL OF AMENDMENTS.** Any proposed amendment to these Bylaws with the rationale for such

proposal may be submitted by the Board or by a volunteer Apartment Owners' committee. If submitted by the volunteer Apartment Owners' committee, it must be accompanied by a petition signed by not less than twenty-five percent (25%) of the Apartment Owners as shown in the Association's records of ownership maintained by the Board as provided in Section 11.3. The proposed amendment, the rationale, and the ballots for voting on the amendment must be mailed by the Board to the Apartment Owners at the Common Expense of the Association for vote or written consent without change within thirty (30) days after the Board receives the petition. Whether submitted by the Board or a volunteer Apartment Owner's committee, the vote or written consent required to adopt the proposed amendment to these Bylaws will be sixty-five percent (65%) of all Apartment Owners and the vote or written consent must be obtained within three hundred sixty-five (365) days after mailing. Any such proposed amendment shall also be subject to the limitations set forth in Section 12.4A. If the proposed amendment is duly adopted, then the Board must record the amendment. The volunteer Apartment Owners' committee cannot submit a petition for a proposed amendment to these Bylaws that is substantially similar to the amendment previously mailed to the Apartment Owners within one (1) year after the original petition was submitted to the Board. This Section 12.4D does not preclude any Apartment Owner or voluntary Apartment Owners' committee from proposing any amendment to these Bylaws at any annual meeting of the Association.

**E. RESTATEMENT OF BYLAWS.** No matter what else the Condominium Documents say, the Association has the authority under the Condominium Property Act:

1) To restate these Bylaws and all amendments to them; and

2) To amend these Bylaws as required to conform with the provisions of the Condominium Property Act or any other law or regulation adopted by a governmental authority.

The Association may do this if the Board adopts a resolution authorizing it. No other vote of the Association is necessary. No restated or amended Bylaws will be effective unless they are recorded.

**12.5 NOTICE.** Except as otherwise expressly provided in these Bylaws, all notices must be given as follows:

**A.** Notice to the Association must be given to each Director. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed, faxed or delivered to the Board Members at their addresses as shown on the membership list, or to any other address that the Board designates by notice to all Owners and Lenders.

B. Notice to an Owner may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed, faxed or delivered to his or her address as it is shown on the membership list.

C. Notice to a Lender or to an insurer or guarantor of a Mortgage may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed, faxed or delivered to their address as it is shown on the membership list, or to any other address that they designate by notice to the Board.

D. All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Association's records. Regardless of the prior two sentences, notices of addresses and changes of addresses will be deemed given only when they are actually received.

**12.6 CAPTIONS.** The Developer has tried to divide these Bylaws into useful Sections and to provide captions describing each Section. The captions are here for convenience only. They do not completely or adequately explain each Section or the entire document. Owners must read with care each and every part of these Bylaws, not just the captions.

**12.7 PRONOUNS.** Pronouns (for example, "his" or "her") used in these Bylaws include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

The Developer signed these Amended and Restated Bylaws of the Association of Apartment Owners of Ocean Resort Villas on the 6 day of August, 2003, on behalf of itself and also as attorney-in-fact for the Association, all Owners, their Lenders, and all other Interested Persons pursuant to (a) the Developer's Reserved Rights in the Original Declaration, (b) the provisions of Section 12.4B of the Original Bylaws, and (c) the powers of attorney contained in Section 28.3 of the Original Declaration and the deed of each Vacation Ownership Interest.

SVO PACIFIC, INC.

By   
Name: Victoria H. Carter  
Title: Vice President

**12.8 INTERPRETATION.** The provisions of these Bylaws will be interpreted to carry out the purpose of creating a uniform condominium complex in which the Apartment Owners operate, maintain, and pay the costs of the Project for their mutual benefit.

**12.9 EFFECT OF INVALID PROVISIONS.**

The provisions of these Bylaws are "severable". This means that if any part of them is not legal or valid, that part can be ignored. But the rest of these Bylaws will remain in effect and everyone must obey them.

STATE OF FLORIDA )

COUNTY OF ORANGE ) ss:

On this 6<sup>th</sup> day of August, 2003, before me personally appeared VICTORIA H. CARTER, 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.

Cynthia M. Keene  
Name: Cynthia M. Keene

Notary Public, State of Orange

My Commission expires: 11/11/2006



## EXHIBIT A

(To Bylaws of Association of Apartment Owners of Ocean Resort Villas)

All of that certain parcel of land situate at Hanakaoo and Honokowai, Kaanapali, Lahaina, District of Lahaina, Island and County of Maui, State of Hawaii, described as follows:

LOT 98, area 13.998 acres, as shown on map 86, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited.

Saving and Excepting the portion thereof lying seaward of the debris line.

Together with a perpetual nonexclusive easement for access of vehicular and pedestrian traffic and for underground utility to and from Honoapiilani Highway over and across Lot 34, area 1.428 acres, as shown on Map 7, as set forth by Land Court Order No. 110015 and Land Court Order No. 138359, and also set forth in that certain Grant of Easement and Covenant to Share Costs dated December 6, 2000, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2668971.

Being the real property conveyed to SVO PACIFIC, INC., a Florida corporation, by Warranty Deed dated December 6, 2000, filed December 6, 2000, in the Office of the Assistant Registrar of the Land Court, as Document No. 2668968, and noted on Transfer Certificate of Title No. 569,700.

Being the land described in the Transfer Certificates of Title listed in Exhibit 1 to this Exhibit A.

SUBJECT, HOWEVER, TO:

1. The lien of real property taxes not yet due and owing.
2. Reservation of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 29, 1960, as contained in that certain instrument dated January 29, 1960, recorded in the Office of the Registrar of Conveyances in Book 3822, page 37.
3. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
4. Designation of Easement "42", for road, utility and pedestrian purposes, as shown on Maps 15 and 74, as set forth by Land Court Order No. 29190, filed November 7, 1968.
5. Easement dated March 9, 1970, filed as Document No. 498923 for a right of way over

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Easement "42".

6. Subdivision Agreement (Large Lots) dated August 6, 1990, filed August 20, 1990, as Land Court Document No. 1756822, and recorded August 20, 1990, as Document No. 90-127827.
7. Private Water System Agreement dated October 2, 1991, recorded October 7, 1991, as Document No. 91-136263 as amended by Amendment to Agreement dated October 14, 1992, recorded October 20, 1992, as Document No. 92-169921 (Not noted on Transfer Certificate of Title No. 569,700).
8. Restriction of Access Rights, as shown on Maps 2 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
9. A 40 foot Building Setback, as shown on Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
10. Designation of Easement "172" (area 4,432 square feet), for sewer force purposes, as shown Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
11. Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions, (North Beach Shoreline Setback Area) dated December 29, 1998 (effective December 14, 1998), filed January 13, 1999, as Land Court Document No. 2513420, and recorded January 13, 1999, as Document No. 99-005138, as amended by instrument dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668965, and recorded December 6, 2000, as Document No. 2000-170916.
12. Designation of Easement "246" (area 1.072 acres), for roadway (bikeway and trolley included) and utility purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
13. Designation of Easement "247" (area 2.057 acres), for shoreline setback purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
14. Designation of Easement "248" (area 0.252 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
15. Designation of Easement "250" (area 0.037 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
16. Designation of Easement "251" (area 0.262 acre), for wetland purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
17. Designation of Easement "252" (area 0.387 acre), for slope preservation, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.

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18. Restriction of Vehicular Access Rights, as shown on Map 86, as set forth by Land Court Order no. 138359, filed May 8, 2000.
19. Reservations of the State of Hawaii, as set forth in Land Court Order No. 138359, filed May 8, 2000, including matters relating to the following: (a) Claims, if any, of native tenants, (b) Claims, if any, to any historic, religious and archaeological sites, (c) Claims, if any, to rights of access through public highways, trails and pathways and historical uses on and across the parcels to the shoreline be determined, protected and not restricted; (d) Claims, if any, to waters having their source upon or flowing under the parcels.
20. Encroachments shown on survey map dated May 17, 2000, prepared by James R. Thompson, Licensed Professional Land Surveyor.
21. Declaration of Covenants, Conditions, Easements and Restrictions for Ka'napali North Beach dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917. Designation of Successor Declarant and Assignment of Declarant's Rights and Interest, dated December 21, 2000, filed February 20, 2001, as Land Court Document No. 2684122, and recorded February 20, 2001, as Document No. 2001-022804. Designation of Successor Declarant and Assignment of Declarant's Rights and Interests Under Declaration of Covenants, Conditions, Easements and Restrictions for Ka'napali North Beach dated January 28, 2003, filed January 28, 2003, as Land Court Document No. 2885398, and recorded January 28, 2003, as Document No. 2003-015949.
22. Grant of Easement and Agreement (Roadway and Utility Purposes) dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668969.
23. Easement dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668970 for roadway, bikeway, pedestrian and utility purposes.
24. Grant of Easements and Covenants to Share Costs (Roadway Lot 34 -Lots 98 and 101) dated December 6, 2000, filed December 6, 2000, as Land Court Document No. 2668971.
25. Unilateral Declaration of Restrictions; Joinder Agreement (North Beach Unit Count and Drainage), dated February 15, 2001, filed February 16, 2001, as Land Court Document No. 2683897, and recorded February 16, 2001, as Document No. 2001-022448.
26. Declaration of Restrictions (Unit Count), dated February 15, 2001, filed March 8, 2001, as Land Court Document No. 2688326, and recorded March 8, 2001, as Document No. 2001-032604.
27. Designation of Easement "261", as shown on Map 87, as set forth by Land Court Order No. 142094, filed May 25, 2001.
28. Declaration of Merger of Condominium Phases of Ocean Resort Villas dated August 28,

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2001, filed August 31, 2001, as Land Court Document No. 2734237.

29. Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, filed August 31, 2001, as Land Court Document No. 2734238, as amended by that certain First Amendment to Declaration of Condominium Property Regime of Ocean Resort Villas, dated March 12, 2003, and filed as Land Court Document No. 2920781, and as further amended by that certain Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas, dated and recorded concurrently herewith (Project covered by Condominium Map No. 1431, as amended by said Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas).
30. Declaration of Ocean Resort Villas Vacation Ownership Plan dated September 14, 2001, filed September 18, 2001, as Land Court Document No. 2737947, as affected by that certain Ocean Resort Villas Declaration of Annexation dated September 13, 2002, filed October 21, 2002, as Land Court Document No. 2852617.
31. Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas dated and filed concurrently herewith.

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CLERK OF THE  
ASSISTANT CLERK OF COURT  
STATE OF HAWAII  
(Honolulu, Hawaii)

The original of this document was  
recorded as follows:

DOCUMENT NO. 2734737  
DATE AUG 31 2001 TIME 3:29

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

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

This document contains 18 pages.

Tax Map Key: 2<sup>nd</sup> Div., 4-4-14-3

DECLARATION OF MERGER OF CONDOMINIUM PHASES  
OF  
OCEAN RESORT VILLAS

THIS DECLARATION OF MERGER OF CONDOMINIUM PHASES OF OCEAN RESORT VILLAS is made by SVO PACIFIC, INC., a Florida corporation (the "Developer"), whose principal place of business and post office address is 8801 Vistana Centre Drive, Orlando, Florida 32821-6353.

INTRODUCTION

- A. The Developer is the owner in fee simple of the land described in Exhibit "A" which is attached to and is part of this document.
- B. The Developer intends to construct or place certain buildings and other improvements on that land.
- C. The Developer intends to establish a condominium that consists of the land and the improvements on it. The name of the project is Ocean Resort Villas.
- D. The Developer has the right to subdivide certain parts of the land and to withdraw it from the Ocean Resort Villas condominium. It may then develop one or more separate condominium projects on the withdrawn land. It may then merge those projects with the Ocean Resort Villas condominium.
- E. The Developer also has an option to buy a neighbor parcel (Lot 101, as shown on Map 86 of Land Court Application No. 1744). If the Developer buys that parcel, it may: (1) subdivide it into one or more parcels, (2) develop a condominium project on it or on one or more parcels into which it may be subdivided, and (3) merge any of those condominium projects with the Ocean Resort Villas condominium.

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## 1. **DEFINITIONS.**

When used in this Declaration, the following terms will have the following meanings unless the context clearly indicates otherwise:

### 1.1 “ADJACENT PARCEL” means:

A. Any part of the land described in Exhibit “A” that the Developer has deleted from the Project using its rights to do so in the Declaration of Condominium Property Regime for the Project, and

B. All or any part of Lot 101 as shown on Land Court Map 86, of Land Court Application 1744 filed by Pioneer Mill Company, Limited. If that lot is subdivided into separate lots, each of them will be an “Adjacent Parcel, whether or not they are each physically adjacent to the Project.

### 1.2 “APARTMENT” means any “Apartment” (as defined by the Condominium Property Act) in any Phase.

### 1.3 “APARTMENT OWNER” or “OWNER” means the person or persons who own a condominium apartment in any Phase.

### 1.4 “COMMON ELEMENTS” means all parts of a Phase except the Apartments. Some Common Elements, called “*Limited Common Elements*”, may be used only by the Owners of certain Apartments.

### 1.5 “CONDOMINIUM DOCUMENTS” means, for each Phase, the following documents and any changes and additions properly made to them from time to time:

A. “CONDOMINIUM DECLARATION” means the Declaration of Condominium Property Regime or similar document creating a Phase as a condominium project.

B. “CONDOMINIUM BYLAWS” means the Bylaws of the condominium owners association of a Phase.

C. “CONDOMINIUM RULES” means any rules and regulations adopted by the condominium owners association of a Phase.

D. “CONDOMINIUM MAP” means the recorded drawings designated in the Condominium Declaration as the Condominium Map.

### 1.6 “CONDOMINIUM PROPERTY ACT” means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, and any changes to it. If that law is replaced, then “Condominium Property Act” will mean the substitute or replacement law. If the State of Hawaii adopts the Uniform Common Interest Ownership Act or any other law that permits condominium projects to choose to be governed by that law, and if the Project chooses to do so, then the term “Condominium Property Act” will mean that law, as amended from time to time, or any substitute or replacement for that law.

### 1.7 “DECLARATION” means this document and any changes and additions properly made to it.

### 1.8 “DEVELOPER” means SVO Pacific, Inc., a Florida corporation. If the Developer transfers some or all of its rights to another person as provided by Section 4.3, then that person will become the “Developer” to the extent of the rights transferred.

### 1.9 “DEVELOPER’S RESERVED RIGHTS” means all rights reserved to the Developer in this Declaration. For example, see the description of the Developer’s Reserved Right to Merge Phases contained in Sections 3 and 4, to add or remove property from the operation of this Declaration as described in Section 5, and so on.

**1.10 "DEVELOPMENT PERIOD"** means the period starting on the date that this Declaration is recorded and ending on the earlier of (i) December 31, 2019, or (ii) the date when the Developer records a document giving up all of the Developer's Reserved Rights under this Declaration.

**1.11 "INTERESTED PERSON"** means any person who has any interest in the Land or who has the right to use the Land or any part of it. For example, it includes (i) each Owner, each Lender, and anyone who rents or leases an Apartment in a Phase on the Land, and (ii) anyone who has the right (in legal terms, an "easement") or who has permission to use any Phase or any part of it.

**1.12 "LAND"** means the real property described in Exhibit "A" and any appurtenances to it. If the Developer annexes any Adjacent Parcel using its rights in Section 5.1, then the term "Land" will include both the Land just before the annexation plus the Adjacent Parcel annexed. If the Developer removes any part of the Land using its rights in Section 5.2, then the term "Land" will not include any part of the Land that is removed.

**1.13 "LENDER"** means the mortgagee of a recorded mortgage on the Land or on an Apartment or a time share interest in any Phase. It also includes the beneficiary of a deed of trust recorded against an Apartment or a time share interest.

**1.14 "MERGE" and "MERGER"** refer to the merger of two or more Phases for administrative purposes. A Merger permits two or more separate condominium projects to be used and managed as though they were a single project.

**1.15 "MERGED PROJECT"** means two or more Phases that have been Merged for administrative purposes as provided by this Declaration.

**1.16 "PHASE"** means any condominium project created on the Land.

**1.17 "PHASE I DECLARATION"** means the Declaration of Condominium Property Regime for the Project. It will be recorded at the same time as this Declaration.

**1.18 "PROJECT"** means the Ocean Resort Villas condominium project.

**1.19 "RECORD", "RECORDED", "RECORDING",** and similar terms mean recorded in the Land Court. Hawaii law may be changed to require that deeds, mortgages, amendments to this Declaration, the Condominiums Documents, or other documents, be recorded in the Bureau of Conveyances. After any such law takes effect, "record", "recorded", "recording", and similar terms will mean and refer to recording in the Bureau to the extent provided by the change in the law.

A. **"BUREAU"** means the Bureau of Conveyances of the State of Hawaii.

B. **"LAND COURT"** means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

## **2. SUBMISSION TO THIS DECLARATION.**

By signing and recording this Declaration the Developer declares that the Land is subject to this Declaration. In legal terms:

- ❖ The Developer submits to this Declaration all of its estate, right, title and interest in and to the Land;
- ❖ The Land will be held, conveyed, used, leased, rented, mortgaged, encumbered, occupied, and improved subject to the declarations, covenants, conditions, easements, restrictions and other provisions contained in this Declaration (the "CC&Rs");
- ❖ The CC&Rs are declared and agreed to be in furtherance of a plan for the possible subdivision and development of the Land, and the merger of any condominium projects located on the Land, all in accordance with section 514A-19 of the Hawaii Revised Statutes, as amended;

- ❖ The CC&R's are adopted and intended to enhance and perfect the value, desirability and attractiveness of the Land and every part of it;
- ❖ The CC&R's are "covenants running with the land and equitable servitudes". They will be binding on the Land. They will also be binding on, and are intended to benefit (i) the Developer and anyone else who has or who acquires any right, title or interest in the Land or any part of it, now or in the future, and (ii) anyone who, by law or by agreement, stands in any of their places. (In legal terms such people are called "heirs," "devisees", "personal representatives," "successors" and "assigns.")

### **3. MERGER OF PHASES.**

**3.1 DEVELOPER'S RESERVED RIGHTS.** The Developer has and reserves the absolute right to Merge any Phase with any other Phase or Phases.

**3.2 LIMITS ON DEVELOPER'S RESERVED RIGHTS.** The Developer can Merge Phases without the consent or approval of anyone else at any time before the Development Period ends. After the Development Period ends, a Merger may occur only if it is approved by the vote or written consent of Apartment Owners owning at least 65% of the total common interest of each Phases to be Merged.

**3.3 STEPS TO EFFECT A MERGER.** Subject to the limits stated in Section 3.2, a Merger will take effect when each of the following events has occurred:

**A. DECLARATION AND CONDOMINIUM MAP.** For each Phase to be merged, the Developer must record a Condominium Declaration, a Condominium Map and any other Condominium Documents that the Condominium Property Act requires to be recorded. Each Condominium Declaration must be substantially similar to the Phase I Declaration except for the physical description of the Phase, the Apartments and Common Elements, the percentage of common interest appurtenant to each Apartment in the Phase, and except for differences due to changes in the law.

**B. CONSTRUCTION.** The Apartments and Common Elements described in the Declarations of Condominium Property Regime for each Phase to be merged must have been constructed, and a Certificate of Substantial Completion must have been issued for them.

**C. CERTIFICATE OF MERGER.** The Developer must record a Certificate of Merger that satisfies the following requirements:

- 1) It must state that the requirements of Subsections 3.3A and 3.3B have been met.
- 2) It must state that the Merger of the Phases will take effect when the Certificate of Merger is recorded.
- 3) It must state that the Merger does not violate any of the conditions stated in Section 3.2 or this Section

3.3.

The Certificate of Merger may also include anything else that the Developer deems necessary or appropriate or that is required by law.

**3.4 EFFECT OF A MERGER.** This is what happens when a Merger takes effect as provided in Section 3.3:

**A. USE OF COMMON ELEMENTS.** An Easement is a legal term. It refers to the right of one person to use property owned by or in the possession of another. After a Merger, each Apartment in the Merged Project will have the right and an easement to use the Common Elements in each of the merged Phases to the same extent and subject to the same limits as an Apartment in each of such Phases. In other words, an Apartment located in one of the Merged Phases may use the Common Elements of any other Phase just as if the Apartment was located in that Phase, and as if the entire Project (including all Merged Phases) had originally been created as one project.

1) The right of an Apartment to use the Common Elements in each of the Merged Phases is a Non-exclusive easement. This means that the Apartments in each of the Merged Phases must share the use of the Common Elements of the Merged Project.

**B. COMMON EXPENSES.** All of the Merged Phases will be treated as one project for purposes of common expenses. The total common expenses for the Merged Project will be equal to the sum of the common expenses for each Merged Phase (as "common expenses" is defined in the Condominium Documents for each Merged Phase). The share of the common expenses charged to each Apartment is based on its Relative Valuation.

1) **RELATIVE VALUATION.** "Relative Valuation" refers to the idea that the share of the Common Expenses charged to each Apartment should be based on a comparison of that Apartment to other Apartments in the Merged Project. While some condominiums compare the size of apartments to determine their common interest, this does not necessarily result in a fair and equitable allocation of maintenance fees among the apartments. For example, the owner of a two-bedroom apartment having 1,500 square feet should not necessarily have to pay 50% more of the common expenses than the owner of a two-bedroom apartment in the same project having 1,000 square feet.

The Developer has determined a "Relative Valuation" for each Apartment in the first phase of the Project based on Apartment size, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. The Relative Valuation for each Apartment in the Project is stated in an exhibit to the Phase I Declaration. The Condominium Documents for every other Phase to be Merged will state the Relative Valuation of each Apartment in that Phase. Note that Relative Valuation is not intended to reflect the fair market value of a particular Apartment and will not change based on changes in market conditions.

2) **SETTING RELATIVE VALUATION.** In setting the Relative Valuation of the Apartments in each Phase, the Developer may consider any and all factors that the Developer determines to be relevant in its sole discretion. For example, the Developer may consider the Apartment size, location, view, estimated maintenance and expense burden, sleeping capacity, and other relevant factors. In setting Relative Valuations, however, the Developer is subject to these rules:

(a) The Relative Valuation of a Resort Apartment in a later Phase cannot differ by more than fifteen percent (15%) from the Relative Valuation of a Resort Apartment in the first Phase of the Project if the Apartments have similar features (for example, size [ $\pm$  100 square feet], location, number of bedrooms and bathrooms, and views).

(b) The Relative Valuation per square foot of a Commercial Apartment in a later Phase cannot differ by more than twenty percent (20%) from the Relative Valuation per square foot of a Commercial Apartment in the first phase of the Project if the Apartments have similar features (for example, size [ $\pm$  150 square feet], location, and traffic patterns).

(c) Despite the requirements of Subsections (a) and (b), there is a special rule for the Gazebo Apartment and any apartment serving a similar purpose in any other Phase.

The Developer intends to develop the Project in several phases. It is likely that Apartments or Vacation Ownership Interests in the first phase of the Project will be deeded before later phases are constructed and before the plans for later phases are completely finalized. When New Apartments are created, the Developer has the right to reallocate the common interests in the Project among the existing Apartments of the Project and the New Apartments. This includes the right to change the common interests of existing Apartments of the Project. A change in the common interests may require that all existing deeds be amended or replacement deeds recorded. Since the Land is registered in the Land Court, a change in the common interest of existing Apartments might require issuance of new certificates of title. Since each Vacation Ownership Interest has a separate certificate of title, this would be impractical, costly and time-consuming.

To avoid changing the common interest of existing Apartments in the Project, the Developer has estimated the Relative Valuation of future phases of the Project based on the Developer's current plans for those buildings (although these plans may change). The sum of these Relative Valuations has been assigned to the Gazebo Apartment as shown in an exhibit to the Phase I Declaration.

If and when the Developer creates New Apartments in the Project, the Developer has the right to reallocate a portion of the Relative Valuation of the Gazebo Apartment to the New Apartments. The Relative Valuation allocated to the New Apartments will be taken from the Relative Valuation of the Gazebo Apartment, and the Relative Valuation of the Gazebo Apartment will be reduced by that amount.

As a result, the Relative Valuation of the Gazebo Apartment does not comply with the requirements of Subsections (a) and (b). Those rules do not apply to the Gazebo Apartment. The Gazebo Apartment will not be considered when applying those rules.

**3) SHARE FOR EACH APARTMENT.** Each Apartment in a Merged Phase must pay a share of the total common expenses for the Merged Project. That share is equal to the total amount of the common expenses for the whole Merged Project multiplied by this fraction:

$$\frac{\text{The Relative Valuation of that Apartment}}{\text{The Sum of the Relative Valuations for all Apartments in the Merged Project.}}$$

In making this calculation, only Apartments for which assessments have begun, as provided in the Condominium Property Act, will be considered.

### C. RESERVE FUNDS.

**1) BACKGROUND.** "*Capital Improvements*" are things like replacing the roof, painting the building exterior, resurfacing the parking areas, and other major repairs and remodeling. Day to day maintenance and repairs are not Capital Improvements. A "*Replacement Reserve Fund*" is an account used to save the money needed to pay for Capital Improvements.

**2) EXISTING FUNDS.** Any funds accumulated in a Replacement Reserve Fund of any Phase or Phases prior to the Merger of Phases will become the property of all Apartment Owners in the Merged Project.

**3) NEW FUNDS.** All funds accumulated in a Replacement Reserve Fund after the Merger will likewise be the property of all Apartment Owners in the Merged Project.

**4) NATURE OF INTEREST.** Each Owner will have an interest in the Replacement Reserve Funds proportionate to the Apartment's total share of the Common Expenses for the Merged Project. The interest of any Owner in the Replacement Reserve Funds cannot be withdrawn or assigned separately. It will be transferred to the new Owner automatically if the Apartment (or a Vacation Ownership Interest, time share interest, or fractional ownership interest) is transferred. This happens whether or not the deed or other transfer document expressly says so.

**5) ADJUSTMENT.** When a Merger takes effect, the Board must determine if there is any material disparity in the funding levels between the Phases Merged. The Board must then adjust the account of the Apartment Owners in each Phase as necessary to reflect any material disparity in funding levels.

(a) For example, suppose that the roof of one Phase needs to be replaced at the time that the Merger takes effect. If that Phase has Replacement Reserve Funds equal to the cost of replacing the roof, then no adjustment would be necessary. If that Phase does not have enough money to pay the cost of replacing the roof, then the Board must make an adjustment (unless the shortfall is not material). Conversely, if that Phase has more money than necessary to replace the roof, the Board must make an adjustment (unless the excess is not material) in favor of the Owners in that Phase.

Of course, in deciding if a disparity exists, the Board is not limited to considering just those things that need repairs or replacement at the time that a Merger takes effect. It may also consider Capital Improvements that will be needed in the future. In determining whether there is a disparity for future Capital Improvements, the Board may consider these factors:

- (1) The total expected useful life of the Improvements to be repaired or replaced.

- (2) The number of years remaining before the repair or replacement must be made.
  - (3) The percentage of the cost to make the repair or replacement that has been previously set aside in the Replacement Reserve Funds.
  - (4) The method of funding Replacement Reserve Funds that will be used by the Association after the Merger takes effect.
  - (5) Any other factors consistent with generally accepted accounting principles or required by law.
- (b) The Board may make an adjustment in any of these ways:
- (1) It may refund all or part of the money in the Replacement Reserve Fund of a particular Phase to Owners of Apartments in that Phase.
  - (2) It may give a credit against future assessments to the Owners of Apartments in a particular Phase or Phases.
  - (3) It may charge a special assessment or series of assessments to the Owners of Apartments in a particular Phase or Phases. The Board cannot, however, charge any Apartment Owner a special assessment for reserves in any one month which exceeds twenty percent (20%) of the monthly assessment for other Common Expenses, after excluding any assessment for Replacement Reserve Funds.
  - (4) It may do anything else that is consistent with generally accepted accounting principles and allowed by law.

**D. OWNERS ASSOCIATION; MANAGING AGENT.** The condominium owners association provided for in the Condominium Documents for each Phase will be merged into a single association governing the entire Merged Project. The Merged Project will have a single Managing Agent.

**E. VOTING.** To determine the voting rights of each Apartment, voting is broken down first by Phase and then by Apartment. It works like this:

- 1) Each of the Merged Phases will have a percentage of the total votes of the Merged Project equal to the percentage of the common expenses to be charged to that Phase under Section 3.4B.1). For example, if a Phase must pay 23% of the total common expenses for the Merged Project, then that Phase would also have 23% of the total votes of the Merged Project.
- 2) Each Apartment is entitled to a vote equal to (i) the common interest of that Apartment multiplied by (ii) the percentage of the common expenses to be charged to the Phase in which the Apartment is located. For example, if the Phase has 23% of the total vote and the common interest of the Apartment is 1%, then the vote for the Apartment would be .23% (i.e.,  $23\% \times 1\% = .23\%$ )

**F. ELECTION OF BOARD.** Within sixty days after any Merger a special meeting of the Association of Apartment Owners for the Merged Project must be called to elect a new Board of Directors. The new Board of Directors will replace any existing Board of Directors and will govern the Merged Project. The meeting will be called and held using the procedures set forth in the Bylaws for holding the first meeting of the Association and electing the first Board of Directors.

**G. INTERPRETATION.** For purposes of administration and use of the Project, after a Merger takes effect, the Phases of the Merged Project will be treated as part of a single project developed as a whole from the beginning. For that purpose, the Condominium Declarations and Bylaws will be treated as one document that applies to the entire Merged Project. If there is a conflict between or among those documents as to any issue, then the Condominium Declaration and Bylaws filed at the same time as this Declaration will control. The Merged Project will be known as Ocean Resort Villas.

**H. OWNERSHIP.** A Merger will only affect the administration and use of the Merged Phases, and will result in the sharing of common expenses among the owners of all of the Apartments in the Merged Phases. A Merger,

however, will not affect the ownership of Apartments and Common Elements in the respective Merged Phases. In other words, an Owner of an Apartment in one of the Merged Phases will not own an interest in any other Merged Phase simply because the two Phases are merged together.

#### **4. NATURE OF DEVELOPER'S RESERVED RIGHTS.**

##### **4.1 SCOPE OF THE DEVELOPER'S RESERVED RIGHTS.**

A. Subject to the limits stated in Section 3.2, the Developer has the right to Merge Phases at any time and may do so more than once.

B. The Developer has the right to Merge Phases regardless of the lease, sale, mortgage, or conveyance of any or all Apartments and/or time share interests and/or fractional ownership interests in any of the Phases being merged.

C. The Developer is not required to develop any Phase or to merge any Phase with any other Phase. Nothing contained in this Declaration can be deemed to be a representation or promise that it will do so.

D. The Developer may deal freely with any Phase that has not been Merged just as if this Declaration never existed. This includes developing an entire Phase, or any part of a Phase, for a purpose that is inconsistent with a Merger of that Phase with any other Phase.

**4.2 THIRD PARTIES; SPECIAL POWER OF ATTORNEY.** The Developer has the right to Merge Phases without being required to obtain the approval, consent, or joinder of anyone else, and without being required to give notice to anyone else. This includes, but is not limited to, any Apartment Owner, any Lender, or any other Interested Person.

A. When an Apartment Owner or any other Interested Person acquires an Apartment or any other interest in any Phase or the Merged Project, he or she automatically does each of these things:

1) He or she takes his or her interest subject to the Developer's Reserved Right to Merge Phases.

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

(a) The Developer's Reserved Rights and its use of them from time to time;

(b) That this may result in Merger of the Phases; and

(c) That the Developer can sign, file and/or record the Certificate of Merger and any other documents that the Developer deems necessary or appropriate to Merge two or more Phases including, for example, the Certificate of Merger described in Section 3.3C.

3) Agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the Developer in its sole discretion determines to be necessary or convenient to the exercise of the Developer's Reserved Rights or to accomplish the purposes for which those rights were reserved (as determined by the Developer). This promise includes the duty to sign, have notarized, deliver, and record a special power of attorney authorizing the Developer to do the things required or permitted by this Declaration.

4) Appoints the Developer as his or her attorney-in-fact to join in, consent to, sign, have notarized, deliver and record all documents and to do all things on his, her or its behalf. This means that the Developer can act in the place of the Owner and/or any other Interested Person. The Developer can do anything that they could do, and they ratify, accept and confirm anything that the Developer does using this power of attorney.

(a) This power of attorney appointment is permanent. In legal terms, it is *coupled with an interest*, it is *irrevocable*, it is a *durable power of attorney*, and it will not be affected by any disability of the Owner or any other Interested Person.

(b) It includes “*full power of substitution*”. This means that the Developer can let someone else act in its place as a substitute attorney-in-fact.

(c) Each Owner and every other Interested Person gives the Developer this power of attorney whether or not it expressly says so in the deed, mortgage, or other document by which the Owner or other Interested Person obtained any interest in the Project.

(d) It is a “*special power of attorney*”. This means that the Developer has the power to do only the things stated or intended by this Declaration (as determined by the Developer). This includes, however, the power to do anything else that the Developer deems necessary or convenient to accomplish the stated or intended goal and anything incidental to it. Ambiguities must be resolved in favor of giving, not denying, the Developer the power to act.

To be clear, and regardless of the preceding language of this Subsection 4.2, the Developer intends and this Declaration should be construed to provide, to the fullest extent permitted by law, that any action taken by the Developer in the exercise of the Developer’s Reserved Rights, requires the vote or written consent of only the Developer and does not require the vote or written consent of any Owner or any other Interested Person. To the extent that the vote or written consent of any Owner or other Interested Person is required, however, the Developer may use this power of attorney to cast that vote or give that consent on behalf of that Owner or other Interested Person.

**B.** When this Subsection 4.2 or any other Section of this Declaration dealing with the Developer’s Reserved Rights refers to “documents”, it means documents and instruments of any kind. For example, it includes Land Court petitions and orders, Land Court maps, deeds and other conveyance instruments, grants of easements, releases, amendments to the Condominium Documents, applications to governmental agencies or authorities, and so on.

#### **4.3 TRANSFER OF THE DEVELOPER’S RESERVED RIGHTS.**

**A.** If the Developer signs and records a document that expressly transfers to someone else some or all of the Developer’s Reserved Rights, or any of its other rights as the Developer under this Declaration, then that person will become the “Developer” to the extent of the rights transferred. The new “Developer” can likewise transfer the rights it has. After a transfer (i) the new “Developer” has and may exercise the rights transferred to it, and (ii) the old Developer is automatically relieved of any and all liability arising after the transfer takes effect with respect to the rights and duties transferred. Each Owner and other Interested Person, by acquiring an Apartment or other interest in the Land, any Phase, or the Merged Project, automatically consents to this and agrees to recognize the new Developer as the “Developer” under this Declaration to the extent of the rights transferred.

**B.** The Developer may also transfer its rights as collateral for a loan. If so, the lender will not have the rights of the “Developer” until (i) it forecloses the loan, (ii) it holds the rights of the Developer outright, and (iii) it records a document that says so. The lender will also have the rights of the “Developer” if the Developer assigns its rights to the lender, pursuant to the Subsection 4.3A, in place of foreclosure.

**C.** No deed, lease, mortgage, or other conveyance of (i) all or any part of the Land (including for example any part of the Land removed from the operation of this Declaration pursuant to Section 5.2), or (ii) any Apartment or any interest in it, or (iii) any time share interest or fractional ownership interest, will transfer any of the Developer’s Reserved Rights, or any of its other rights under this Declaration, unless the document expressly says so and unless it describes the rights transferred.

## **5. ADDING AND REMOVING PROPERTY.**

### **5.1 ANNEXATION.**

**A. DEVELOPER'S RIGHT TO ANNEX PROPERTY.** The Developer may submit all or any part of any Adjacent Parcel to the operation of this Declaration. The Developer may do this at any time before the end of the Development Period and may do it more than once. The Developer does not need the consent of any Owner or anyone else to do so. Only the Developer may annex an Adjacent Parcel. The Developer is not promising to annex any Adjacent Parcel. Owners of Apartments, time share interests, or fractional ownership interests may enjoy certain advantages from having all or part of an Adjacent Parcel annexed but will have no legal right to insist that the Developer do so.

#### **B. DECLARATION OF ANNEXATION.**

1) **REQUIRED CONTENT.** The Developer may annex an Adjacent Parcel by recording a "*Declaration of Annexation.*" It must contain the following:

- (a) A legal description of the property to be annexed and the name of its record Owner.
- (b) A statement submitting the property to this Declaration. This Declaration must be identified by title and recording data.

The Developer must sign the Declaration of Annexation. If the property to be annexed is owned by anyone other than the Developer, then the record owner must also sign it.

2) **OTHER PROVISIONS:** The Declaration of Annexation may contain any other information that the Developer deems necessary or appropriate or that is required by law.

3) **LIMITATIONS ON DEVELOPER'S RIGHTS.** The Developer's right of annexation is subject to these terms:

- (a) The Developer may only annex an Adjacent Parcel.
- (b) Every parcel of land to be annexed must be a legally separate lot.
- (c) The Developer must pay all costs of annexation.

**C. EFFECT OF ANNEXATION.** After the Declaration of Annexation is recorded, the property described in it will be subject to this Declaration for all purposes, just as if it was subject to this Declaration from the outset.

### **5.2 REMOVAL.**

**A. DEVELOPER'S RIGHT TO REMOVE PROPERTY.** The Developer may remove all or any part of any Adjacent Parcel from the operation of this Declaration. The Developer may do this at any time before the end of the Development Period and may do it more than once. The Developer does not need the consent of any Owner or anyone else to do so. Only the Developer may remove an Adjacent Parcel. The Developer is not promising to remove any Adjacent Parcel. Owners of Apartments, time share interests, and/or fractional ownership interests may enjoy certain advantages from having all or part of an Adjacent Parcel removed from this Declaration but will have no legal right to insist that the Developer remove it.

#### **B. DECLARATION OF REMOVAL.**

1) **REQUIRED CONTENT.** The Developer may remove an Adjacent Parcel by recording a "*Declaration of Removal.*" It must contain the following:

- (a) A legal description of the property to be removed and the name of its record Owner.

(b) A statement that the property is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

The Developer must sign the Declaration of Removal. Even if the property to be removed is owned by someone other than the Developer, only the Developer has to sign the Declaration of Removal.

2) **OTHER PROVISIONS:** The Declaration of Removal may contain any other information that the Developer deems necessary or appropriate or that is required by law.

3) **LIMITATIONS ON DEVELOPER'S RIGHTS.** The Developer's right of removal is subject to these terms:

(a) The Developer may not remove property that contains a Phase that has already been Merged with any other Phase.

(b) Every parcel of land to be removed must be a legally separate lot.

(c) The Developer must pay all costs of removal.

C. **EFFECT OF REMOVAL.** After the Declaration of Removal is recorded, the property described in it will no longer be subject to this Declaration.

## **6. AMENDMENTS.**

6.1 **BY VOTE OR WRITTEN CONSENT.** This Declaration may be "*amended*" (changed) from time to time by the vote or written consent of (i) the Developer, and (ii) Apartment Owners in each Phase who own at least a majority of the common interests in that Phase (not counting the common interest appurtenant to any Apartments, time share interests, or fractional ownership interests owned by the Developer).

An amendment made under this Section 6.1 will take effect when it is (i) signed by the Developer and by an officer of the condominium owners association for each Phase that has been Merged, and (ii) recorded.

6.2 **BY THE DEVELOPER.** Without the consent or approval of any person, including any Owner and any other Interested Person, the Developer may change this Declaration at any time:

A. And for any purpose before title to any Apartment time share interest, or fractional ownership interest is transferred to someone other than the Developer or its Lender by way of a recorded deed or agreement of sale.

B. To comply with the laws and regulations of the State of Hawaii.

C. To comply with the real estate laws of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with the registration of (i) the Project or the Merged Project, or (ii) any time share plan or fractional ownership plan that includes property in the Project or the Merged Project, or (iii) the Starwood Pacific Vacation Club or the Starwood Vacation Network identified in the Phase I Declaration.

D. To satisfy requests for changes made to the Developer by any institutional lender loaning money to 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.

No amendment under Subsections C or D will be effective, however, unless:

(i) The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental authorities) having authority over any Phase as a result of the registration of it (or time share plan or fractional ownership plan, the Starwood Pacific Vacation Club, or the Starwood Vacation Network) with that governmental authority, and

(ii) The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

An amendment made by the Developer under this Section 6.2 will take effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

The Developer signed this Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium on August 28, 2001.

SVO PACIFIC, INC.

By



Name Victoria H. Carter

Office Vice President, Assistant Secretary

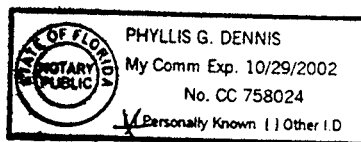
C:\Docs\Starwood\New masters\merger3.doc 08/28/01 2:11 PM

FLORIDA  
STATE OF ~~HAWAII~~ )  
CITY AND COUNTY OF ~~HONOLULU~~ ) ss:  
ORANGE )

On this 28 day of AUGUST, 2001, before me personally appeared VICTORIA H. CARTER, 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.

Phyllis G. Dennis  
Name: PHYLLIS G. DENNIS

Notary Public, State of Hawaii  
My Commission expires: 10-29-02



## EXHIBIT "A"

### (To Declaration of Merger of Condominium Phases)

All of that certain parcel of land situate at Hanakaoo and Honokowai, Kaanapali, Lahaina, District of Lahaina, Island and County of Maui, State of Hawaii, described as follows:

Lot 98, area 13.998 acres, as shown on map 86, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1744 of Pioneer Mill Company, Limited.

Saving and excepting the portion thereof lying seaward of the debris line.

Together with a perpetual nonexclusive easement for access of vehicular and pedestrian traffic and for underground utility to and from Honoapiilani Highway over and across Lot 34, area 1.428 acres, as shown on Map 7, as set forth by Land Court Order No. 110015 and Land Court Order No. 138359, and also set forth in that certain Grant of Easement and Covenant to Share Costs dated December 6, 2000, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2668971.

Being the real property conveyed to SVO PACIFIC, INC., A Florida corporation, by Warranty Deed dated December 6, 2000, filed December 6, 2000, in the Office of the Assistant Registrar of the Land Court, as Document No. 2668968, and noted on Transfer Certificate of Title No. 569,700.

### SUBJECT, HOWEVER, TO:

1. The lien of real property taxes not yet due and owing.
2. Reservation of all mineral or metallic mines of every description to the Hawaiian Government; said reservation, however, being subject to that certain covenant that neither the State of Hawaii nor persons authorized by it will enter, occupy or use the said land for the exercise of the reserved mineral and mining rights for a period of 75 years from January 29, 1960, as contained in that certain instrument dated January 29, 1960, recorded in the Office of the Registrar of Conveyances in Book 3822, page 37.
3. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
4. Designation of Easement "42", for road, utility and pedestrian purposes, as shown on Maps 15 and 74, as set forth by Land Court Order No. 29190, filed November 7, 1968.
5. Easement dated March 9, 1970, filed as Document No. 498923 for a right of way over Easement "42".

6. Subdivision Agreement (Large Lots) dated August 6, 1990, filed August 20, 1990, as Document No. 1756822, and recorded August 20, 1990, as Document No. 90-127827.
7. Private Water System Agreement dated October 2, 1991, recorded October 7, 1991, as Document No. 91-136263 as amended by Amendment to Agreement dated October 14, 1992, recorded October 20, 1992, as Document No. 92-169921 (Not noted on Transfer Certificate of Title No. 569,700).
8. Restriction of Access Rights, as shown on Maps 2 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
9. A 40 foot Building Setback, as shown on Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
10. Designation of Easement "172" (area 4,432 square feet), for sewer force purposes, as shown Maps 71 and 74, as set forth by Land Court Order No. 109618, filed November 27, 1992.
11. Unilateral and Irrevocable Declaration of Perpetual Rights and Uses and Perpetual Restrictions, (North Beach Shoreline Setback Area) dated December 29, 1998 (effective December 14, 1998), filed January 13, 1999, as Document No. 2513420, and recorded January 13, 1999, as Document No. 99-005138, as amended by instrument dated December 6, 2000, filed December 6, 2000, as Document No. 2668965, and recorded December 6, 2000, as Document No. 2000-170916.
12. Designation of Easement "246" (area 1.072 acres), for roadway (bikeway and trolley included) and utility purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
13. Designation of Easement "247" (area 2.057 acres), for shoreline setback purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
14. Designation of Easement "248" (area 0.252 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
15. Designation of Easement "250" (area 0.037 acre), for drainage purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
16. Designation of Easement "251" (area 0.262 acre), for wetland purposes, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.
17. Designation of Easement "252" (area 0.387 acre), for slope preservation, as shown on Map 86, as set forth by Land Court Order No. 138359, filed May 8, 2000.

18. Restriction of Vehicular Access Rights, as shown on Map 86, as set forth by Land Court Order no. 138359, filed May 8, 2000.
19. Reservations of the State of Hawaii, as set forth in Land Court Order No. 138359, filed May 8, 2000, including matters relating to the following: (a) Claims, if any, of native tenants, (b) Claims, if any, to any historic, religious and archaeological sites, (c) Claims, if any, to rights of access through public highways, trails and pathways and historical uses on and across the parcels to the shoreline be determined, protected and not restricted; (d) Claims, if any, to waters having their source upon or flowing under the parcels.
20. Encroachments shown on survey map dated May 17, 2000, prepared by James R. Thompson, Licensed Professional Land Surveyor.
21. Declaration of Covenants, Conditions, Easements and Restrictions for Ka'napali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917. Designation of Successor Declarant and Assignment of Declarant's Rights and Interest, dated December 21, 2000, filed February 20, 2001, as Document No. 2684122, and recorded February 20, 2001, as Document No.2001-022804.
22. Grant of Easement and Agreement (Roadway and Utility Purposes) dated December 6, 2000, filed December 6, 2000, as Document No. 2668969.
23. Easement dated December 6, 2000, filed December 6, 2000, as Document No. 2668970 for roadway, bikeway, pedestrian and utility purposes.
24. Grant of Easements and Covenants to Share Costs (Roadway Lot 34 -Lots 98 and 101) dated December 6, 2000, filed December 6, 2000, as Document No. 2668971.
25. Unilateral Declaration of Restrictions; Joinder Agreement (North Beach Unit Count and Drainage), dated February 15, 2001, filed February 16, 2001, as Document No. 2683897, and recorded February 16, 2001, as Document No.2001-022448.
26. Declaration of Restrictions (Unit Count), dated February 15, 2001, filed March 8, 2001, as Document No. 2688326, and recorded March 8, 2001, as Document No.2001-032604.
27. Designation of Easement "261", as shown on Map 87, as set forth by Land Court Order No. 142094, filed May 25, 2001.

ASST. CLERK OF COURT

CLERK OF COURT

2737946  
SEP 18 2001 12:30

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

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

This document contains 74 pages.

Tax Map Key: 2<sup>nd</sup> Div., 4-4-14-3

## DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

FOR

### *Ocean Resort Master Association*

THIS DECLARATION is made on the 5<sup>th</sup> day of September, 20 01, by SVO PACIFIC, INC., a Florida corporation (the "Developer") and Ocean Resort Master Association, a Hawaii non-profit corporation (the "Master Association").

#### INTRODUCTION

The Developer is developing the Ocean Resort Villas condominium. It is located in Ka'anapali North Beach, a master community on the Island of Maui in the State of Hawaii. The Developer may also develop other condominium projects, hotels, vacation ownership or time share projects, and/or fractional ownership projects on land next to the Ocean Resort Villas condominium or elsewhere in Ka'anapali North Beach.

The Ocean Resort Villas condominium includes various amenities. For example, it has waterfalls, a water slide, a slide mountain, swimming pool, koi pond, spas, pool decks, pool bathrooms, beach and pool showers, and tennis courts.

The Developer wants to be sure that the owners and occupants of the resort apartments in the Ocean Resort Villas condominium may use these amenities and perhaps certain other amenities. It also wants to provide a way to make these amenities available to owners and occupants of other projects located in Ka'anapali North Beach.

To accomplish this, the Developer created the Master Association. The Developer intends to transfer the apartment described in Exhibit "A" to the Master Association. Certain amenities of the Ocean Resort Villas condominium are "limited common elements" of that apartment. This means that the Master Association, as the owner of that apartment, will have the right to use those amenities. The Master Association will, in turn, make these amenities available to the members of the Master Association and their guests.

All owners of resort apartments in the Ocean Resort Villas condominium will be members of the Master Association. In addition, the Developer may arrange membership for some or all of the owners and occupants of other projects located in Ka'anapali North Beach.

The Developer would prefer that the landscaping and grounds of the Ocean Resort Villas condominium and other projects in Ka'anapali North Beach provide a complementary vacation ambience consistent with a first class destination resort. The Developer also wants to be sure that they can be updated and enhanced over the years to keep up with modern trends for first class destination resorts. To accomplish this, the Developer has designated most or all of the grounds and landscaping of the Ocean Resort Villas condominium as limited common elements of the apartment described in Exhibit "A". The Developer intends for the Master Association to manage and maintain the grounds and landscaping for the Ocean Resort Villas condominium and possibly for other projects.

Finally, the Developer intends to reserve the right to use some of the property owned or controlled by the Master Association for the Developer's own purposes. For example, the Developer wants to be able to do these things:

- ❖ It wants to be able to show the amenities and the grounds to persons who might buy apartments, time share interests or fractional ownership interests.
- ❖ It wants to be able to offer activities to these prospective purchasers.
- ❖ It wants to be able to establish booths or concessions for the sale of tourist activities or other incentives intended to encourage prospective purchasers to attend a sales presentation.
- ❖ It wants to be able to conduct receptions for purchasers and prospective purchasers for the purpose of promoting the sales of apartments, time share interests or fractional ownership interests.

This Declaration establishes a plan for the Master Association, its members, the Developer, and other persons to share the use of the property described in Exhibit "A" and any other property owned or controlled by the Master Association. It also establishes a means for sharing the expenses of that property and provides for the management of that property by the Master Association and its agents.

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## 1. DEFINITIONS.

This Chapter 1 defines certain words or phrases having special meanings in this Declaration or in the Bylaws. Other Chapters include definitions of key words or phrases that are introduced or explained in those Chapters. Section 20.4 contains a glossary of key legal terms. Finally, some terms are defined elsewhere in this document in order to put them in context. These terms will have these special meanings except where the context clearly requires otherwise.

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

**1.1 THE MASTER ASSOCIATION.** The Master Association was created for the purposes previously mentioned. These definitions are used to describe the Master Association and the documents that govern it:

**A. "MASTER ASSOCIATION"** means the Ocean Resort Master Association. It is a non-profit Hawaii corporation.

**B. "BOARD"** means the Board of Directors of the Master Association.

**C. "MANAGING AGENT"** means the agent hired by the Developer to manage the Master Association and the Common Property. It also means any replacement agent hired by the Board to manage the Master Association and the Common Property. See Section 13.4 for details.

**D. "MEMBER"** means a member of the Master Association.

**E. "DEVELOPER"** means SVO Pacific, Inc., a Florida corporation.

**F. "MASTER ASSOCIATION DOCUMENTS"** means the following documents and any changes and additions properly made to any of them from time to time:

1) **"MASTER DECLARATION"** means this document.

2) **"MASTER ARTICLES"** means the Articles of Incorporation of Ocean Resort Master Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. They established and govern the Master Association as a corporation.

3) **"MASTER BYLAWS"** means the bylaws adopted by the Master Association. The Master Bylaws are attached as Exhibit "D".

4) **"MASTER ASSOCIATION RULES"** means any rules and regulations adopted by the Master Association.

**G. "DEVELOPER'S RESERVED RIGHTS"** means all rights reserved to the Developer under this Master Declaration or in the Bylaws. For example, see the Developer's rights described in Chapter 5 are "Developer's Reserved Rights". For other examples of the Developer's Reserved Rights, see Sections 8.4, 13.31.2), 13.4, 18.2, 18.4A, and 19.1B. This is not intended to be a list of all of the Developer's Reserved Rights.

**1.2 THE MASTER PROJECT.** The Master Project consists of the property subject to this Master Declaration. Two kinds of property are subject to this Master Declaration.

First, the Master Association owns or controls certain property. This includes, for example, the pool and other amenities located in the Ocean Resort Villas condominium project. The Master Association will operate, manage, and maintain that property, and will make it available for use by the Members on the terms and conditions stated in the Master Association Documents.

Second, certain property owned by the Members of the Master Association is subject to this Master Declaration. For example, the apartments described in Exhibit "B" are subject to this Master Declaration. The owners of those apartments will be members of the Master Association and will have all of the rights and duties described in the Master Association Documents.

These definitions are used to describe the Master Project and the property that is included in it:

**A. "MASTER PROJECT" or "PROPERTY"** means (i) the Common Area, and (ii) the Participating Property.

**B. "MASTER ASSOCIATION AMENITIES"** means any part of the Common Property made available by the Master Association for use by the Members.

**C. "COMMON PROPERTY"** means the Common Area and the Common Furnishings.

1) **"COMMON AREA"** means the real property owned or controlled by the Master Association. The property described in Exhibit "A" is "Common Area." Any real property transferred by the Developer to the Master Association in the manner stated in Section 18.2B and designated as Common Area as provided in Section 18.2A is also "Common Area."

2) **"COMMON FURNISHINGS"** means all personal property owned or leased by the Master Association. *"Personal property"* means any property except for real property. For example, things like furniture, appliances,

equipment (like computers, tools and ladders), and motor vehicles are "personal property".

**D. "PARTICIPATING PROPERTY"** means (i) the real property described in Exhibit "B", and (ii) any other real property that the Developer includes in the Master Project and designates as Participating Property in the manner provided in Section 18.2A.

**E. "UNIT"** means a condominium unit, townhouse unit, apartment, time share unit, hotel room, house, or other real property that is suitable and intended to provide overnight lodgings for one or more persons and that is part of the Participating Property.

Some units are designed so that they can be used either as a whole unit or on a "lock-off" basis. For example, in the Ocean Resort Villas condominium, a Two-Bedroom Ocean View Villa can be used on a lock-off basis. It may be used as a two-bedroom apartment. But it may also be used as two separate units: a one-bedroom unit and a studio unit, each having its own separate front door that can be locked. In this Declaration, even if a Unit can be used on a lock-off basis, it is still considered to be a single Unit for the purposes of voting and Assessments. This affects, for example, Sections 12.3, 14.1B, 14.1C, and 14.4.

**F. "PARCEL"** means a separately subdivided parcel of real property that is a Participating Property. For example, in the case of a condominium, each condominium apartment is considered to be a separate "Parcel". In the case of a hotel, the entire hotel may be a single "Parcel". In the case of a Vacation Plan, however, the following special rules apply:

1) If the Vacation Plan is a "time share ownership plan" (as that term is defined in the Time Share Act), each Vacation Interest (meaning each time share interest) will be considered to be a separate "Parcel".

2) If the Vacation Plan is a fractional ownership plan where the owners own an undivided interest in a Participating Property, each Vacation Interest (meaning each fractional ownership interest) will be considered to be a separate "Parcel". Note that "undivided interest" is defined in the glossary. See Section 20.4.

**G. "FIRST DEED"** means the recorded deed by which the Developer first transfers a Parcel to someone else. A document that transfers the Developer's entire remaining interest in the Master Project is not a First Deed if (i) it says that it is not a First Deed, or (ii) some or all of the Developer's rights as the "Developer" under this Master Declaration are transferred with it.

**H. "OWNER"** means the person or persons who own a Parcel; provided that:

1) While an Agreement of Sale is in effect, only the buyer (and not the seller) will be considered to be the Owner. Even so, the seller may keep the right to vote on "matters substantially affecting his security interest" as that phrase is used in the Condominium Property Act. If the Agreement of Sale is canceled, the seller will become the Owner again. "Agreement of Sale" is defined in the glossary (Section 20.4).

2) If someone leases a condominium apartment, the tenant (and not the landlord) will be considered to be the Owner. This applies only to the extent and for the purposes stated in a recorded lease of a condominium apartment as required by the Condominium Property Act.

**I. "OCCUPANT"** means an Owner, Exchange User, or other person who has the right to occupy a Unit. The Guest of any of those persons is also an "Occupant."

**J. "GUEST"** means an Occupant's family, visitors, renters, employees, servants, tenants, "licensees" (persons permitted in the Unit) and "invitees" (persons invited in). An Exchange User is not considered a "Guest" of the Owner whose Vacation Period he or she uses. The Developer has certain special rights to use the Common Area other than as an Owner. The term "Guests" also means any employees, agents, licensees, and invitees of the Developer who use the Common Area pursuant to the Developer's special rights.

**1.3 THE MASTER ASSOCIATION RESORTS.** At the outset, the Master Project consists entirely of property that is part of the Ocean Resort Villas condominium project. However, the Developer has the right to expand the Master Project to include property in other condominium projects, hotels, vacation ownership or time share projects, and/or fractional ownership projects located in Ka'anapali North Beach. If this happens, then the Member's rights to use the Master Association Amenities will be governed not just by the Master Association Documents. They will also be governed by any legal documents governing a Resort containing Master Association Amenities. These definitions are used to describe those Resorts and the documents that govern them:

**A. "RESORT"** means a real estate project that is located in Ka'anapali North Beach and that contains one or more Participating Properties. For example, the Ocean Resort Villas condominium described in Exhibit "A" is a Resort. A Resort does not have to be a condominium project. It might be a townhouse project, an apartment building, a hotel, or any other real estate development. For example, a time share plan where buyers receive an undivided interest in the entire project, rather than in individual condominium apartments, would be a "Resort". Also, Ka'anapali North Beach is not considered to be a "Resort" for purposes of this Declaration.

**B. "RESORT DOCUMENTS"** means the legal documents that govern a particular Resort and any changes and additions properly made to any of them from time to time. For

example, if the Resort is a condominium project, then the documents governing the condominium are the "Resort Documents". If a Unit or Resort is leased, then the lease is also a "Resort Document".

Note that the documents establishing the Ocean Resort Villas Vacation Ownership Plan are not "Resort Documents" for purposes of this Master Declaration. This is because they were recorded after this Master Declaration. However, if the documents creating a time share plan on other property are recorded before that property is made subject to this Master Declaration, then those documents will be "Resort Documents".

**C. "RESORT OWNERS ASSOCIATION"** means the owners association of a particular Resort. For example, the Association of Apartment Owners of Ocean Resort Villas is a Resort Owners Association.

**D. "RESORT DEVELOPER"** means the "developer" or "declarant" under the Resort Documents for a particular Resort. If a Resort Developer transfers some or all of its rights or duties as the "developer" or "declarant" under the Resort Documents to someone else (other than as security for a loan), then that person will become the Resort Developer to the extent of the rights or duties transferred.

**1.4 KA'ANAPALI NORTH BEACH.** The Master Project will include only Resorts located in Ka'anapali North Beach. Ka'anapali North Beach is a community that includes the Ocean Resort Villas condominium and certain other parcels of land. It has its own separate association and its own board of directors. It is governed by its own declaration, and bylaws, and various other documents. Because the Master Project is part of Ka'anapali North Beach, it is governed by the Ka'anapali North Beach Documents. These definitions are used to describe Ka'anapali North Beach and the documents that govern it:

**A. "KA'ANAPALI NORTH BEACH"** means all of the property that is subject to the Ka'anapali North Beach Declaration.

**B. "KA'ANAPALI NORTH BEACH DOCUMENTS"** means the following documents and any changes and additions properly made to any of them from time to time:

**1) "KA'ANAPALI NORTH BEACH DECLARATION"** means the "Declaration of Covenants, Conditions, Easements and Restrictions for Ka'anapali North Beach" described in Exhibit "A". It established and governs the Ka'anapali North Beach community.

**2) "ARTICLES OF INCORPORATION OF KA'ANAPALI NORTH BEACH MASTER ASSOCIATION, INC."** means the document filed with the Department of Commerce

and Consumer Affairs of the State of Hawaii to establish the Ka'anapali North Beach Association as a corporation.

**3) "BYLAWS OF KA'ANAPALI NORTH BEACH MASTER ASSOCIATION, INC."** means the bylaws adopted by the Ka'anapali North Beach Association.

**4) "OTHER KA'ANAPALI NORTH BEACH DOCUMENTS"** means any documents that are "Governing Documents" as that term is defined in the Ka'anapali North Beach Declaration.

**C. "KA'ANAPALI NORTH BEACH ASSOCIATION"** means the Ka'anapali North Beach Master Association, Inc. It is a Hawaii nonprofit corporation. If the rights or duties of the Ka'anapali North Beach Association are transferred to someone else (other than as security for a loan), then that person will become the "Ka'anapali North Beach Association" to the extent of the rights or duties transferred. The Ka'anapali North Beach Association serves as the association of all of the owners of real property in Ka'anapali North Beach. Note that the Ka'anapali North Beach Association is completely separate from the Master Association and any Resort Owners Associations.

**D. "KA'ANAPALI NORTH BEACH AMENITIES"** means any amenities or other common areas in Ka'anapali North Beach that are available for use by the Members. The Developer cannot promise that there will be any Ka'anapali North Beach Amenities, or that they will be available for use by the Members.

**1.5 VACATION PLANS.** The Developer is developing the Ocean Resort Villas Vacation Ownership Plan in the Ocean Resort Villas condominium. It may also develop other time share plans or fractional ownership plans in other Resorts located in Ka'anapali North Beach. These definitions are used to describe any such plans:

**A. "VACATION PLAN"** means a vacation ownership or time share plan or program. This includes any "time share plan" as that term is defined in Chapter 514E, Hawaii Revised Statutes. It also includes any fractional ownership plan. A "fractional ownership plan" is any plan or program, other than a time share plan or a hotel, in which the use, occupancy, or possession of one or more Units circulates among various persons. Under the current definition of "time share plan" contained in the Time Share Act, a fractional ownership plan would contemplate circulation for a period of sixty or more days in any year, for any occupant.

**B. "VACATION PLAN DOCUMENTS"** means the legal documents governing a particular Vacation Plan and any changes and additions properly made to any of them from time to time.

C. **"VACATION PLAN DEVELOPER"** means the "developer" or "declarant" under the Vacation Plan Documents for a particular Vacation Plan. If a Vacation Plan Developer transfers some or all of its rights or duties as the "developer" or "declarant" under the Vacation Plan Documents to someone else (other than as security for a loan), then that person will become the Vacation Plan Developer to the extent of the rights or duties transferred.

D. **"VACATION OWNER"** means the owner of a Vacation Interest.

E. **"VACATION INTEREST"** means an interest in a Vacation Plan which gives its owner the right to use a unit in that Vacation Plan. This includes any "time share interest" as that term is defined in Chapter 514E, Hawaii Revised Statutes. It also includes any fractional ownership interest.

F. **"VACATION PERIOD"** means the time period when a Vacation Owner or someone else (such as the Vacation Plan Developer or an Exchange User) has the right to use a Unit that is part of a Vacation Plan.

#### 1.6 EXCHANGE PROGRAMS.

In some circumstances, Owners of Vacation Interests can exchange their use rights in their own Vacation Plan for the right to use other property that is not a part of their Vacation Plan. This is called an "exchange". This is discussed in greater detail later. These definitions are used to describe Exchange Programs.

A. **"EXCHANGE PROGRAM"** means a service that permits Owners of Vacation Interests to trade their use rights in their Vacation Plan for the right to use other property.

B. **"EXCHANGE COMPANY"** means the operator of an Exchange Program. For example, the Club Operator and the Network Operator are Exchange Companies.

C. **"CLUB"** means the Starwood Pacific Vacation Club. "Starwood Pacific Vacation Club" is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered from time to time by the Club Operator to members of the Club. The Club is not a legal entity or association of any kind. It is a business owned and operated by the Club Operator.

D. **"CLUB OPERATOR"** means SVO Hawaii Management, Inc., a Hawaii corporation. If the Club Operator signs and records a document that transfers some or all of its rights or duties as the "Club Operator" to someone else (other than as security for a loan), then that person will become the "Club Operator" to the extent of the rights or duties transferred.

E. **"CLUB MEMBER"** means a Vacation Owner who is a member of the Club.

F. **"OTHER CLUB MEMBER"** means a Club Member who is not also an Owner in the Master Project.

G. **"CLUB DOCUMENTS"** means any documents that govern the Club and any changes and additions made to any of them from time to time. This includes, but is not limited to any "affiliation agreement" between the Club Operator and a Vacation Owners Association that requires or permits owners of Vacation Interests in that Vacation Plan to participate in the Club.

H. **"NETWORK"** means the Starwood Vacation Network. "Starwood Vacation Network" is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services that may be offered from time to time by the Network Operator to members of the Network. The Network is not a legal entity or association of any kind. It is a business owned and operated by the Network Operator.

I. **"NETWORK OPERATOR"** means the Starwood Vacation Exchange Company, a Delaware corporation. If the Network Operator signs and records a document that transfers some or all of its rights or duties as the "Network Operator" to someone else (other than as security for a loan), then that person will become the "Network Operator" to the extent of the rights or duties transferred.

J. **"NETWORK MEMBER"** means a Vacation Owner who is a member of the Network.

K. **"NETWORK DOCUMENTS"** means any documents that govern the Network and any changes and additions made to any of them from time to time. This includes, but is not limited to any "affiliation agreement" between the Club Operator and the Network Operator that requires or permits Club Members to participate in the Network.

L. **"OTHER NETWORK MEMBER"** means a Network Member who is not also an Owner in the Master Project.

M. **"EXCHANGE USER"** means a person whose use of a Unit is arranged through an Exchange Program. For example, owners of Vacation Interests in resorts that are not part of the Master Project are Exchange Users if they exchange their use rights in their own Vacation Plan for the right to use a Unit in the Master Project. Note that Other Club Members and Other Network Members, if any, are Exchange Users.

## 2. DEDICATION OF THE COMMON PROPERTY

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

- ❖ It intends to create a program for the Members to share the use, enjoyment, management, upkeep and repair of the Common Property and to operate the Master Association.
- ❖ It intends to comply with the legal requirements necessary to impose the Master Association Documents on the Property and anyone who has any rights or interests in it.
- ❖ It intends to comply with the legal requirements necessary to dedicate the Common Area to use by the Master Association, its Members, the Developer, and others, all as provided in the Master Association Documents.
- ❖ It intends to grant easements to the Members to use the Common Area in the manner and at the times permitted by the Master Association Documents.
- ❖ It intends to give other Occupants and their Guests the right to use the Common Area in the manner and at the times permitted by the Master Association Documents.
- ❖ It intends to reserve easements in favor of the Developer to use the Common Area in the manner and at the times permitted by the Master Association Documents.
- ❖ It intends to enhance, maintain, and protect the value, desirability and enjoyment of the Property and all interests in it for the benefit of each of the Members and the Developer.

## **2.2 ADOPTION OF THE MASTER ASSOCIATION DOCUMENTS.** The Developer declares that:

**A.** The Property is subject to the Master Association Documents. (In legal terms, the Developer is "submitting all of its estate, right, title and interest" to those documents).

**B.** The Master Association Documents will govern the Master Project. This includes, for example, the ownership, use, enjoyment, management, operation, upkeep, repair, and improvement of the Common Area. It also includes the ownership, use and enjoyment of the Participating Property. In legal terms, the Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any Unit or who uses the Common Area must obey them.

**C.** The Master Association Documents will be binding on the Master Project. They will also be binding on, and are intended to benefit these persons:

- 1) The Developer.
- 2) The Master Association.
- 3) Each Member.
- 4) Anyone else who now or later owns all or any part of the Property or has any rights or other interests in all or any part of the Property, or in any Membership in the Master Association. This includes, for example, all Parcel Owners.
- 5) Anyone who, by law or by agreement, stands in the place of the persons listed in items 1) to 4). Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when a person obtains an interest in the Property or any Membership, or whether he or she ever signed the Master Association Documents or expressly agreed to obey them. He or she must still obey them just as if he or she signed them.

All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents.

In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this Subsection.

## **2.3 DEVELOPER'S RESERVED RIGHTS.**

**A. UNDER THE RESORT DOCUMENTS.** The Developer is also the developer under the Resort Documents for the Ocean Resort Villas condominium. It may also be the developer under the Resort Documents for other Resorts. Regardless of what Section 2.2 says:

1) The Developer reserves to itself any and all rights it may have as the Resort Developer of any particular Resort. For example, the Developer reserves all of the "*Developer's Reserved Rights*" in the documents governing the Ocean Resort Villas condominium. They include, among others, the Developer's rights to build more phases and to create more apartments on the Ocean Resort Villas condominium, the right to change the common elements and each apartment's common interest in the common elements, and various other rights.

2) The rights reserved to the Resort Developer under the Resort Documents for each Resort will not be subject to the Master Association Documents. The Resort Developer alone may exercise those rights. Those rights will not be transferred to the Master Association or to any Member unless the Resort Developer signs and records a document

that clearly says so. A Resort Developer may exercise its reserved rights under the Resort Documents without the consent or approval of the Master Association, any Member, or anyone else having any rights under the Master Association Documents. The Developer makes no promise and has no duty to exercise any of the Resort Developer's reserved rights under the Resort Documents. Neither the Members nor the Master Association will have any legal right to insist that it do so.

**B. UNDER VACATION PLAN DOCUMENTS.** The Developer is also the developer under the Vacation Plan Documents for the Ocean Resort Villas Vacation Ownership Plan. It may also be the developer under the Vacation Plan Documents for other Vacation Plans. Regardless of what Section 2.2 says:

1) The Developer reserves to itself any and all rights it may have as the Vacation Plan Developer of any particular Vacation Plan. Even if property included in a Vacation Plan is subject to the Master Association Documents, only the Vacation Plan Developer may exercise the rights reserved to the Vacation Plan Developer under the Vacation Plan Documents. Those rights will not be subject to the Master Association Documents and they will not be transferred to the Master Association or to any Member unless the Vacation Plan Developer signs and records a document that clearly says so.

2) The Vacation Plan Developer may exercise its reserved rights under the Vacation Plan Documents without the consent or approval of the Master Association, any Member, or anyone else having any rights under the Master Association Documents. For example, the Developer is the Vacation Plan Developer of the Ocean Resort Villas Vacation Ownership Plan. The Vacation Plan Developer has the exclusive right to include more apartments in the Ocean Resort Villas Vacation Ownership Plan, the right to rent unreserved use nights, and various other rights provided in the Vacation Plan Documents. It may use those rights without having the consent or approval of the Master Association or its Members. The Developer makes no promise and has no duty to exercise any of the Vacation Plan Developer's reserved rights under the Vacation Plan Documents. Neither the Members nor the Master Association will have any legal right to insist that it do so.

### **3. MEMBERS' EASEMENT**

**3.1 MEMBER'S EASEMENT.** An "easement" is the right to use property in the possession of someone else. The Developer here and now grants to each Member an easement to use and enjoy the Common Area on the terms and conditions stated in this Master Declaration. This easement is called the "*Members' Easement*".

### **3.2 NATURE OF THE MEMBERS' EASEMENT.**

**A. GENERAL NATURE.** The Members' Easement is in favor of each person who is an Owner and only while he or she is an Owner. In legal terms, the Members' Easement is "appurtenant" to the Member's Parcel. This means, among other things, that a Member who transfers his or her Parcel to someone else also automatically transfers the Member's Easement to the new Owner. This happens whether or not the document transferring the Parcel expressly says so. The person who transferred the Parcel will no longer have an easement (unless he or she still owns another Parcel).

**B. RIGHTS OF OCCUPANTS.** Anyone who has the right or permission to occupy a Unit also has the right to use the Member's Easement appurtenant to that Unit. This means that an Occupant may use the Common Property as if he or she was an Owner in the Master Project even if that is not the case.

1) This includes, for example, the following persons:

(a) Anyone who rents or leases a Unit (subject to any limits contained in any rental agreement or lease with the Owner).

(b) A Vacation Owner who occupies a Unit as allowed by the Vacation Plan Documents.

(c) An Exchange User.

(d) The Developer when it occupies a Unit using any reserved rights it has as the Vacation Plan Developer of a particular Vacation Plan.

Of course the rights of Vacation Owners, the Developer, and Exchange Users are subject to any limits contained in the Vacation Plan Documents.

2) For Occupants other than Owners and the Developer, this right is not an "easement". It is a "license" (meaning that this right of use remains in effect only during the time period when the person has the right to occupy a Unit.)

### **3.3 LIMITATIONS ON THE MEMBERS' EASEMENT.**

**A. EASEMENT IS NOT EXCLUSIVE.** The Members' Easement is not an exclusive easement. This means that other persons besides the Members may use the Common Area. For example:

1) Owners may permit their Guests to use the Common Area. The Developer and Exchange Users may permit their Guest to use the Common Area at any times when they have the right to occupy a Unit. This right is not an "easement". It is a "license" (meaning that the Guest may use

the Common Area only for so long as the Owner, Exchange User or Developer allows it).

2) The Master Association and the Developer also have the right to use the Common Area to the extent provided in Chapters 4 and 5.

3) The Board or the Developer may allow other persons to use the Common Area from time to time upon payment of reasonable use fees.

**B. USE OF THE COMMON PROPERTY.** All Members may use the Common Property. However this does not mean that all Members have the right to use all of the Common Property or to use it all of the time. Instead, the Member's Easement is subject to the following:

1) **MASTER ASSOCIATION RULES.** The Managing Agent may adopt, publish and enforce fair and reasonable rules and regulations relating to the Common Property, as provided in Section 13.3F. For example:

- ❖ The Master Association Rules may provide that Members who own Vacation Interests may only use the Common Property during the time when they are occupying a Unit in a Resort. The rights of Guests and Exchange Users may likewise be limited.
- ❖ The Master Association Rules may limit the times when Occupants and their Guests may use the Master Association Amenities such as a swimming pool, sauna, and so on.
- ❖ The Master Association Rules may require sign-up sheets to reserve the use of tennis courts and other amenities where demand may exceed availability.
- ❖ The Master Association Rules may permit Occupants to reserve part of the Common Property for private parties and other social functions.
- ❖ The Master Association Rules may limit or prohibit certain activities by Occupants and their Guests. For example, they may prohibit running on the pool deck, barbecuing except in designated areas, rowdy or noisy behavior, use of the pool without showering, and so on.
- ❖ The Master Association Rules may limit the number of Guests who may use the Common Property at any given time.
- ❖ The Master Association Rules may limit or prohibit people from entering the koi pond, playing in decorative waterfalls, standing in or on landscaped areas and so on.

2) **RESTRICTED AREAS.** The Board may restrict or limit access to parts of the Common Property. For example, Occupants may not use mechanical and equipment rooms,

storage rooms, offices, and other parts of the Common Property that the Board designates as "off limits" to the Members or that it uses for the administration or operation of the Master Association.

3) **TEMPORARY CLOSINGS.** The Master Association has the right to close down all or any parts of the Common Property as needed to do maintenance or repair work, or to remodel or upgrade the property. Neither the Members nor anyone else may use those areas while the Master Association is doing these things. The Master Association must complete any such work promptly after it begins it so as to minimize any interference with the rights of the Occupants and the Developer to use and enjoy the Common Property.

**C. RESORT DOCUMENTS.** The Members' Easement is subject to any restrictions or limitations contained in the Resort Documents or in any deed, lease, or other document transferring property to the Master Association.

**D. MASTER ASSOCIATION AMENITIES.** The Members' Easement is subject to the right of the Board to impose reasonable requirements and to charge reasonable admission or other fees for the use of any of the Master Association Amenities. This might include, among other things, a fee for a massage or use of any spa, surfing lessons, sports equipment rentals, use of a cabana, and so on.

**E. SUSPENSION.** If a Member's membership or use rights are suspended for disciplinary reasons then his or her easement rights will also be suspended for the same time period. This will not affect (i) a tenant who leased a Unit before the suspension took effect, or (ii) an Exchange User who has a reservation to use the suspended Owner's Vacation Period if the reservation was confirmed by the Vacation Owners Association or an Exchange Company before the suspension took effect.

#### 4. MASTER ASSOCIATION EASEMENT.

4.1 **MASTER ASSOCIATION EASEMENT.** The Developer here and now grants to the Master Association an easement to use and enjoy the Common Area on the terms and conditions described in this Master Declaration. This easement is called the "*Master Association Easement*".

4.2 **NATURE OF THE MASTER ASSOCIATION EASEMENT.** The Master Association has the right to use and possess the Common Property as necessary or useful to perform the duties and obligations of the Master Association as set forth in the Master Association Documents.

4.3 **MASTER ASSOCIATION'S AGENTS.** The Master Association's agents, employees, contractors, and other authorized persons may use the Master Association's

easement rights to the extent authorized by the Master Association. This includes, among others, any Managing Agent hired by the Master Association.

**4.4 MERGER.** The Developer will deed or otherwise transfer the Common Area to the Master Association. The Master Association Easement is separate from the Master Association's interest as the owner of the Common Area. Even though the Master Association will own both, the Master Association Easement will stay in effect. If the Master Association transfers the Common Area to someone else, the Master Association Easement will still be in effect and the Master Association will still have it so long as it continues to serve as the owners association of the Master Project. In legal terms, the Master Association Easement will not "merge" with the property transferred by the deed.

## **5. DEVELOPER'S EASEMENT.**

**5.1 DEVELOPER'S EASEMENT.** The Developer here and now reserves, and the Master Association grants to the Developer, the right and an easement to use and enjoy the Common Area on the terms and conditions described in this Master Declaration. This easement is called the "*Developer's Easement*".

### **5.2 NATURE OF THE DEVELOPER'S EASEMENT.**

**A. RIGHTS AS A MEMBER.** To the extent that the Developer is a Member, it has the right to use the Common Property on the same basis as any other Member.

**B. SPECIAL RIGHTS OF THE DEVELOPER UNDER THE RESORT DOCUMENTS.** In addition to the Developer's rights under Section 5.2A, the Developer may use the Common Area for any purpose permitted by law and by the Resort Documents. For example, the Developer's Reserved Rights under the Ocean Resort Villas Condominium Declaration include the rights (i) to conduct extensive marketing and sales activities on the Master Association Amenities (including the right to display signs, banners, and so on), (ii) to conduct educational, cultural, entertainment or sporting events, and other activities of general community interest on the Common Area, and (iii) to operate one or more programs for children of Members and certain other persons. These rights are not and cannot be changed in any way by the Master Association Documents or the Master Association.

**C. SPECIAL RIGHTS OF THE DEVELOPER UNDER VACATION PLAN DOCUMENTS.** The Developer has certain reserved rights under the Vacation Plan Documents for the Ocean Resort Villas Vacation Ownership Plan. It is likely that the Developer will have similar rights under the Vacation Plan Documents for any other Vacation Plan that includes any Participating Property. For example, the Developer has the

following rights in its role as the Vacation Plan Developer of the Ocean Resort Villas Vacation Ownership Plan:

1) The Developer has the right under the Vacation Plan Documents to reserve any Use Periods that, for any reason, are not reserved as of sixty (60) days before the Check-In Day. This right of the Developer is in addition to the reservation rights it has for any Vacation Interests it owns.

2) In certain Use Years, there will be 53 Use Weeks instead of 52. The Developer has the right under the Vacation Plan Documents to reserve and then use the Vacation Units for one Use Week in each Use Year that contains a 53rd Use Week.

The Developer has the right to rent these Use Periods and to keep the rent. The Developer's Easement includes the right and an easement for it and its Guests to use the Common Property during any Use Period reserved as provided in Subsection 5.2C.1) and 5.2C.2) just as if they were Members. The Developer's Easement includes the right to use the Common Property in other circumstances as may be reasonably necessary or convenient to the exercise of the Developer's reserved rights as the Vacation Plan Developer under any Vacation Plan Documents.

**D. CONCESSIONS.** The Developer's Easement includes the right and an easement to establish, operate, maintain, repair and replace on the part of the Common Area that is located in the Ocean Resort Villas condominium no more than three (3) concession stands in the Courtyard of that condominium (as "Courtyard" is defined in the condominium declaration) and no more than four (4) more concession stands on the portion of the grounds of that condominium that is part of the Common Area. The stands may be used only for these purposes:

1) They may be used for sales of food and/or beverages, rental and storage of portable beach cabanas, surfboards, boogie boards, boats, jet skis, snorkels, fins, bicycles, or other recreational equipment.

2) They may also be used for the operation by the Developer of tour or activity desks or for the operation of any other businesses intended to promote the sales of condominium apartments and/or Vacation Interests.

The easement under this Subsection 5.2D includes the right to connect the concession stands with utility services. However, each month the Developer must pay to the Master Association an amount equal to the estimated cost of utility services. Any concession stands must be built, set up, operated, and maintained in accordance with the Resort Documents and all laws that apply. The Developer must pay all costs to build, set up, operate, maintain, repair, and replace any concession stands. The design of all such concession stands must be consistent with a first class destination resort. The Developer may operate the concession stands itself or it may contract

with someone else to operate some or all of them. It may also rent them to someone else. The Developer has the right to keep all money it receives in connection with the operation of the concession stands.

**E. RECEPTIONS.** The Developer has an easement to conduct receptions on the Common Property for Members and prospective Members, and for Guests of the Members, prospective Members, or the Developer, for the purpose of promoting the sales of apartments or Vacation Interests. The Developer must reimburse the Master Association for all reasonable out-of-pocket costs of such activity.

**F. ACCESS.** The Developer has an easement for access across the Common Area as may be reasonably necessary or convenient to the exercise of the Developer's other rights and easements under the Master Association Documents.

**5.3 LIMITS ON THE DEVELOPER'S EASEMENT.** The Developer's rights under Section 5.2D must be used so as to minimize, when reasonably possible, any unreasonable interference with the rights of Members or others to use the Master Association Amenities. If the Developer's membership or use rights are suspended for disciplinary reasons then its easement rights will also be suspended for the same time period. This will not affect, however, the rights of anyone who rents a Unit from the Developer before the suspension takes effect.

**5.4 DEVELOPER'S AGENTS.** The Developer's agents, employees, contractors, and other authorized persons may use the Developer's easement rights to the extent authorized by the Developer.

## **6. GENERAL RULES ABOUT EASEMENTS.**

**6.1 DEFINITION.** "*Master Project Easements*" means the Members' Easement, the Master Association Easement, and the Developer's Easement.

**6.2 RELATION TO RESORT DOCUMENTS.** To the extent that this Master Declaration conflicts with the Resort Documents for a particular Resort, the Resort Documents will control.

**6.3 WHEN THE EASEMENTS END.** The Master Project Easements will end automatically if all Participating Property is removed from the Master Project in the manner provided in Section 18.4. If only part of the Participating Property is removed from the Master Project, then (i) the Master Project Easements will end as to the property described in the Declaration of Removal, and (ii) the Master Project Easements will remain in effect for the rest of the Participating Property.

**6.4 HOW EASEMENTS TERMINATE.** When this Master Declaration says that an easement will expire or otherwise

terminate automatically in certain cases, no further steps must be taken to terminate the easement in those cases. (In legal terms, the easement is a "*determinable easement*" and not an "*easement subject to a condition subsequent*".)

**6.5 EVERYONE GIVES UP CERTAIN RIGHTS.** "*Partition*" is the right of co-owners to ask a court to divide commonly owned property into separate parts for each co-owner. If the property cannot legally be divided, a court may order the property sold and divide the money from the sale among the co-owners. While this Master Declaration is in effect, nobody may ask for or obtain partition of the Common Area or the Master Project Easements.

## **7. UTILITY AND SIMILAR EASEMENTS.**

**7.1 GRANT OF EASEMENTS AND RIGHTS OF WAY.** The Master Association may grant, accept, change, move, and end easements and rights of way to government agencies or utility or service companies for public purposes. Public purposes might include, for example, easements or rights of way to build, change, operate, maintain or repair things like sewage, electrical, gas, and water lines, or for sending or receiving radio, television, telephone, microwave, or other electronic signals. The Master Association may also join in and consent to the grant or change of easements or rights of way by anyone else who may have the right to do so by law or under the Resort Documents for any particular Resort.

**7.2 RELATION TO OTHER EASEMENTS.** The Master Project Easements will be subject to any easement or right of way granted by the Master Association when acting under section 7.1. Each Member and anyone else who owns any interest in the Common Area or any part of it or in any Membership:

**A.** Automatically accepts and consents to any easements or rights of way granted, accepted, changed, moved, or ended by the Master Association when acting under section 7.1.

**B.** Agrees to sign and let the Master Association record any document and do anything else necessary or useful to grant, accept, change, move, or end easements and rights of way allowed under Section 7.1.

**1)** Gives the Master Association a special power of attorney (see Section 20.3) to sign for him or her any document, and to do anything necessary or useful to grant, accept, change, move, or end easements and rights of way allowed under Section 7.1.

**7.3 LIMITATION ON THE MASTER ASSOCIATION'S RIGHTS.** Nothing in Sections 7.1 or 7.2 may be interpreted to permit anyone to take away the right of the Developer to use the Common Area as provided in this Master Declaration unless it consents in writing. The Master Association may not grant an easement or right of way which has that effect.

## **8. USE RIGHTS AND RULES**

**8.1 INTRODUCTION.** This Chapter explains the rights and duties of anyone who is using the Common Property.

**8.2 USE RIGHTS.** An Owner may use the Common Property at the times and on the terms and conditions stated in the Master Association Documents. The Developer has the same use rights to the extent that it is an Owner.

**A. VACATION PLANS.** A Vacation Owner or Exchange User may use the Master Association Amenities during his or her Vacation Period. Neither a Vacation Owner nor an Exchange User can use the Common Property at any other time unless he or she is a Guest of someone else who has the right to occupy and use a Unit at that time.

**B. GUEST USE.** During his or her Vacation Period, a Vacation Owner or Exchange User may allow a Guest to use the Master Association Amenities. Vacation Owners and Exchange Users are fully responsible for their Guests. See Chapter 10 for more details.

**C. DAY USE.** Regardless of what Section 8.2A says, the Managing Agent may permit Vacation Owners and their Guests to use the Master Association Amenities at times other than the time when they may also occupy a Unit. Such use is called "*Day Use*".

1) The Managing Agent has no duty to permit Day Use. If the Managing Agent permits Day Use, then Vacation Owners and their Guests will have the right to use the Master Association Amenities upon the terms and conditions set by the Managing Agent. Day Use will be subject to any further limitations contained in the any applicable Resort Documents or Vacation Plan Documents and/or the Ka'anapali North Beach Documents.

2) The Managing Agent must limit Day Use to the extent reasonably necessary to assure that such use does not unreasonably burden or interfere with the use of the Resort, the Common Property, or the Ka'anapali North Beach Amenities. For example, if the pool is overburdened by Day Use, then the Managing Agent must take reasonable steps to limit such use to a level that does not overburden the pool.

**D. DEVELOPER USE.** The Developer has the same use rights and duties as an Owner under this Section 8.2 to the extent that it is the Owner of a Vacation Interest or otherwise has the right to use a Unit included in a Vacation Plan.

### **8.3 GENERAL USE RESTRICTIONS AND DUTIES.**

**A. LIMITS ON COMMERCIAL USE.** No business or profession may be conducted on the Common Property. Owners, Exchange Users, other Occupants, and their Guests may not use the Common Property for any commercial

purpose. These rules do not apply, however, to the Developer's rights under Chapter 5 or Section 8.4.

**B. ANIMALS.** Persons with handicaps or disabilities may bring specially trained animals on the Common Property as provided in the Ka'anapali North Beach Documents, the Resort Documents, or by law. No other pets or other animals of any kind may be allowed or kept on the Common Property except as explicitly provided in the Master Association Rules.

**C. RELATIONSHIP TO OTHER DOCUMENTS.** This Master Declaration gives the Owners and other Occupants no greater rights than they otherwise have under any Resort Documents, the Ka'anapali North Beach Documents, any Vacation Plan Documents, or the Club Documents.

**D. AVAILABILITY OF MASTER ASSOCIATION AMENITIES.** Master Association Amenities available at one time may not continue to be available, or available to Owners or other Occupants, in the future. The Board may determine which, if any, Master Association Amenities to add, continue, change, eliminate, replace, or upgrade.

**E. CHANGES TO THE COMMON PROPERTY.** No Occupant may make or authorize anyone else to make any changes, additions, or repairs to the Common Property except when needed to prevent damage or injury to persons or property in an emergency. Nobody may paint, refinish or redecorate the Common Property or remove, alter or replace any part of the Common Furnishings without first having the written consent of the Master Association. The Master Association alone has the right to do those things. However, these restrictions do not reduce or change the duty of every Occupant described in the next paragraph.

**F. DUTY OF CARE; MAINTENANCE AND REPAIR.** All Occupants must take good care of all property available for their use. Occupants must leave the Common Area and Common Furnishings neat and in good and sanitary condition (except for reasonable and ordinary wear and tear or destruction by an unavoidable casualty or accident). The Owners, acting through the Master Association, will conduct and pay for the costs of normal maintenance and repair of the Common Area and the Common Furnishings.

**G. OBEY THE GOVERNING DOCUMENTS.** Each Owner and each other Occupant must obey the Resort Documents, the Master Association Documents, and the Ka'anapali North Beach Documents, and see that all his or her Guests also do so.

**H. PERSONAL BELONGINGS.** Owners, Occupants, and their Guests are solely responsible for the safety and security of their personal effects. Nobody (including the Master Association, the Managing Agent, or anyone else) will be liable or responsible in any way at all for any personal effects left or lost in the Common Area. Personal effects left in the Common Area will be considered abandoned. The Managing

Agent may throw away, sell, or give them away except as otherwise provided by law or by the Master Association Rules.

**8.4 SPECIAL RIGHTS OF THE DEVELOPER.** No matter what else the Master Association Documents provide, the Developer has and will have the following special rights and privileges:

**A. DEVELOPER'S USE.** The Developer may use the common elements of any Resort (other than Common Area) for any purpose permitted by law and the Resort Documents, free from the restrictions imposed by the Master Association Documents.

**B. NAME CHANGE.** The Developer may change the name of the Master Project or the Master Association at any time. The Developer may record any documents that it deems necessary or helpful to change the name.

## **9. OWNERSHIP RIGHTS AND RULES**

**9.1 INTRODUCTION.** Membership in the Master Association is tied to ownership of a Parcel of Participating Property. This Chapter explains what happens when an Owner transfers or mortgages a Parcel of Participating Property.

### **9.2 DEFINITIONS.**

**A. "PRIOR OWNER"** means an Owner who is transferring a Parcel to someone else.

**B. "NEW OWNER"** means the person to whom a Prior Owner is transferring his or her Parcel.

### **9.3 TRANSFERS OF MEMBERSHIPS.**

**A. MEMBERSHIP GOES WITH THE PARCEL.** An Owner cannot separate his or her Membership or Member's Easement from his or her Parcel. He or she cannot sell, transfer, mortgage or otherwise deal with the Membership or Member's Easement separately from the Parcel. Likewise, the Member's Easement cannot be separated from the Membership. Any attempt to do any of these things is void. There are two exceptions:

1) An Owner may pledge or transfer his or her voting rights to a Lender having a mortgage on his or her Parcel (including but not limited to a Lender who has a nominee – such as the Mortgage Electronic Registration Systems, Inc. – hold a mortgage for it); and

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

Nothing in the Master Association Documents prevents the Developer from dividing a Parcel into individual Vacation Interests.

**B. NOTICE OF TRANSFERS.** Written notice must be given to the Master Association within ten (10) days after any Parcel is transferred. The notice may be given by either the Prior Owner or the New Owner. The notice must include:

- ❖ The name and address of both the Prior Owner and the New Owner;
- ❖ The date of the transfer;
- ❖ A legal description of the Parcel transferred; and
- ❖ A copy of the recorded document used to make the transfer. It must include the recording information for the document.

**C. REGISTRATION OF TRANSFER.** The Managing Agent may collect a reasonable service charge for changing the Master Association's records to reflect the transfer. When the Master Association receives a proper notice of a transfer and the Managing Agent receives the service charges owed to it, then the Managing Agent will register the change on the Master Association's list of Owners.

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

- 1) Neither the Master Association nor the Managing Agent has to recognize the New Owner for any purpose;
- 2) The Master Association and the Managing Agent may continue to treat the Prior Owner as the Owner;
- 3) The Prior Owner will remain fully liable as an Owner along with the New Owner; and
- 4) The Master Association and the Managing Agent may deal exclusively with the Prior Owner, the New Owner, or both. All notices from the Master Association or the Managing Agent to the "Owner" may be sent to the New Owner, the Prior Owner or both, as the Master Association or Managing Agent choose.

**E. RIGHTS AUTOMATICALLY TRANSFERRED.** The transfer of a Parcel automatically transfers each of these things to the New Owner:

- ❖ The interest of the Prior Owner in all funds held by the Master Association.
- ❖ The Membership of the Prior Owner in the Master Association.

- ❖ The Member's Easement in favor of the Parcel transferred.

This happens whether or not the document transferring the Parcel expressly says so.

**F. FUNDS HELD BY THE MASTER ASSOCIATION.** No share of any Owner in funds held by the Master Association can be withdrawn or separately transferred. An Owner who wants this money must get it from the New Owner. The Master Association will not refund it.

#### 9.4 RELEASE OF AN OWNER'S DUTIES UNDER THIS DECLARATION.

A person's liability as an Owner under the Master Association Documents ends when:

- ❖ He or she no longer owns a Parcel, and
- ❖ He or she or the New Owner notifies the Master Association of the transfer, and
- ❖ He or she has paid all sums and performed all his or her other duties under the Master Association Documents up to the time his or her ownership ends and the notice of the transfer is sent. This includes Assessments and Personal Charges.

#### 9.5 MORTGAGES.

**A. PERMITTED MORTGAGES.** An Owner may mortgage his or her Parcel. The Owner must, however, mortgage all his or her rights in the Parcel; any attempt to mortgage anything less will be void. Anyone who owns more than one Parcel may mortgage each one separately.

**B. PROHIBITED ACTS.** No Owner can mortgage or otherwise encumber all or any part of:

- ❖ Another Owner's Parcel,
- ❖ Another Member's Easement,
- ❖ The Common Area, or
- ❖ The Common Furnishings.

Any attempt to do so will not be effective. It will be void. NOTE: "Encumber" is defined in the glossary (Section 20.4).

**C. ENFORCEMENT OF MORTGAGES.** Any mortgage on a Parcel will be subordinate to (will be governed by and will not affect) this Master Declaration or the other Master Association Documents. If a mortgage is properly recorded and given in good faith and for value, then no violation of the Master Association Documents or enforcement of the Master Association's Secured Lien will defeat or make the lien of the

mortgage invalid. This does not guarantee, however, that the Lender will be fully paid or paid first.

#### 9.6 DUTY TO OTHERS.

**A. PROTECTING THE COMMON PROPERTY.** No Owner may cause or permit his or her Parcel, Membership or Member's Easement to be subject to any claim or lien which could result in the sale of the Common Property or could interfere with another Owner's use or enjoyment of it.

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

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

#### 10. OWNER'S RESPONSIBILITY FOR OTHERS

**10.1 INTRODUCTION.** An Owner may wish to allow his or her Guests to use the Master Association Amenities. The Master Association Documents allow an Owner to do this. But each Owner has certain responsibilities for his or her Guests. This Chapter explains those responsibilities. It also explains the responsibilities as between two Owners of a single Parcel.

##### 10.2 CO-OWNERS OF A SINGLE PARCEL.

If there is more than one Owner of a single Parcel, each co-Owner is jointly and severally liable to pay all Assessments and Personal Charges. This means that each person may be held responsible to pay the whole amount of the Personal Charge or Assessment, not just part of it or his or her share of it. It does not matter that only one co-Owner uses the Common Property or that Personal Charges were caused by only one of the co-Owners and not the others. For example, when one co-Owner damages the pool furniture, each of the

co-Owners are fully responsible to pay for it, not just the one who did it. "Joint and several liability" is defined in the glossary.

### 10.3 OWNER'S RESPONSIBILITY FOR GUESTS.

An Owner is personally responsible to see that his or her Guests:

- 1) Obey the Ka'anapali North Beach Documents, the Resort Documents, and the Master Association Documents.
- 2) Promptly pay all Personal Charges incurred by them (for example, charges for use of the spa).
- 3) Promptly pay all other Personal Charges arising from or related to use by the Owner's Guests of the Resort, the Ka'anapali North Beach Amenities, or the Master Association Amenities.

### 10.4 OWNER'S LIABILITY FOR GUESTS.

By permitting his or her Guest to enter or use the Common Property (whether or not the Guest is expressly invited), the Owner agrees to be fully responsible for:

- ❖ Any loss, damage or destruction caused by the Guest's act or failure to act;
- ❖ Any violation by the Guest of the Ka'anapali North Beach Documents, the Master Association Documents, or the Resort Documents; and
- ❖ Any Personal Charges or other charges incurred by the Guest.

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

**10.5 AN OWNER AND HIS OR HER GUESTS ARE LIABLE SEPARATELY AND TOGETHER.** Each Owner and his or her Guests are jointly and severally liable to pay all Personal Charges and all other charges arising from or related to the Guest's use of the Resort, the Master Association Amenities or Ka'anapali North Beach. This means that the Owner, the Owner's Guest, or both may be required to pay the whole amount, not just part of it or some share of it.

## 11. EXCHANGE PROGRAMS

### 11.1 EXCHANGE PROGRAMS.

**A. PARTICIPATION IN EXCHANGE PROGRAM.** Vacation Owners may have the opportunity to participate in one or more Exchange Programs. Rules and regulations of an Exchange Program do not change or suspend the duties of an Owner under the Master Association Documents. Any amounts charged to the Owner by the Exchange Company or relating to an Exchange Program do not change or reduce the Owner's personal duty to pay all amounts charged to the Owner or his or her Parcel as Personal Charges and Assessments.

### 11.2 EXCHANGE USER'S DUTIES AND LIABILITIES.

**A. DUTIES.** Exchange Users have these responsibilities:

- ❖ They must obey the Ka'anapali North Beach Documents, the Master Association Documents, the Resort Documents and the Vacation Plan Documents and see that their Guests also do so.
- ❖ They will be responsible for (and personally liable for) their Guests just as if the Exchange Users were Owners (see Section 10.4).
- ❖ They must promptly pay all Personal Charges incurred during their Vacation Periods (for example, charges for sports equipment rentals).
- ❖ They must promptly pay all other Personal Charges arising from or related to their use of the Common Property, the Resort, or Ka'anapali North Beach (for example, charges for use of the Master Association Amenities or legal fees paid to collect Personal Charges owed by them or their Guests).
- ❖ They are not Owners. They do not have to pay any Regular or Special Assessments, and they cannot vote in the Master Association.

**B. LIABILITY OF EXCHANGE USERS AND THEIR GUESTS.** Exchange Users and their Guests are jointly and severally liable to keep all promises and pay all charges described in Section 11.2A. This means that each of them may have to pay the whole amount, not just part of it or their share of it. Each person is responsible separately and together with the others.

**C. EXCHANGE USERS MAY BE REQUIRED TO SIGN A CONTRACT.** Exchange Users may be required to sign a contract in which they promise to do the things required in this Section 11.2.

### 11.3 LIABILITY.

**A. FOR EXCHANGE COMPANIES.** The Master Association, the Managing Agent, and the Developer (and each of their directors, officers, employees and agents) are not responsible for the acts, failure to act or conduct of an Exchange Company or for an Exchange Company's breach of any agreement it may have with any Vacation Plan or Vacation Owner.

**B. FOR EXCHANGE USERS.** The Master Association, the Managing Agent, the Developer, and any Exchange Companies (and each of their directors, officers, employees and agents) are not responsible for any act, failure to act or conduct of Exchange Users or their Guests. An Owner is not responsible for any act, failure to act or conduct of Exchange Users or their Guests whose use of a Unit is exchanged for that Owner's use rights through an Exchange Company.

**11.4 ASSOCIATION'S DUTY TO COMPLY WITH THE CONTRACTS.** The Master Association must always repair and keep the Common Property in good enough condition to comply with any standards reasonably set by an Exchange Company pursuant to any agreement with a Vacation Plan that includes any Participating Property.

## 12. THE ASSOCIATION

**12.1 THE MASTER ASSOCIATION.** The name of the Master Association is "Ocean Resort Master Association". It is a Hawaii non-profit corporation.

The Master Association is intended to continue as a corporation for the life of the Plan. But the state can terminate or "dissolve" a corporation in certain circumstances such as if the officers fail to file yearly reports required by law. If the corporation is ever dissolved, whether on purpose or not, then it will be replaced automatically by an unincorporated association having the same name and same Members, officers and directors. In that event, all property, powers and obligations of the incorporated Association just before it dissolved automatically will be held by the unincorporated Association. To the greatest extent possible, any replacement unincorporated Association will be governed by the Master Association Documents as if they were the governing documents of the unincorporated Association. Any officers or directors of the unincorporated Association may either revive the old corporation or create a new one to be the Master Association. The name of the new corporation should be the same as or similar to the old name if possible.

**12.2 ASSOCIATION MEMBERSHIP.** Each Owner is a Member of the Master Association and only Owners can be Members. If more than one person is the "Owner" of a Parcel, each of them is a Member. A person's Membership ends

automatically when he or she is no longer the "Owner" of a Parcel, such as when an Owner deeds it to someone else.

**12.3 VOTING RIGHTS OF OWNERS.** Some parts of the Participating Property may be part of a Vacation Plan. Other parts may not. To accommodate this, the Owners will vote in this way:

**A.** If a Parcel consists of a single Unit (such as a condominium apartment) the Owner will have one hundred and four (104) votes.

**B.** If a Parcel includes more than one whole Unit, then the Owner will have one hundred and four (104) votes for each Unit on that Parcel.

**C.** If the Vacation Owners in a particular Vacation Plan own undivided interests in the real property included in that Vacation Plan, then each Vacation Owner will be entitled to a vote equal to the undivided interest of the Vacation Interest multiplied by the amount determined under Subsections A or B, above, whichever is appropriate.

For example, Owners of Vacation Interests in the Ocean Resort Villas Vacation Ownership Plan own either a 1/52<sup>nd</sup> or a 1/104<sup>th</sup> interest in a condominium apartment. In their case:

1) A Vacation Owner who owns a 1/52<sup>nd</sup> interest in a Unit will have two (2) votes.

2) A Vacation Owner who owns a 1/104<sup>th</sup> interest in a Unit will have one (1) vote.

**D.** If a Parcel is owned by more than one person, they will have to agree among themselves on how to vote. The Master Association need not settle disputes among co-Owners as to voting. If they cannot agree, they lose their right to vote on the matter in question. If a Parcel is owned by more than one person, the vote or votes for that Parcel may be cast by any of its co-Owners, unless (i) another co-Owner files a written objection with the secretary or the chairperson of the meeting, or (ii) another co-Owner casts an inconsistent vote.

**12.4 BOARD OF DIRECTORS.** The business and affairs of the Master Association are controlled by the Board. Except as limited by law or by the Master Association Documents, the Board may exercise all powers of the Master Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Master Association Documents, must be taken, authorized or approved by the Owners, or by some part or percentage of them. The Board may delegate its powers to the officers of the Master Association or to one or more professional managers hired by the Master Association, including but not limited to the Managing Agent. This authority is subject to any limits contained in this Master Declaration or the Master Bylaws. The first Board will consist of persons named in the Articles

or otherwise appointed by the Developer. At the Master Association's first annual meeting, the Owners will elect a new Board.

### **13. MANAGING THE MASTER PROJECT**

**13.1 THE MASTER ASSOCIATION MANAGES THE MASTER PROJECT.** Administration and management of the Common Property and all other aspects of the Master Association is vested in the Master Association. Owners participate only through the Master Association.

**13.2 ASSOCIATION DUTIES AND POWERS.** Except as limited by the Articles, this Declaration, or by law, the Master Association has and may exercise any or all of these powers and has each of these duties and obligations:

A. The powers, duties and obligations granted to or imposed on the Master Association in this Declaration or the Bylaws;

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

C. The powers, duties and obligations of a planned community association as provided in Chapter 421J, Hawaii Revised Statutes; and

D. Any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Master Association under this Declaration or the Bylaws, or that otherwise promote the general benefit of the Owners.

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

A. **PAYMENT OF EXPENSES.** The Master Association, acting as the agent of the Owners, must pay all Project Expenses. The Master Association may delegate this duty to the Managing Agent. The Master Association will pay the Project Expenses as the agent of the Owners, and only if it has the money to do so.

B. **REPAIR AND MAINTENANCE.** The Master Association must repair and maintain the Common Property and keep it in good condition. The Master Association may replace the Common Furnishings and may remodel or upgrade the Master Association Amenities or other Common Property. The Master Association may buy any materials and furnishings, and obtain any labor or services, necessary to do so. For example, it may buy or lease replacements for the Common Furnishings.

C. **TAXES AND ASSESSMENTS.** The Master Association must pay all taxes and assessments on the Common Property. This includes, for example, assessments by any Resort Owners Association or the Ka'anapali North Beach Association. It also includes all governmental taxes and assessments. The Master Association will pay these taxes and assessments as the agent of the Owners, and only if it has the money to do so.

D. **LIENS OR CLAIMS.** The Master Association may, but need not, pay, compromise or contest liens or claims affecting the Common Property.

E. **UTILITIES.** Unless the Resort Owners Association already provides these services: (1) the Master Association must obtain and pay for water, electricity, sewage, garbage disposal, and any other necessary utility services for the Common Area; and (2) the Master Association will decide whether to obtain or cancel telephone, cable television, and similar services.

F. **MASTER ASSOCIATION RULES.** The Managing Agent may adopt, publish and enforce fair and reasonable rules and regulations relating to the Common Property or use by Occupants of the common elements or common areas of any Resort. The Managing Agent may change the rules from time to time with the approval of the Board. The Board may not withhold its approval unreasonably. The Master Association Rules must be consistent with this Declaration, the Articles and the Bylaws. At any meeting of the Master Association, a Majority of the Owners may change the Master Association Rules so long as the notice of meeting stated that the change would be considered at the meeting. So long as the Developer owns, or holds mortgages on, at least fifty Parcels, no change to the Master Association Rules will be effective without the Developer's written consent.

G. **LEGAL AND ACCOUNTING SERVICES.** The Master Association may obtain and pay for any legal and accounting services necessary or helpful to manage the Master Association or the Common Property, or to enforce the Ka'anapali North Beach Documents, the Master Association Documents, or the Resort Documents.

1) Even so, the Board shall not incur or commit the Master Association to incur legal fees and costs of more than \$10,000 in a dispute with the Developer, or any company related to the Developer, nor start or prosecute any lawsuit or any other arbitration or other legal proceeding against the Developer, or any company related to it, unless it first meets each of these requirements:

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

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

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

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

(4) An estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on.

In a trial or arbitration of the Master Association's claims, the Developer cannot use the opinions of the law firms as evidence that the Master Association's claims are not valid.

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

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

(d) At the special meeting, a Majority of the Owners (not counting the Parcels and votes of the Developer) must authorize the Board to start and prosecute the lawsuit or any other arbitration or other legal proceeding.

2) The rule in Section 13.3G.1) does not apply to suits against the Developer or any company related to it if the suit is filed solely to collect Assessments, Personal Charges, or Subsidy Contract payments that are past due or for breach of any contract to provide goods or services to the Association (for example, the Management Agreement).

3) The \$10,000 ceiling contained in Section 13.3G.1) will rise or fall each year with the rate of inflation in Honolulu, Hawaii, as measured by the C.P.I. Index. The amount of the increase or decrease will be equal to the percentage change between (i) the C.P.I. Index published for December of 2003, and (ii) the most recent December C.P.I. Index figure.

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

**H. FINANCIAL STATEMENTS.** The Master Association must prepare and send financial reports to each Owner as required by Section 14.13A of this Declaration.

#### **I. LIST OF MEMBERS.**

**1) THE MASTER ASSOCIATION MUST KEEP A LIST.** At all times, the Master Association must use good faith efforts to keep an accurate and current list of the names and addresses of all Members.

(a) The Master Association will furnish a copy of the list within a reasonable time after any Owner asks for it in writing, pays a reasonable fee (to be determined by the Board), and complies with any other requirements of this Declaration or the Bylaws, including those contained in Section 13.3I.3).

(b) The Master Association will furnish a copy of the list to the Club Operator (at any time when any Owner is a Club Member) or to the Developer within a reasonable time after either of them requests it. The conditions stated in Section 13.3I.3) do not apply to the Developer or the Club Operator.

**2) THE DEVELOPER'S RIGHTS.** The Developer has certain important reasons for wanting to protect the list of Owners. For example, the list of Members is also the list of the Developer's customers. In addition, the Condominium Property Act contains certain provisions intended to protect the list of Members. The Developer wants to insure that these requirements are not circumvented, especially for commercial reasons by a Competitor of the Developer. For these and other reasons, the Developer is expressly declared to be an intended third party beneficiary of this Section 13.3I. This means that this Section 13.3I is intended to protect the Developer and that the Developer can enforce it.

**3) RELEASE OF THE LIST.** Despite anything else stated in the Master Association Documents, the Master Association will not furnish the list of Owners or any copy of it, or any other documents from which a membership list may be compiled, nor allow anyone to inspect or make copies or extracts of the list or any other documents from which a list may be compiled, until after each of these conditions is satisfied:

(a) The person requesting the list or inspection:

(1) Provides a written statement explaining his or her purpose for obtaining the list. The Board may request that the person requesting the list furnish copies of all documents and materials that he or she intends to distribute using the list. The Board will then decide whether the list is being requested for a proper purpose based on its review of the Owner's statement and documents and materials, and any other information made known to the Board;

(2) Provides an affidavit stating that the list (i) will be used by such Owner personally and only for the purpose of soliciting votes or proxies or providing information to other Owners with respect to Association matters or for the protection of the Master Association, its Members, or both, and (ii) shall not be used by that Owner or furnished to anyone else for any other purpose; and

(3) Satisfies any other conditions to obtaining the list contained in Chapters 415B or 421J, Hawaii Revised Statutes.

(b) The Master Association gives notice of the request to the Developer. The notice must include (i) the name and address of the person requesting the list or inspection; and (ii) copies of the written statement, documents and materials, and affidavit submitted pursuant to Section 13.3I.3(a);

(c) At least ten days have passed since the Developer received the Master Association's notice and the Developer has not given the Master Association a written notice objecting to the release because the affidavit is improper or the person is not requesting the list or inspection for a proper purpose or that the requirements of law or this Section 13.3I.3 have not been fully satisfied.

(1) If the Developer objects and if Association or the Owner contests the Developer's objection, then the matter will be decided by appropriate legal proceedings. In such a case, the Master Association will not release the list until the appropriate legal authorities order it to do so.

(d) All other lawful conditions adopted by the Board pursuant to Section 13.3I.8 have been fully satisfied.

**4) RELEASE TO OWNERS OTHER THAN COMPETITORS.** If the person requesting the list or inspection is not a Competitor then the Master Association will furnish the list or permit the inspection after each of the requirements of this Declaration and the Bylaws are met.

**5) RELEASE TO A COMPETITOR.** If the person requesting the list is a Competitor and each of the requirements of this Declaration and the Bylaws are met, then unless the law requires something else, the Master Association will furnish the list in this way (and only in this way): The Master Association will provide the list in the form of mailing labels directly to a company providing mailing services chosen by the person requesting the list. The company providing mailing services: (i) cannot be a Competitor; and (ii) must provide to the Developer the company's written promise to the Developer that it will not:

(a) Use the list for any purpose except for the mailing;

(b) Provide a copy of the list to anyone else, including but not limited to the Competitor; and

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

**6) INSPECTION BY A COMPETITOR.** If the person requesting the inspection is a Competitor and each of the requirements of this Declaration and the Bylaws are met, then unless the law requires something else, the Master Association will permit the person to inspect copies of the records requested. However, the copies will first be modified so as to obliterate entirely the address and any other biographical information from which the person requesting the list could compile a list containing the addresses, email addresses, fax numbers, or phone numbers of the Owners, or any other means of soliciting the Owners.

**7) WHO IS A COMPETITOR.** A "Competitor" is a person who is:

(a) The developer of a Vacation Plan not developed by the Developer;

(b) Any marketer or sales agent of a Vacation Plan not developed by the Developer (including but not limited to any OPC);

(c) The manager of a Vacation Plan not developed by the Developer;

(d) An Exchange Company other than the Club or the Network;

(e) Any officer, director, agent, employee, independent contractor, partner, co-venturer, attorney, or affiliate of (i) a developer, marketer, sales agent, or manager of a Vacation Plan not developed by the Developer, or (ii) an Exchange Company other than the Club or the Network; or

(f) A person who is collaborating with anyone listed in Subsections (a) through (e).

**8) OTHER CONDITIONS.** The Board may impose other reasonable conditions intended to assure the confidentiality of the list of Owners and that the list is not used (i) for commercial purposes by anyone other than the Developer or any company related to the Developer, or (ii) for any other improper purpose.

**J. ASSOCIATION REAL PROPERTY.** The Master Association must accept title to any real or personal property transferred to it by the Developer. The Master Association may buy, lease, or otherwise acquire other real property for use by the Master Association for Master Association purposes. The Board may mortgage, lease or rent the Master Association's real property from time to time as it deems necessary or appropriate, consistent with the purposes

permitted above. Any such mortgage, lease, or rental agreement will be subject to the Master Project Easements. All costs, expenses, and liabilities incurred in connection with the Master Association's real property will be Project Expenses.

**K. OTHER POWERS.** The Master Association may do anything else it deems necessary, desirable or useful to run the Master Association or to maintain, repair, upgrade, enhance, add to, preserve or protect the Common Property.

**L. DELEGATION OF ASSOCIATION POWER AND DUTIES.** The Master Association may delegate its power and duties under this Declaration to one or more agents, including, among others, the Managing Agent. The Board must supervise the agents.

**13.4 THE MANAGING AGENT.** The Master Association must hire a Managing Agent. The first Managing Agent will be appointed by the Developer and may be the Developer or a company related to the Developer. If the first Managing Agent must be replaced for any reason, the Master Association must use its best efforts to hire and maintain a reputable firm as the Managing Agent for the Master Association.

**13.5 THE MANAGEMENT CONTRACT.** The Managing Agent must sign a written contract (the "*Management Contract*") containing the following provisions:

**A. MANAGING AGENT'S DUTIES.** The Management Contract must require the Managing Agent to perform the duties and obligations of the Master Association except those that cannot be delegated by law or under the Master Association Documents. It may permit the Managing Agent to delegate its power and duties to one or more sub-agents for any period and upon any terms it deems proper.

**B. TERM.** The Management Contract:

1) May provide for an initial term of not more than five (5) years from the Starting Date. The "*Starting Date*" is the first date on which a First Deed is recorded.

2) May provide that after the first term and each later term ends, the contract automatically will be renewed for three more years, unless a written notice canceling the Management Contract is sent by either party at least 90 days before the next renewal date. The Management Contract may also provide that the Master Association cannot give this notice unless a Majority of the Owners vote to do so at an annual or special meeting of the Master Association held within one year before the renewal date. If the Management Contract contains such a provision, then:

(a) If the Managing Agent is affiliated with the Developer then (i) the Developer must abstain from the vote,

and (ii) the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice; and

(b) A decision to cancel or not to renew the Management Contract cannot be made by the Board alone; and

(c) Neither the Board nor any officer, director, employee or agent of the Master Association can give the notice before a Majority of the Owners vote to cancel the Management Contract at an annual or special meeting of the Master Association. Any notice sent before then will not be effective. It will be void.

**C. CANCELLATION BY THE MASTER ASSOCIATION.** The Master Association must have the right to cancel the Management Contract without paying a cancellation fee whenever the Managing Agent violates a material part of it and fails to cure its violation within the time permitted by the Management Contract or any longer time permitted by the Board. If the Managing Agent disputes the cancellation, the matter will be decided by arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Board will represent the Master Association in the arbitration.

**D. RESIGNATION.** The Management Contract must provide that the Managing Agent can resign only if it gives written notice to the Board at least ninety (90) days in advance and it turns over all books and records of the Master Association relating to the management and operation of the Common Property and the Master Association to the Board. This does not require that the Managing Agent turn over internal or confidential or other records of the Manager.

**E. FEES.** The Management Contract must specifically state the fees to be paid to the Managing Agent by the Master Association. The fees do not have to be stated as a dollar amount. For example, the management fee may be set to a percentage of the Project Expenses or to costs plus a percentage profit. The fees must not be more than fifteen percent of the total amount of the Project Expenses. The fee, however, may be higher if:

1) The Board reasonably decides that the Master Association is unable to hire a competent, reputable and experienced management firm to act as Managing Agent without increasing the fees, and

2) The Board notifies the Owners of that finding. The notice must also state that the increase in the management fees will be considered approved unless a Majority of the Owners Voting object to the increase in writing within thirty (30) days after the notice is mailed. The Developer's votes as an Owner will not be counted here.

**F. MANAGING AGENT'S INSURANCE.** The Management Contract must require that the Managing Agent obtain errors and omissions insurance. The policy must name the Master Association, as agent for each of the Owners, as an insured. An "insured" is someone who is paid if there is a loss is covered by insurance. The Master Association will pay for the insurance. The Board will decide what policy limits are appropriate. The Board will buy this insurance only if it is available at a reasonable price. The Board will decide what is reasonable, and its decision will be final. The Management Contract may also provide that the Master Association must obtain a fidelity bond or buy fidelity insurance that covers the Managing Agent as an employee of the Master Association with respect to its handling of the Master Association's funds.

**G. RECORDS AND REPORTS.** The Management Contract must identify the records to be kept by the Managing Agent and the periodic reports and other information to be communicated to the Master Association and the Owners.

**13.6 LIMITS ON CONTRACTS.** The Managing Agent may not enter into a contract with a person to furnish goods or services for the Master Association or Common Property for a period longer than one year unless authorized by the vote or written consent of a Majority of the Owners (not counting the Developer's votes). This rule does not apply, however, to:

- ❖ The Management Contract.
- ❖ A contract with a public utility company if the rates charged by it are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term that the supplier will accept at the regulated rate.
- ❖ Prepaid casualty and/or liability insurance policies not lasting more than three years, provided that the policy permits "short-rate cancellation" by the insured.
- ❖ A lease of laundry room fixtures and equipment for five years or less but only if neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the company leasing the fixtures and equipment.
- ❖ Agreements for cable television, satellite television, and/or internet services and equipment for five years or less but only if neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.
- ❖ Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services for five years or less but only if neither the Developer nor the Managing Agent owns, directly or indirectly, 10 percent or more of the supplier.

- ❖ Any other contract for three years or less so long as the Master Association can cancel it after no more than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

**13.7 LIMITS ON MASTER ASSOCIATION AUTHORITY.** Unless authorized by the vote or written consent of a Majority of the Owners Voting (not counting the Developer's votes), the Association shall not sell during any Fiscal Year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

### **13.8 LEGAL REPRESENTATION OF OWNERS.**

**A. REPRESENTING THE MASTER ASSOCIATION OR OWNERS.** By accepting a Parcel, each Owner agrees that the president of the Master Association or, if authorized by the Board, the Managing Agent may represent the Master Association or any two or more Owners similarly situated as a class in any proceeding concerning the Master Association, the Ka'anapali North Beach Association, or the Common Property. The president or the Managing Agent may begin, defend, intervene in, prosecute and settle any such proceedings. This does not, however, limit the rights of any Owner to appear, sue or be sued separately or to decide not to participate. The president or the Managing Agent will be supervised by the Board in any representation.

**B. POWER OF ATTORNEY.** By accepting a Parcel, each Owner gives a special power of attorney (see Section 20.3) to the president of the Master Association and the Managing Agent, with full power to do anything needed or helpful to represent the Owner as provided in Section 13.8A.

**C. SERVICE OF PROCESS.** Process (such as papers for a lawsuit) for the Master Association may be served on any member of the Board.

**D. LIMITATIONS.** The authority of the president of the Master Association and Managing Agent under this Section is subject to the limitations contained in Section 13.3G.

### **13.9 LIMITS ON LIABILITY.**

**A. LIABILITY FOR OWNERS AND GUESTS.** The Master Association, the Developer, companies related to the Developer, and the Managing Agent (and each of their directors, officers, employees and agents) cannot be held responsible for the acts, failure to act or conduct of any Owner or an Owner's Guests.

**B. SECURITY.** The Master Association, the Developer, or the Managing Agent may, but need not, take steps to make the Common Property safer than it otherwise might be. The Master Association, the Developer, companies related to the Developer, and the Managing Agent are not insuring or

guaranteeing the safety or security of people or property in the Common Property. *The Master Association, the Developer, companies related to the Developer, and the Managing Agent (and each of their directors, officers, employees and agents) cannot be held responsible for any loss or damage for failing to provide adequate or effective safety or security measures. No representation or warranty is made that any fire protection, burglar alarm or other safety or security system or measures will:*

- 1) *be effective in all cases;*
- 2) *prevent all losses;*
- 3) *limit access to the Common Property; or*
- 4) *provide the detection or protection that it is designed or intended to provide.*

C. **WARRANTIES.** The Developer is also the developer of the Ocean Resort Villas condominium but the Developer is not the general contractor or related to the general contractor. The Resort Documents for the Ocean Resort Villas condominium disclaim any warranties by the Developer. Those provisions are made a part of this Declaration, just as if they were fully restated right here. This means, among other things, that *the Common Property is being transferred to the Master Association "as is"* and that the Developer does not have to correct or fix, or pay to have someone else correct or fix, any defect no matter what causes it or when it is discovered.

## 14. ASSESSMENTS AND PERSONAL CHARGES

### 14.1 DEFINITIONS.

A. **"PROJECT EXPENSES"** are the costs of operating the Master Association and operating and maintaining the Common Property. The Project Expenses are shared by the Owners. Project Expenses may include among other things, any or all of the following:

- ❖ The cost of utility services such as water, electricity, telephone and cable television.
- ❖ The cost of repairing, rebuilding, replacing, remodeling, or making improvements to the Common Property.
- ❖ The cost of buying insurance required or permitted by the Master Association Documents.
- ❖ Wages, accounting and legal fees, management fees, start-up fees, housekeeping and cleaning fees, and other expenses necessary to maintain, repair, manage and operate the Common Property or to manage and operate the Master Association.

- ❖ All amounts charged to the Common Area by a Resort Owners Association or the Ka'anapali North Beach Association. This includes, for example, a share of the expenses of operating and maintaining the Ocean Resort Villas condominium.
- ❖ Any amount charged by a Resort Owners Association or the Ka'anapali North Beach Association due to an intentional or negligent act by an Occupant. The Master Association will pay the charge but will then pass on the charge, and any taxes on it, to the responsible person as a Personal Charge.
- ❖ Any taxes or other governmental charges upon or charged to the Common Property or the use of it (except taxes separately charged to individual Owners or other Occupants). For example, real property taxes on the Common Area would be Project Expenses.
- ❖ Any liability for loss or damage relating to the Common Property or the use of it.
- ❖ Any money owed by any Owner to the Master Association to the extent the Board decides that it is uncollectible or too expensive to collect, as a practical matter.
- ❖ Amounts needed to make up any shortfall in funds needed to pay the Project Expenses for any prior year.
- ❖ Amounts needed for the Reserve Accounts. These are savings accounts of the Master Association. The money is used to pay for Capital Improvements. "Capital Improvements" are things like replacing the pool deck, refinishing the pool, replacing pumps for water slides or waterfalls, other major repairs and remodeling, or replacing the Common Furnishings. (Day to day maintenance and repairs are not Capital Improvements.)
- ❖ Any amounts needed by the Board to buy one or more Parcels in a foreclosure sale.

B. **"RELATIVE VALUATION"** means the number assigned to each Unit for comparison purposes. Relative Valuation refers to the idea that each Unit's share of the Project Expenses should be based on a comparison of that Unit to other Units included in the Master Project.

Some master declarations require that each unit pay an equal share of the project expenses. This does not necessarily result in a fair division of expenses among the units. For example, the use of the pool is likely to be greater for a Unit that sleeps six than it is for a Unit that sleeps two.

Another approach to dividing expenses is to compare the size of the units. This too does not necessarily result in a fair division of expenses among the units. For example, the cost of sending a newsletter or notice of an Association meeting to

an Owner is the same whether the Owner's unit is a one-bedroom unit or a much larger two-bedroom unit.

As a result, the Developer has adopted a plan for dividing Project Expenses among the Units based on their "Relative Valuation". The Developer determines a Relative Valuation for each Unit or type of Unit based on the size of the Unit, the estimated maintenance and expense burden, sleeping capacity, and other relevant factors as determined by the Developer in its sole discretion. Project Expenses are then divided among the Units by comparing the Relative Valuation of each Unit to each other Unit.

In setting Relative Valuations the Developer is subject to these rules:

1) The Relative Valuation of a Unit in a later phase of a Resort cannot differ by more than fifteen percent (15%) from the Relative Valuation of a Unit in the first phase of the same Resort if the Units have similar features (for example, size [ $\pm$  100 square feet], location, number of bedrooms and bathrooms, and views).

2) The average Relative Valuation of a Unit in one Resort cannot differ by more than fifteen percent (15%) from the average Relative Valuation of a Unit in another Resort if the Units have similar features (for example, size [ $\pm$  100 square feet], location, number of bedrooms and bathrooms, and views).

The Relative Valuation for Units currently included in the Master Project is listed in Exhibit "C".

Note that Relative Valuation is not intended to reflect the fair market value of the Units or types of Unit. The Relative Valuation for a Unit or kind of Unit will not change based on changes in market conditions.

C. "FAIR SHARE" means a share based on a comparison of the Relative Valuation for one Unit to the total of the Relative Valuations for all of the Units, as follows:

1) The Fair Share for a Parcel consisting of a single Unit (for example, a single condominium apartment) is equal to

The Relative Valuation of that Unit  
The Sum of the Relative Valuations  
For All Units For Which  
Assessments Have Begun Under Section 14.4

2) The Fair Share for a Parcel includes more than one Unit (for example, a hotel) is equal to

The Sum of the Relative Valuations  
of all Units located on that Parcel  
The Sum of the Relative Valuations  
For All Units For Which

#### Assessments Have Begun Under Section 14.4

3) These rules will apply to Units that are part of a Vacation Plan:

(a) If the Vacation Owners in a particular Vacation Plan own undivided interests in the real property included in the Vacation Plan, then the Fair Share for a Vacation Interest will be equal to the undivided interest of the Vacation Interest multiplied by the amount determined under Subsections 1) or 2), above, whichever is appropriate. For example,

(1) The Fair Share for an Every-Year Vacation Ownership Interest in the Ocean Resort Villas Vacation Ownership Plan is 1/52nd of the following fraction:

The Relative Valuation of that Unit  
The Sum of the Relative Valuations  
For All Units For Which  
Assessments Have Begun Under Section 14.4

(2) The Fair Share for an Every-Other-Year Vacation Ownership Interest in the Ocean Resort Villas Vacation Ownership Plan is 1/104th of the following fraction:

The Relative Valuation of that Unit  
The Sum of the Relative Valuations  
For All Units For Which  
Assessments Have Begun Under Section 14.4

(b) If the Vacation Owners in a particular Vacation Plan do not own undivided interests in the real property included in that Vacation Plan, then the Fair Share for the whole Unit or larger Parcel (as determined under Subsections 1) or 2), above) will be charged to the Owner of the Parcel. The Vacation Owners Association may then divide the charges among the Vacation Owners in that Vacation Plan as provided in the Vacation Plan Documents.

D. "FISCAL YEAR" means tax year.

E. "ASSESSMENTS" means Regular Assessments, Special Assessments, or both.

F. "CAPITAL ASSET" means anything that the Master Association is required to repair, replace, restore, or maintain. For example, the pool, pool furniture, waterslide, and so on, are Capital Assets of the Master Association.

G. "RESERVE STUDY" means a study of the Reserve Account requirements of the Master Association. See Section 14.3 for details.

#### 14.2 THE BUDGET.

A. ANNUAL BUDGET. At least sixty (60) days before the end of each Fiscal Year, the Managing Agent will prepare

and give to the Board an estimate of the Project Expenses for the following year. The estimate will cover all Parcels paying Assessments or expected to be paying Assessments by the start of the Fiscal Year. This estimate must include at least the following:

- 1) The estimated revenue and expenses of the Master Association on an accrual basis.
- 2) A summary (printed in bold type) of the Master Association's reserves based upon the most recent review or Reserve Study required by Section 14.3.
- 3) A statement as to whether the Board has determined or expects that it will have to charge one or more Special Assessments to repair, replace, or restore any Capital Asset or to provide adequate reserves for it.
- 4) A general statement addressing the procedures used to calculate and establish the reserves to pay for future repair, replacement or additions to the Capital Assets.

Upon review and approval by the Board, this estimate (with any changes the Board makes) will become the "*Budget*" for that year. The Budget must specifically state the Participating Properties that it covers or it must attach a list of them.

**B. LIMITS ON ASSESSMENTS.** The Board may not adopt a Budget that increases the Regular Assessment of any Parcel by more than 20% over the Regular Assessment for the previous year unless approved by the Developer and by vote or written consent of a Majority of the Owners Voting (not counting the Developer's votes). No vote or written consent is required, however, in these circumstances:

- 1) It is not required if the Regular Assessment for a Parcel would not have exceeded the limit except for an increase in taxes or other governmental assessments (for example real property taxes) or utility expenses.
- 2) It is not required if the funds are needed to pay the cost to comply with a court order or the requirements of the Resort Documents or the Ka'anapali North Beach Documents.
- 3) It is not required if the Parcel has more Units than the last year. This could happen if the Developer expands a hotel or apartment complex.
- 4) It is not required if the funds are necessary for an emergency situation such as repairs or maintenance necessary for personal or public safety.
- 5) It is not required if the funds are necessary for repairs or maintenance that could not reasonably be foreseen by the Board in preparing its Budget.

The rule limiting increases does not apply to Parcels not covered by the prior year's Budget. This happens when a Parcel is added to the Master Project after the Fiscal Year begins.

#### **14.3 RESERVE STUDY.**

**A. WHEN A RESERVE STUDY IS REQUIRED.** At least once every three years, the Board must arrange for someone to conduct a Reserve Study. The Reserve Study must include a reasonably competent and diligent visual inspection of the accessible areas of the Capital Assets.

**B. REVIEW.** The Board must review the Reserve Study each year. It must consider and implement any necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review. "Reserve Account requirements" means the amount of money that the Board estimates will be needed at a specific point in time to repair, replace, restore, or maintain the Capital Assets.

**C. CONTENT OF RESERVE STUDY.** The Reserve Study must include at least these things:

- 1) It must identify the major Capital Assets that, as of the date of the study, have a remaining useful life of less than thirty years.
- 2) It must estimate the remaining useful life of those Capital Assets.
- 3) It must estimate the cost to repair, replace, restore, or maintain those Capital Assets during and at the end of their useful life.
- 4) It must estimate the total yearly contribution to the Reserve Accounts needed to pay the cost of those Capital Assets during and at the end of their useful life. This amount must subtract the total amount already saved in the Reserve Accounts. In making these estimates, the Board may consider interest that the Master Association has earned or expects to earn on any Reserve Accounts.
- 5) It must list the amount of money currently set aside in the Reserve Accounts for those Capital Assets.
- 6) It must state the percentage of the estimated costs described in Subsection 14.3C.3) that is set aside in the Reserve Accounts.

**14.4 WHEN ASSESSMENTS BEGIN.** For any Parcel, Assessments begin as follows.

**A.** In the case of a Parcel that consists of a single Unit (for example, a whole condominium apartment), Assessments will begin on the first day of the month after a First Deed transferring that Parcel to someone other than the Developer is recorded.

B. In the case of a Vacation Plan in which the Vacation Owners receive an undivided interest in a condominium apartment or other legally subdivided lot containing only a single Unit, Assessments for the entire Unit begin on the first day of the month after a First Deed transferring a Vacation Interest in that property is recorded.

C. In the case of a Vacation Plan in which the Vacation Owners receive an undivided interest in a legally subdivided lot that contains more than one Unit, Assessments for the entire Unit begin on the first day of the month after a First Deed transferring a Vacation Interest in that property based on the availability of that Unit is recorded.

D. In the case of a Vacation Plan in which the Vacation Owners do not receive an undivided interest in the Participating Property (for example, a "time share use plan" as that term is defined in the Time Share Act), Assessments for an entire Unit begin on the first day of the month after the Vacation Owners Association first issues a membership to someone other than the Developer based on the availability of that Unit.

E. In the case of a hotel or other project where Units or Vacation Interests are not sold to third parties, Assessments for a Unit will begin on the date when the Unit becomes a part of the Participating Property.

Regardless of what Subsections 14.4A to E say, in no case will Assessments for a Parcel begin before the date when the County of Maui issues a temporary or permanent certificate of occupancy for:

(i) That Parcel In the case of a Parcel that consists of a single Unit (for example, a whole condominium apartment).

(ii) That condominium apartment or other Unit in the case of a Vacation Plan in which the Vacation Owners receive an undivided interest in a condominium apartment or other legally subdivided lot containing only a single Unit

(iii) The Unit on that supports a First Deed in the case of a Vacation Plan in which the Vacation Owners receive an undivided interest in a legally subdivided lot that contains more than one Unit.

(iv) The Unit that supports the issuance of a membership in the case of a Vacation Plan in which the Vacation Owners do not receive an undivided interest in the Participating Property (for example, a "time share use plan" as that term is defined in the Time Share Act).

(v) The Unit in the case of a hotel or other project where Units or Vacation Interests are not sold to third parties.

After Assessments for a Parcel begin, the Owner of that Parcel, whether it is the Developer or someone else, must pay a Fair Share of the Project Expenses.

**14.5 REGULAR ASSESSMENTS.** The Owner of each Parcel will pay a share of the Project Expenses, called the "*Regular Assessment*." The Regular Assessment for each Parcel is set as follows:

A. For Parcels covered by the Budget, the Regular Assessment will be a Fair Share of the Budget.

B. For Parcels not covered by the Budget (such as Participating Property added to the Master Project at mid-year), the Regular Assessment will equal the Fair Share of a Unit having the same Relative Valuation. For example, if the Relative Valuation of a Unit covered by the Budget is 52,000 and its Fair Share is \$520, then the Fair Share of a Unit not covered by the Budget and having a Relative Valuation of 75,000 would be \$750 ( $\$520/52,000 = \$0.01$ ;  $\$0.01 \text{ times } 75,000 = \$750$ ).

#### **14.6 SPECIAL ASSESSMENTS.**

A. **HANDLING SHORTFALLS.** If for any reason the Regular Assessments for the Project Expenses are, or will be, inadequate to pay all Project Expenses on time, the Board must estimate the shortfall. The Board must then (i) increase the next year's Budget to make up the shortfall, or (ii) charge a Special Assessment.

B. **SHORTFALL'S RELATING TO DAMAGE OR DESTRUCTION.** If the Common Property is damaged or destroyed and the costs to repair or replace it cannot be fully paid by using available insurance proceeds and the money from any appropriate Reserve Account, the Board has the same two choices. It may charge a Special Assessment or add the amount needed to next year's Budget. The Special Assessment must be charged against all Parcels regardless of where or how the damage occurred or whether the Master Association is entitled to be repaid by an Occupant.

C. **HOW SPECIAL ASSESSMENTS ARE CHARGED.** To charge a Special Assessment, the Board must prepare and send to each Owner a Special Budget showing the amount of the shortfall. The Board will charge to each Parcel a Fair Share of the total shortfall shown on the Special Budget.

D. **LIMITS ON SPECIAL ASSESSMENTS.** The total of all Special Assessments charged to a Parcel in a Fiscal Year may not exceed 5% of the Regular Assessment for that Parcel in that Fiscal Year. The limit, however, is 10% for Special Assessments to pay the costs to repair or rebuild damaged or destroyed Common Property. The Board may exceed the limit if approved (i) by the Developer, and (ii) by the vote or written consent of a Majority of the Owners Voting (not counting Parcels and votes of the Developer). No vote or written consent is required, however, in these circumstances:

1) It is not required if the Special Assessment for a Parcel would not have exceeded the limit except for an

increase in taxes or other governmental assessments (for example real property taxes) or utility expenses.

2) It is not required if the funds are needed to pay the cost to comply with a court order or the requirements of the Resort Documents or the Ka'anapali North Beach Documents.

3) It is not required if the funds are necessary for an emergency situation such as repairs or maintenance necessary for personal or public safety.

4) It is not required if the funds are necessary for repairs or maintenance that could not reasonably be foreseen by the Board in preparing its Budget.

**14.7 PERSONAL CHARGES.** A "Personal Charge" is an expense not covered by Assessments. This includes expenses that result from the act, failure to act, or other conduct of an Owner or Occupant, or the Guest of an Owner or Occupant. It also includes charges for extra services requested or used by the Owners or Occupants, or by their Guests. Personal Charges should not be confused with Regular and Special Assessments. The following expenses are examples of Personal Charges:

- ❖ Charges arising from or related to a person's use of the Resort, the Master Association Amenities, or the Ka'anapali North Beach Amenities (for example, rentals of sports supplies or other recreational equipment, use of a spa, and so on).
- ❖ The cost of food and beverages provided by or through the Master Association, and other special services or supplies resulting from or related to the person's use of the Common Property.
- ❖ The cost to repair any the Common Area or to repair or replace any Common Furnishings caused by an Owner or Occupant, or by their Guest (unless caused by ordinary wear and tear or by an unavoidable accident or other casualty).
- ❖ Expenses to any other Owner or the Master Association due to a person's intentional or negligent act or failure to act.
- ❖ Expenses resulting from any intentional or negligent violation of the Ka'anapali North Beach Documents, the Master Association Documents, or the Resort Documents.
- ❖ The cost to collect any Assessments or other Personal Charges, including court costs and reasonable attorneys' fees.
- ❖ Any late charges and interest on overdue payments.

#### **14.8 DUTY TO PAY ASSESSMENTS AND PERSONAL CHARGES.**

**A. PROMISE TO PAY.** By acquiring a Parcel, an Owner promises to pay all Assessments on the Owner's Parcel and all Personal Charges charged to the Owner. Each Owner makes this promise whether or not he or she signs any document that expressly says so.

**B. THE DEVELOPER'S DUTY TO PAY; SUBSIDY CONTRACT.** The Developer also promises to pay the Assessments and Personal Charges for each Parcel while the Developer is the Owner of it. Instead of doing so, however, the Developer may enter into a "Subsidy Contract" with the Master Association in which the Developer agrees to pay to the Master Association the difference between the actual cost incurred by the Master Association and the Assessments charged to other Owners.

**C. PERSONAL OBLIGATION TO PAY.** Each Owner is personally obligated to pay on time all Assessments charged to his or her Parcel and all Personal Charges charged to the Owner. The amount of an Assessment will become the personal debt of the Owner as of the date when it is assessed. An Owner cannot avoid liability for the Assessments and Personal Charges by not using the Common Property or by abandoning his or her Parcel. Even if the Owner transfers his or her Parcel to someone else, the Owner is still personally obligated to pay all Assessments and Personal Charges due before the transfer takes effect.

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

**E. HOW PAYMENTS WILL BE APPLIED.** Payments will be applied as the Board provides in the Master Association Rules. If the Master Association Rules do not say how payments will be applied, then they will be applied (in equal shares for each Parcel if the Owner owns more than one) first to legal fees, costs and expenses, then to late charges, then to interest, then to the principal amount of the Assessment or Personal Charge.

#### **14.9 COLLECTING ASSESSMENTS.**

**A. TIME AND METHOD OF PAYMENT.** An Owner must pay his or her Assessments and Personal Charges to the Master Association. An Owner of a Vacation Interest must pay his or her Regular Assessments yearly in advance unless the Board adopts a different payment schedule. All other Owners must pay their Regular Assessments monthly in advance unless the Board adopts a different payment schedule. The Board may not adopt a schedule in which

payments are due more often than monthly. The Board may require Vacation Owners whose use rights recur only every other year to pay Assessments:

1) Every year, in which case the Owner must pay a Fair Share every year (see the example in Section 14.1C.3)(a)(2)), or

2) Every other year. In that case, every other year, the Owner must pay an amount equal to the Fair Share for a Vacation Interest having an every-year use right for that year. See the example in Section 14.1C.3)(a)(1).

**B. BILLS FOR ASSESSMENTS.** The Master Association or Managing Agent will mail to each Owner, at the address shown on the records of the Master Association, a bill stating the due date and amount of the Assessment for the Owner's Parcel. If a single Parcel is owned by more than one person, the bill may be sent to any of its co-Owners. No matter when the bill is sent, however, for the purpose of fixing the amount of any Secured Lien based on the Assessment, the Assessment will be considered due on the date stated in the bill.

1) **JOINT BILLINGS.** The Master Association or Managing Agent may join with any Resort Owners Association, the Master Association, the Ka'anapali North Beach Association, the Club Operator, or any of them to send out single bill covering Assessments due under the Resort Documents, the Master Association Documents, Ka'anapali North Beach Documents, the Club Documents, and/or the Vacation Plan Documents. The Master Association may permit a Resort Owners Association, a Vacation Plan Association, the Ka'anapali North Beach Association, or the Club Operator to collect the Assessments and turn them over to the Master Association or Managing Agent provided that they have adequate fidelity insurance and bonds. The Master Association may also agree with a Resort Owners Association, a Vacation Plan Association, the Ka'anapali North Beach Association, or the Club Operator to act as their agent in collecting amounts due under any Resort Documents, any Vacation Plan Documents, the Ka'anapali North Beach Documents, or the Club Documents.

2) **NOTICE OF ASSESSMENTS.** Any time that the Board increases the Regular Assessment or charges a Special Assessment, it must give written notice of the increase or Special Assessment to each Owner. The notice must state the amount of the increase or of the Special Assessment for the Owner or the Owner's Apartment. The Board must send the notice at least thirty (30) days before the increase or Special Assessment takes effect.

#### **C. PAYMENT OF PERSONAL CHARGES.**

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

(a) Vacation Owners and Exchange Users must pick up and pay all bills for Personal Charges that are ready at Check-Out Time. Examples include food or beverage charges, equipment rentals, and so on.

(b) In all other cases, Personal Charges must be paid within thirty (30) days after a bill for the Personal Charges is mailed.

2) **PERSONAL CHARGE DEPOSIT.** At any time before or during a person's occupancy, the Master Association or the Managing Agent may require an advance payment or deposit, or a credit card imprint, from an Occupant if they decide that it is appropriate. The Master Association or Managing Agent may (but are not required to) use these funds to pay any Personal Charges of that person. The Master Association may keep the money (or any unspent part of it) until all charges relating to that person's occupancy have been paid. Neither the Master Association nor the Managing Agent will be liable for not asking for or not keeping advance payments or deposits. The request or failure to request and keep them does not excuse an Occupant's duty to pay the Personal Charges.

**D. COLLECTION POLICIES.** The Board may establish collection policies and procedures and may delegate the authority to implement those policies and procedures to the Managing Agent. The Board may also compromise and settle disputed amounts and may delegate the authority to do so to the Managing Agent.

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

- ❖ To pay Project Expenses,
- ❖ To promote the recreation, health, safety and welfare of the Owners,
- ❖ To pay amounts due under any Resort Documents or the Ka'anapali North Beach Documents, or
- ❖ To operate, manage, maintain, improve, add to, upgrade, repair and replace the Common Property, and to pay any expenses incurred by the Master Association in performing its duties under the Master Association Documents.

#### **14.11 DEPOSIT AND USE OF FUNDS.**

**A. MANAGEMENT OF ACCOUNTS.** All amounts received by the Master Association or Managing Agent will be deposited in the General Account promptly after the Master Association receives it. Money received for any Reserve Accounts will be transferred to those accounts promptly. All accounts must be established with a safe and responsible depository (such as a bank, savings and loan association, or trust company) in Hawaii. This money may be

put in a savings or checking account. It also may be invested in treasury bills or certificates of deposit or other obligations of an agency of the United States of America (such as U.S. savings bonds) or obligations that are fully guaranteed as to principal by an agency of the United States of America. It may also be invested in any other investments authorized by the Condominium Property Act, the Hawaii Time Share Act, or the Planned Community Association Act. All interest will belong to the Master Association.

**B. THE GENERAL ACCOUNT.** The Board may spend the money in the General Account to pay Project Expenses as permitted by the Master Association Documents. Any extra money in the General Account at the end of any Fiscal Year must be used to pay Project Expenses in the following year. At the annual meeting each year, the Master Association must adopt a resolution requiring this. For this purpose, each Owner gives the president of the Master Association a proxy and a special power of attorney to adopt such a resolution.

**C. THE RESERVE ACCOUNT.** Any part of the Regular Assessment that is intended for a Reserve Account must be put in a separate account. Money in these accounts will be considered conclusively to be savings of the Owners of the Vacation Units held for their benefit to pay for Capital Improvements. Any part of an Owner's Assessments used or to be used by the Master Association for Capital Improvements or any other capital expense will be treated as a capital contribution by the Owner. It will be credited by the Master Association on its books as paid in surplus. It will not be treated as income to the Master Association or to the Owners. The Board will authorize payments from the Reserve Accounts as needed.

Money in the Reserve Accounts may be used only to pay for Capital Improvements. However, the Board may "borrow" money from a Reserve Account to meet short-term cash-flow requirements or other expenses. Before doing so, the Board must make a written finding that explains the reason that the loan is needed and describing when and how the money will be repaid to the Reserve Account. This finding must be recorded in the Board's minutes. The Board must see that the money is repaid to the Reserve Account within one year of the date of the initial borrowing. However, the Board may delay repayment temporarily if it makes a written finding that doing so is in the best interests of the Master Project. The Board must exercise prudent fiscal management in maintaining the integrity of the Reserve Accounts. If necessary, it must charge a Special Assessment to repay the full amount borrowed from the Reserve Account. This Special Assessment is subject to the limits stated in Section 14.6D. The Board can extend the due date for a Special Assessment. Any extension will not prevent the Board from using any legal remedy it has to collect an unpaid Special Assessment.

**14.12 FINANCIAL MANAGEMENT.** The Board must do the following things at least quarterly:

A. It must have someone reconcile the General Accounts and it must review the reconciliation.

B. It must have someone reconcile the Reserve Accounts and it must review the reconciliation.

C. It must review the current year's actual reserve revenues and expenses as compared to the current year's Budget.

D. It must review the latest account statements prepared by the financial institutions where the Master Association has its General Accounts and its Reserve Accounts.

E. It must review an operating and expense statement for the Master Association's General Accounts and its Reserve Accounts.

#### **14.13 FINANCIAL REPORTS.**

**A. FINANCIAL STATEMENTS.** The Master Association must prepare and send the following statements to each Owner:

1) **THE BUDGET.** At least 45 and not more than 60 days before the Fiscal Year starts the Master Association must send to the Owners (i) a pro-forma operating budget showing the estimated revenue and expenses of the Master Association on an accrual basis, and (ii) a summary of the association's reserves based upon the most recent Reserve Study or review of it. See Section 14.3.

2) **THE ANNUAL REPORT.** The Master Association must send an annual report to each Owner within 120 days after the end of each Fiscal Year. It must include:

(a) A balance sheet showing the assets, liabilities and net worth of the Master Association at 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 Master Association for the Fiscal Year;

(d) The name, mailing address and phone number of each Board member; and

(e) Any other information required by the law of any place (for example, another state) where the Master Project is registered.

3) **FINANCIAL STATEMENT REVIEW.** Each year, if the Annual Report is not prepared by a certified public accountant then the Managing Agent, or the Board if there is no Managing Agent, must arrange for a review of the Annual Report. The review must be conducted by a certified public

accountant in accordance with generally accepted accounting principles. The Master Association must send a copy of the review to each Owner within 120 days after the end of each Fiscal Year.

**4) ANNUAL STATEMENT.** Not more than 60 days before the start of each Fiscal Year, the Master Association must send to the Owners a statement describing the Master Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments of Project Expenses, including the recording and foreclosing of liens against Owners' Parcels. This statement may be mailed with the budget information required in Subsection 14.13A.1).

**5) INSURANCE.** At least 60 days before the Fiscal Year starts the Master Association must send to the Owner a summary of the Master Association's property, general liability, and earthquake and flood insurance policies. It must include the following information for each policy:

- ❖ The name of the insurance company.
- ❖ The type of insurance.
- ❖ The policy limits of the insurance.
- ❖ The amount of deductibles, if any.

**B. SUMMARY.** Instead of sending the items required by Subsections 14.13A.1) to 14.13A.4), the Board may elect to send to the Owners a summary of those documents. The Board must include with the summary a notice saying (i) that the actual documents are available at the business office of the Master Association or at another suitable location within the Common Property, and (ii) that copies of the actual documents will be provided upon request and at the expense of the Master Association. The notice must appear in at least 10-point boldface type on the front page of the summary of the Budget. If any Owner asks that a copy of the actual documents be mailed to the Owner, the Master Association must provide a copy to the Owner by first-class United States mail at the expense of the Master Association and delivered within five days.

## **15. ENFORCEMENT**

**15.1 ENFORCING THE MASTER ASSOCIATION DOCUMENTS.** If anyone violates the Master Association Documents, the Board or the Managing Agent (acting on behalf of the Master Association) has full power and the right to enforce compliance in any manner permitted in the Master Association Documents. The Developer and the Club Operator each have the right to enforce any rights they have under the Master Association Documents in any manner permitted by law or under the Master Association Documents. The enforcement powers contained in the Master Association

Documents, or provided by law are "cumulative". This means that they may be used one at a time or all at once. By acquiring a Parcel, each Owner promises and agrees that the Master Association, the Managing Agent, the Developer, and the Club Operator have all the rights, powers and remedies provided in the Master Association Documents or by law.

**A. PRIOR FAILURE TO ENFORCE.** Failure to enforce any provision of the Master Association Documents does not mean that the provision cannot be enforced later.

**B. ATTORNEYS' FEES AND COSTS.** The Master Association (and the Managing Agent if authorized by the Master Association) may employ an attorney to enforce the Master Association Documents against any Owner or Occupant. If so, the Owner or Occupant must pay, in addition to any other amounts due, all reasonable attorneys' fees and costs incurred by the Master Association or Managing Agent. Likewise, the Developer and the Club Operator may employ attorneys to enforce their rights under the Master Association Documents and may recover their reasonable attorneys' fees and costs.

**15.2 RIGHT OF ENTRY.** The Master Association and the Managing Agent have the right and power to enter any part of the Common Property at any time to stop any activity or condition or to remove anything that:

**A.** Violates the law, any applicable Resort Documents, the Ka'anapali North Beach Documents, or the Master Association Documents,

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

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

### **15.3 SUSPENSION OF PRIVILEGES; FINES.**

**A.** If any Owner or the Owner's Guests violate the Master Association Documents, the Master Association may charge the Owner a money penalty and/or suspend the Owner's rights under the Master Association Documents. For example, the Master Association may suspend the Owner's rights to use the Master Association Amenities or to participate in any vote under the Master Association Documents.

**B. HEARING.** The Board must meet and permit the Owner to present his or her case before it fines the Owner or suspends the Owner's privileges and services. This rule does not apply, however, when an Owner is fined or suspended for failing to pay any Assessment or Personal Charge on time. The Board must give the Owner written notice of the meeting at least 15 days in advance. The notice must state the purpose of the meeting and the reason for seeking the suspension or fine. The Owner has the right to appear and to explain why

the penalty should not be imposed. The Board will decide whether the Owner's defense will be oral or written. A majority of the directors present will decide whether to fine the Owner or to suspend the Owner's privileges. The directors cannot act, however, unless a quorum is present and the meeting is held as provided in the Bylaws.

**C. WHEN THE FINE OR SUSPENSION TAKES EFFECT.**

The Board must give the Owner written notice of any disciplinary action taken and the reasons for it. Any disciplinary action will take effect on the date that the notice is sent.

**D. EFFECT ON AN EXCHANGE USER.** A suspension under this Section 15.3 will not affect an Exchange User who has a reservation to use the suspended Owner's Vacation Period if the reservation was confirmed by the Vacation Owners Association or an Exchange Company before the suspension took effect.

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

**F. THE MANAGING AGENT'S ROLE.** The Board may delegate to the Managing Agent the power to carry out any disciplinary actions imposed by the Board, including the right to suspend, without a hearing, an Owner's right to use the Master Association Amenities when the Owner has not paid all Assessments or Personal Charges due.

**15.4 ENFORCEMENT BY FILING A LAWSUIT.**

The Master Association, the Managing Agent, the Developer, the Club Operator, or any Owner may ask a court to enforce the Master Association Documents and ask for any appropriate relief. For example, the appropriate relief could be damages or an order specifically enforcing those documents, or a combination of those things. The Master Association or the Managing Agent may also enforce the liens provided by this Declaration and any other lien provided by law and have the right to take the Parcel of any defaulting Owner in any lawful manner.

**A. A VIOLATION IS A NUISANCE.** Each violation of the Master Association Documents is declared to be a nuisance. The Master Association, the Managing Agent, the Developer, or the Club Operator may seek an "*injunction*" (a court order requiring someone to do or stop doing something) or any other appropriate relief to stop the nuisance.

**B. DISPUTES WITH THE DEVELOPER.** No matter what else the Master Association Documents say, any dispute between the Master Association and the Developer with respect to whether the Developer has satisfied its obligations (i) to complete and pay for any improvements of the Common Area, (ii) to pay any Assessments and Personal Charges due under the Master Association Documents, or (iii) to pay the costs of operating the Master Association and maintaining the Common Property under a Subsidy Contract, must, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**15.5 THE MASTER ASSOCIATION'S "SECURED LIEN"; FORECLOSURE.**

**A. LIEN.** The Master Association has a "*Secured Lien*" on each Parcel for all amounts charged to it or to its Owner. This means that the Parcel is collateral for the Owner's obligations to obey the Master Association Documents and to pay all Assessments and Personal Charges, including late charges, interest, costs of collection, and reasonable attorneys' fees. If the Owner fails to do so, the Master Association may "*foreclose*" its Secured Lien. This means that the Parcel will be sold and the money from the sale will be used to pay the amounts owed. The Secured Lien will cover all interests in a Parcel, including, for example, (i) the seller's and the buyer's interests under any Agreement of Sale, and (ii) all Condemnation and Insurance Proceeds relating to a Parcel. The recording of this Declaration is notice of the Secured Lien to each and every person who has or acquires any interest in or to any Parcel, now or later.

**B. EFFECT OF MASTER ASSOCIATION'S LIEN.**

**1) EFFECT ON A NEW OWNER.** In this Section 15.5B.1), "*Prior Owner*" means the Owner who transfers a Parcel, and "*New Owner*" means the person to whom the Parcel is transferred. If a Parcel is transferred, the New Owner is not personally responsible to pay Assessments or Personal Charges charged to the Prior Owner and due before the date the transfer took place. However, the Parcel will still be subject to the Secured Lien for all the unpaid Assessments and Personal Charges of the Prior Owner. As a result, the Master Association still may foreclose the Secured Lien on the Parcel. If so, the Parcel would be taken from the New Owner and sold to pay the amounts due. The New Owner would get only the money that is left, if any, after all unpaid Assessments and Personal Charges have been fully paid.

**(a) STATEMENT OF UNPAID AMOUNTS.** A New Owner can avoid this problem by asking the Master Association for a statement of unpaid amounts. Any Owner, Lender, potential Lender or potential buyer may ask the Master Association for a letter listing all amounts unpaid with respect to the Parcel. Within twenty (20) days after receiving the request, the Master Association or the Managing Agent

must provide the letter. The letter will bind the Master Association in favor of anyone who relies on it in good faith (except the Prior Owner). As a result, after the transfer or mortgage is made the Master Association may not foreclose the Secured Lien for any Assessments or Personal Charges due before the date of the letter in excess of the amount stated in the letter except for the amount of any check that is later dishonored and that is mentioned in the letter as having been received within the 30-day period immediately preceding the date of the letter. The Master Association and/or the Managing Agent may charge a reasonable fee for preparing the letter.

**2) EFFECT ON MORTGAGES AND OTHER ENCUMBRANCES.** No matter what else the Master Association Documents say, the Secured Lien is subordinate to (subject to and will not affect) the rights or remedies of any Lender whose mortgage is recorded before a Notice of Lien is recorded. Unless the law says otherwise, this rule only applies if the Lender has a first mortgage on a Parcel for a loan made in good faith and for value. In all other cases, the liens created by this Declaration will be prior to (superior to and controlling over) all mortgages made by an Owner and all liens or encumbrances imposed by law upon any Parcel. This will be so whether the Notice of Lien is recorded before or after any such encumbrance. Of course, some liens (such as real property tax liens) may be superior to the liens in this Declaration if the law makes them so.

**3) EFFECT ON AGREEMENTS OF SALE.** Since the buyer is considered the Owner, only the buyer (and not the seller) under an Agreement of Sale will be personally liable. The Parcel, however, has a Secured Lien on it for all unpaid Assessments and Personal Charges for which the buyer is personally liable. The Secured Lien will remain on the Parcel even if the Agreement of Sale is later canceled and the seller again becomes its "Owner." As a result, the Master Association may foreclose the Secured Lien at any time, before or after the Agreement of Sale is canceled.

If this happens before the Agreement of Sale is canceled, the Parcel will be taken from both the buyer and the seller and sold to someone else to pay the overdue amounts. The buyer and seller would get only the money that is left, if any, after all unpaid Assessments and Personal Charges have been fully paid. If this happens after the Agreement of Sale is canceled, the Parcel will be taken from the seller and sold, and the seller still gets only the money left after all unpaid amounts have been paid.

**4) EFFECT ON A BUYER AT A FORECLOSURE SALE.** Anyone who buys a Parcel at a foreclosure sale is not liable for any Assessment or Personal Charge due before the Parcel is transferred to the buyer. In addition, the Parcel will not be subject to the Secured Lien for any Assessments or Personal Charges which became due before the Parcel is transferred to the buyer. Of course, the Master Association

will have a Secured Lien on the Parcel for all Assessments and Personal Charges that become due after the Parcel is transferred to the buyer at the foreclosure sale.

**C. FORECLOSURE AND SALE.** The Secured Lien is like a mortgage with a private power of sale. The Master Association may foreclose it in any legal way and the defaulting Owner's Parcel may be sold at a public auction with or without first obtaining a court order. The Master Association may foreclose a Secured Lien for Personal Charges, however, only by court order in a foreclosure lawsuit.

**1) NOTICE OF DEFAULT.** Before the sale, the Master Association must give a notice to the defaulting Owner explaining the violation. The Master Association must send a copy of the notice to any Lender of the defaulting Owner which has asked for a copy and furnished its name and address to the Master Association. The notice must state the date and nature of the violation. If the Owner's default is that he or she failed to pay money, the notice must state the total of any unpaid amounts and include a demand for payment.

**2) NOTICE OF LIEN.** If the violation is not cured within ten (10) days after the Master Association gives its notice to the Owner, then an officer of or attorney for the Master Association or the Managing Agent may sign and record a Notice of Lien ("*Notice of Lien*"). The Notice of Lien must include each of these things:

(a) It must state the name of the defaulting Owner.

(b) It must include a legal description of the Owner's Parcel.

(c) It must state the amount claimed to be due (after any proper offset).

(d) It must say that the Notice of Lien is made by the Master Association under the terms of the Master Association Documents.

(e) It must say that a Secured Lien is claimed against the Parcel for the violation and in an amount equal to the net amount due plus interest and the costs of enforcement, including attorneys' fees.

(f) It must say that the Master Association intends to have the Parcel sold in a foreclosure sale.

Each violation will be a separate basis for a Notice of Lien. But a single Notice of Lien may cover more than one default, and may include defaults between the date of the Notice of Lien and the date of the sale.

**3) CANCELLATION OF NOTICE OF LIEN.** The Master Association may provide a document canceling a

Notice of Lien. It will do so if both of these conditions are met:

(a) The Board must first receive payment in full of the amount claimed to be due and owing (including interest, late fees, and any costs of enforcement and attorneys' fees).

(b) The Owner must ask for the cancellation document and pay a reasonable fee for it.

The document canceling the Notice of Lien must be signed by two (2) directors or officers of the Master Association or by the Managing Agent.

4) **CONDUCTING THE SALE.** The sale may be conducted in any lawful way. For example, the Master Association has a power of sale and may foreclose its Secured Lien in the manner provided in H.R.S. Section 667-5, or in any substitute or replacement laws.

5) **POWER OF ATTORNEY.** When foreclosing its Secured Lien on an Owner's Parcel, the Master Association may sign and deliver any legal documents necessary to transfer title to that Owner's Parcel to a purchaser. It may do so in its own name or in the name of the defaulting Owner. For this purpose, each Owner gives a special power of attorney to the Master Association.

6) **PERMITTED BUYERS.** The Master Association or anyone else except a Competitor may bid on and buy the Parcel at the foreclosure sale. The Master Association may offset the debt against the amount bid at the sale. The Board may buy the Parcel of a defaulting Owner. If the Board agrees, an Owner may transfer his or her Parcel to the Master Association in place of foreclosure.

7) **AMOUNTS OWED AFTER THE SALE.** The foreclosure sale may not produce enough money to pay all amounts owed by the defaulting Owner. If this happens, the defaulting Owner remains personally liable for the difference, and the Master Association can sue him or her to collect the unpaid amount.

8) **BUYER AT FORECLOSURE.** Anyone who buys the Parcel at the foreclosure sale will have to obey the Master Association Documents just like any other Owner.

## 16. INSURANCE

### 16.1 INSURANCE GENERALLY.

**A. INSURANCE REQUIRED.** The Board must see that, as a minimum, the Master Association and all of the Owners together are covered by the insurance required by this Chapter. The cost of insurance will be a Project Expense.

Each Policy may be separate or the Board may buy one or more commercial package policies.

**B. SOURCE OF INSURANCE.** The Master Association may buy the insurance itself. Or it may join with a Resort Owners Association or a Vacation Owners Association in order to buy insurance. If the Managing Agent or any related company manages more than one owners association or real estate project, then the Managing Agent may buy one or more blanket policies that cover the Master Association and/or the Common Property and also any other owners associations or real estate projects. In that case, the covered projects will split the costs of the policies. The amount charged to the Master Association for its share of the costs is subject to approval by the Board. If any part of this Chapter conflicts with any Resort Documents regarding insurance, the Resort Documents will control as to any of the Common Area located in that Resort.

**C. QUALIFIED INSURANCE COMPANIES.** Each insurance company must be licensed to do business in the State of Hawaii. This rule does not apply, however, to (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price, from a company licensed in Hawaii. Each insurance company must have a financial rating of Class VI or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Master Association may buy the insurance from any financially sound company of recognized responsibility. If the Master Association is relying on insurance bought by a Resort Owners Association or a Vacation Owners Association, the policy may be bought from any financially sound insurance company of recognized responsibility.

**D. ADDED INSURANCE.** The Board has the right and power to increase the insurance coverage or obtain better terms than those stated in this Chapter whenever the Board deems it necessary or in the best interests of the Master Association. The Board may also buy other kinds of insurance even if they are not described in this Chapter. For example, the Board may buy business interruption insurance.

**E. SUBSTITUTE COVERAGE; REDUCTION IN INSURANCE.** Except for insurance required by law, the Board need not buy any insurance if it is advised that it cannot reasonably be obtained or if the Board decides that it is too expensive. In those cases, the Board must buy other insurance that it believes to be appropriate under the circumstances for master association property similar in construction, location and use. The Board may accept any deductibles, uninsured retentions, and co-insurance as it chooses in its business judgment. Any amount paid on account of any deductible, uninsured retention, or co-insurance will be a Project Expense; provided that if a loss results from the negligence or willful misconduct of an Occupant, then the Master

Association may charge the amount to the Occupant as a Personal Charge as provided in Section 17.1B.

**F. YEARLY REVIEW OF COVERAGE.** The Board must review the insurance program at least yearly. The Managing Agent must prepare or cause to be prepared an analysis of (a) the insurance needs of the Master Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board will review this analysis and then make any changes in the insurance program it deems necessary or appropriate. All Board decisions are final.

**G. LIABILITY FOR INSURANCE DECISIONS.** The Board will not be liable for any decision it makes on insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, neither the Developer nor the Managing Agent will be liable either unless they were grossly negligent or guilty of intentional misconduct.

**H. INSPECTION AND COPYING.** Any Owner (and anyone having a contract to buy a Parcel) may inspect copies of the Master Association's insurance policies at the office of the Managing Agent. If asked to do so, the Board will furnish a copy of any Policy, or a current certificate of insurance, to any Lender that has a first mortgage on a Parcel. The Lender must pay a reasonable fee for the copy.

**I. NOTICE OF CHANGES IN INSURANCE.** The Master Association will send notice to the Owners if:

1) The Association's policy of property insurance under Section 16.2 or liability insurance under Section 16.3 has lapsed, has been canceled, or will not be renewed. However, the Master Association does not have to send notice if replacement coverage will be in effect before the policies lapse or are canceled.

2) There is a significant adverse change in the coverage of those policies (for example, a significant reduction in the policy limits or an increase in the deductible).

The Association must send any notice required by this Subsection by first-class mail and it must do so as soon as reasonably possible.

**16.2 PROPERTY INSURANCE.** The Board must buy a policy of property insurance. The insurance bought is called the "Policy" in this Section 16.2.

**A. WHO IS INSURED.** The Policy must be written in the name of the Master Association.

**B. REQUIRED COVERAGE.** The Policy must, if possible, cover one hundred percent (100%) of the cost to replace the Common Property without deductions for depreciation.

**C. COVERAGE NOT REQUIRED.** The Policy does not have to cover (i) exterior glass if the Board decides that this is too expensive, and (ii) underground improvements, except for conduits, plumbing and wiring.

**D. FORM OF POLICY.** The Policy must cover those risks generally covered by a special form policy. A "special form policy" commonly insures against these risks: fire, lightning, windstorm and hail, smoke, explosion, civil commotion, riot, and riot attending a strike, aircraft and vehicle damage, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, water damage, collapse of structure, and direct physical loss. If the Common Area is located in an area prone to earthquakes, the Master Association must also buy earthquake insurance if it is available at a reasonable cost.

**E. ADDITIONAL COVERAGE.**

1) The Policy must have an agreed amount endorsement. This protects members from co-insurance clauses. A co-insurance clause reduces benefits if the Master Association fails to buy enough insurance.

2) The Policy must have an inflation guard endorsement. This automatically increases the Policy limits up to a certain amount each year to keep the Policy limits current with inflation.

**F. REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

1) The Policy must not relieve the insurance company from liability because of:

(a) Any increased hazard on any part of the Common Area, whether or not within the control or knowledge of the Master Association, the Board, the Developer, the Managing Agent, any Resort Owners Association, any Vacation Owners Association, any Occupant, or any persons under any of them; or

(b) Any breach of warranty or condition or any other act or neglect by any of those persons.

2) The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board and the Managing Agent.

3) The Policy must provide that the insurance company gives up any right to repair, rebuild or replace any damaged or destroyed Common Property if a decision is made under the Resort Documents not to do so.

4) The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the Policy as against the Master Association, the Board, the Owners and any person under any of them. "Subrogation" is the right of the insurance company to try to recover its costs from the person who caused the loss.

5) The Policy must not limit or prohibit any Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance.

6) The Policy must provide that any loss with respect to any Common Property will be adjusted (settled) by the insurance company and the Board.

7) The Policy must contain a standard "Mortgagee Clause". This protects the rights of Lenders. Unless it cannot be obtained, the Mortgagee Clause must do these things:

(a) It must name as an insured any Lender whose name has been furnished to the Board and to the insurance company.

(b) It must provide that any reference to a lender in the Policy includes all Lenders, in their order of priority, whether or not named in the Policy.

(c) It must provide that any act or neglect of the Master Association, the Board or any Occupant will not release the insurance company from its duties to the Lender.

(d) It must provide that the insurance company gives up these rights:

(1) Any right to deny coverage for the Lender's benefit because the Lender fails to notify the insurance company of any hazardous use or vacancy.

(2) Any requirement that the Lender pay any Policy premium. (But, the Lender may pay any premium due if the Master Association fails to do so on time).

(3) Any right to contribution from the Lender.

(4) Any right to be subrogated to the right of any Lender against anyone causing the loss or to require that any Mortgage be transferred to the insurance company. However, the insurance company may retain the right of subrogation to the extent of insurance proceeds received and retained by the Lender, if the insurance company gives up any claims for liability against the Lender, the Master Association, the Board, the Managing Agent, the Club Operator, the Developer, the Owners and their Guests. This must not, however, impair the Lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds.

**16.3 LIABILITY INSURANCE.** The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance. In this Section 16.3, the commercial general liability insurance and commercial umbrella insurance are together called the "Policy".

**A. WHO IS INSURED.** The Policy must cover (i) the Master Association, the Board, the Developer, the Managing Agent, the Club Operator (at all times when any Owner is a Club Member), and (ii) each of their directors, officers, employees, and agents, and (iii) all Owners as a group against claims for personal injury, bodily injury, death and property damage.

**B. REQUIRED COVERAGE.** The Policy limits for each accident or occurrence may not be less than \$3,000,000 for personal injury, bodily injury, and death, and \$1,000,000 for property damage.

**C. REQUIRED AND PROHIBITED PROVISIONS.** Unless the Board decides the cost is unreasonably high (and its decision will be final), the Policy must provide as follows:

1) The Policy must not limit or prohibit any Owner from buying other liability insurance for the Owner's own benefit.

2) The Policy must not relieve the insurance company from liability because of any act or neglect of the Master Association, the Managing Agent, the Developer, the Board, the Club Operator, any Owner or Occupant, or any person under any of them;

3) The Policy must provide that the insurance company gives up any right of subrogation to any right of the persons insured by the Policy as against the Master Association, the Board, the Managing Agent, the Club Operator, the Developer, the Owners and any persons under any of them.

4) The Policy must contain a "cross-liability" endorsement. This permits one person who is covered by the Policy to file a claim on the Policy based on the acts or failure to act of another person who is also covered by the Policy.

5) The Policy must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of one person who is covered by the Policy because of the negligence of another person who is covered by the Policy.

6) The Policy must provide that the Policy and the coverage it provides may not be canceled or substantially changed by the insurance company (whether or not asked by the Board) unless the insurance company gives a written notice of the cancellation or change at least thirty (30) days in advance. The notice must be sent to the Board, the Managing

Agent, the Developer, and, if any Owner is a Club Member, the Club Operator.

**16.4 MOTOR VEHICLES.** The Board must buy and maintain a commercial automobile liability policy of insurance if the Master Association owns or leases any motor vehicles. This is called the “Policy” in this Section 16.3C.6). It must insure the Board, the Master Association, the Developer, the Managing Agent, and each of their officers, directors, agents and employees. It must cover claims for bodily injury, death and property damage arising out of the condition, use, operation, ownership or lease of any motor vehicle owned or leased by the Master Association. The Policy limits may not be less than \$1,000,000 for bodily injury or death or property damage arising out of a single accident or occurrence. The Policy must contain a severability of interest provision and a cross-liability endorsement.

**16.5 DIRECTORS AND OFFICERS INSURANCE.** The Board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a director, officer, agent or employee of the Master Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the “Policy” in this Section 16.5. The Policy must also cover anyone who serves, at the request of the Master Association, as a director, officer, member, employee or agent of another company or organization. The Board will choose the Policy limits.

If it can be obtained at a reasonable cost, the Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The Policy must pay for any expense actually and reasonably incurred. This includes, but is not limited to, attorneys’ fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

**16.6 FIDELITY BONDS.** A “fidelity bond” covers the loss of money in the care or custody of the Master Association or the Managing Agent. The Master Association must buy a fidelity bond or fidelity insurance. It must cover the Master Association and the Managing Agent. It must also cover each of their directors, officers, agents, and employees who handle funds belonging to or administered by the Master Association or the Managing Agent. The fidelity bond or insurance must name the Master Association as the person protected and who gets paid in case of loss (the “obligee” or the “insured”). The amount of the coverage must not be less than one-half of one year’s estimated operating expenses plus all of the savings of the Master Association. The bond or insurance must also do these things:

A. It must provide that it may not be canceled or substantially changed without at least thirty (30) days’

advance written notice to the Master Association and the Managing Agent.

B. It must cover anyone who serves without pay (for example, a volunteer). It must also waive (give up) any defense based on excluding such persons from the definition of the term “employee” or similar terms.

**16.7 OTHER INSURANCE.** The Master Association will buy all other insurance required by law. This may include, for example, temporary disability insurance and worker’s compensation insurance. The Owners have the right to buy extra insurance for their own benefit at their own expense.

## **17. DAMAGE, DESTRUCTION, AND CONDEMNATION**

**17.1 REPAIRING VACATION PROPERTY.** If the Common Area is located in a Resort, then the Resort Documents will govern all matters covered in them relating to damage or destruction of the Common Area located in that Resort. In all other cases, if the Common Property is damaged or destroyed (other than by ordinary wear and tear) the Master Association must immediately repair the damage and replace anything that cannot be repaired. Anything damaged by normal wear and tear, however, need not be repaired or replaced while it is still usable, reasonably attractive, safe, and in good condition. The Board will decide when such things will be repaired or replaced and its decision will be final. If the Board decides it is better to replace something instead of repairing it, the Board may do so. The Board may also use any available Insurance or Condemnation Proceeds to provide new amenities elsewhere on the Common Area to replace any that have been lost.

**A. PAYING FOR THE REPAIRS.** The Master Association will use any available Insurance or Condemnation Proceeds to pay for the repair or replacement. The Master Association also may use any money set aside in a Reserve Account to repair or replace the damaged items. The damage may not be covered by insurance, or the available proceeds or applicable Reserve Account may not be enough to pay the total cost of repairing or replacing the damaged property. If so, the Master Association may charge a Special Assessment to raise the money.

1) “Insurance Proceeds” means any money paid by an insurance company for a loss.

2) “Condemnation Proceeds” means any money paid if the Common Area or any part of it is “taken”, meaning that it is condemned or is sold to a Condemning Agency that has threatened to condemn it. The government and certain other persons have the “power of eminent domain”. This means that they can make someone sell their property to them.

This process is called “*Condemnation*”. Anyone having the power of eminent domain is called a “*Condemning Agency*”.

**B. LIABILITY OF OWNERS AND OCCUPANTS FOR DAMAGES.** If an Owner or an Owner’s Guest intentionally or negligently damages or destroys any Common Property, that person must repay the Master Association for all expenses related to repairing or replacing it. That amount will be a Personal Charge. If an Exchange User or his or her Guest intentionally or negligently damages or destroys any Common Property, that person must repay the Master Association for all expenses related to repairing or replacing it; the Owner of the Vacation Interest whose Vacation Period is used by the Exchange User, however, will not be responsible to repay the Master Association. The Board will decide what should be repaired or replaced as a result of any such damage or destruction. The Board’s decision will be binding on any person responsible for repayment. This Section 17.1B does not apply to damage or destruction that the Board decides is the result of ordinary wear and tear.

**C. NO CLAIM FOR LOSSES PAID FOR BY INSURANCE.** Despite what Section 17.1B says, the Master Association and the Owners will have no claim or cause of action against any Occupant for damage or destruction to the extent the loss is covered by insurance. An Occupant will have no claim or cause of action for any damage or destruction of his or her own property against the Master Association, the Board, the Managing Agent, the Developer, or any company related to the Developer (or any of officers, directors, employees or agents of any of these persons) or against any other Owner or Occupant to the extent that the loss is covered by insurance.

## **17.2 EXCESS PROCEEDS.**

**A. EXCESS PROCEEDS.** “*Excess Proceeds*” are Insurance Proceeds or Condemnation Proceeds:

- ❖ remaining after paying the cost of repairs and replacements;
- ❖ paid on account of Common Property that is destroyed and is not rebuilt. This could happen, for example, if the law is changed so it cannot be rebuilt or if a decision not to rebuild it is made under the Resort Documents for the Resort in which the Common Area is located; or
- ❖ not required (i) to repair or replace the Common Property, or (ii) to pay any one or more Owners for personal injury or loss or damage to their property.

**B. USE OF EXCESS PROCEEDS.** Any excess proceeds will be deposited by the Master Association in the General Account. The Board may decide to use this money to pay Project Expenses or to reduce future Assessments, or the Board may deposit the money into one or more Reserve

Accounts. The Board must consider any tax issues that may be affected by their decision on how to use the money.

## **18. ADDING AND REMOVING PROPERTY**

**18.1 ADDING PROPERTY TO THE MASTER PROJECT.** The Developer may add property to the Master Project at any time and without the consent of any Owner or anyone else. Only the Developer may add property to the Master Project. The Developer is not promising to add any more property to the Master Project. Owners may enjoy certain advantages from having property added but will have no legal right to insist that the Developer do so.

**18.2 HOW PROPERTY IS ADDED.** The Developer may add property to the Master Project, and it will become part of the Master Project, by meeting these conditions:

### **A. DECLARATION OF ANNEXATION.**

**1) REQUIRED CONTENT.** The Developer may add property to the Master Project by recording a “*Declaration of Annexation*.” It must contain the following:

(a) A legal description of the property and the name of its record Owner;

(b) A statement submitting the property to this Declaration. This Declaration must be identified by title and recording data;

(c) A statement as to whether the property is Common Area or Participating Property;

(d) If the property being added is a Participating Property:

(1) A list of the Units if the property is not part of a condominium project or otherwise legally divided into separate parcels having only one Unit apiece; and

(2) The Relative Valuation of each Unit.

**2) OTHER PROVISIONS:** The Declaration of Annexation may contain any provisions that the Developer may consider appropriate. For example, it may include provisions that:

(a) Disclose that the record owner is not related to the Developer or the Master Association,

(b) Relieve the record owner of any responsibility for acts of the Developer or the Master Association; or

(c) Permit the Developer, at its own expense, to further develop the property being added. For example, the Developer might have the right:

(1) To develop and construct additional improvements on the property being added;

(2) To create, grant, accept or otherwise deal with any easements over, under, across or through the property being added or in favor of the property being added;

(3) To change the property being added as needed or helpful to comply with law or with governmental permits, approvals or zoning requirements;

(4) To enter the property being added and to permit its employees, agents, contractors, and so on, to do so; or

(5) To make noise, dust, vibrations and do other annoying things when using these rights.

**3) LIMITATIONS ON DEVELOPER'S RIGHTS.** Despite what Section 18.2A.2) says:

(a) The Declaration of Annexation cannot unreasonably disturb or interfere with the rights of Owners to use the existing Common Property.

(b) The Declaration of Annexation cannot give some Owners the exclusive right to use any Common Area being added unless those Owners must also pay all costs to operate, manage, maintain, repair and replace that Common Area.

(c) The Declaration of Annexation cannot give the Owners of any new Participating Property more than 104 votes for each Unit. However, this does not mean that an amendment cannot change other voting rights. For example, if certain Owners have the exclusive right to use part of the Common Area and that property is destroyed by a fire, then the Declaration of Annexation might say that only those Owners can vote on whether or how to repair or replace that property.

(d) The Declaration of Annexation cannot include anything which in any way has the effect of taking away the Members' Easement.

**4) WHO MUST SIGN.** If the property being added to the Master Project is owned by anyone other than the Developer, then the record owner must also sign the Declaration of Annexation. If the Developer asks, the Master Association must also sign the Declaration of Annexation. The Master Association here and now gives the Developer a special power of attorney to sign for the Master Association.

**B. TRANSFER OF COMMON AREA TO THE MASTER ASSOCIATION.** If the property being added to the Master Project will be Common Area, then the Developer must transfer (or cause someone else to transfer) title to the property to the Master Association.

**18.3 ADDED PROPERTY IS GOVERNED BY THE MASTER ASSOCIATION DOCUMENTS.** The Master Association Documents will govern the ownership, use and transfer of any property added to the Master Project. Any property added will become Common Area or Participating Property, as stated in the Declaration of Annexation. Any money encumbrances or liens on the property as of the date it is added must be subordinated to this Declaration and to the lien rights given to the Master Association by this Declaration unless other reasonable arrangements are made to pay them off or to protect the use rights of the Owners, the Master Association, and the Developer.

**18.4 PROPERTY MAY BE REMOVED FROM THE PLAN.**

**A. THE DEVELOPER'S RIGHTS.**

**1) WHEN THE DEVELOPER CAN REMOVE PROPERTY.**

(a) If the Developer owns an entire Parcel, it may remove that Parcel from the operation of this Declaration and the Master Project. In the case of a Vacation Interest, however, the Developer must own all Vacation Interests in a legally subdivided parcel of real property. For example, if the Developer owns a Vacation Interest in a condominium apartment, it cannot remove that apartment from the Master Project unless it owns all of the Vacation Interests in that condominium apartment.

(b) If the Developer includes a Common Area by mistake, it may remove that property from the operation of this Declaration and the Master Project.

**2) STEPS TO REMOVE PROPERTY.** To remove property, the Developer must sign and record a document named "*Declaration of Removal*." It must contain both of these things:

- ❖ A legal description of the property being removed from the Master Project.
- ❖ A statement that the property being removed is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**3) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded:

(a) The Parcel described in it will no longer be subject to this Declaration nor part of the Master Project.

(b) The Master Project Easements granted or reserved in the Master Association Documents will no longer apply to the property removed.

(c) If the Master Association holds title to the property being removed, then within ten days after receiving a copy of the recorded Declaration of Removal, the Master Association must sign and record a document transferring legal title to the property being removed to the Developer or to someone else picked by the Developer. The Developer must reimburse the Master Association for its reasonable costs of doing so.

**B. THE ASSOCIATION'S RIGHTS.** If a Majority of the Owners vote to do so, and if their Lenders consent, the Owners may remove any legally subdivided part of the Common Area from the operation of this Declaration and the Master Project. They may not do so, however, without first getting the Developer's written (if the Developer owns, or holds mortgages on, at least fifty (50) Vacation Interests in the Master Project or one or more whole Units).

**1) STEPS TO REMOVE COMMON AREA.** To remove part of the Common Area, the Association must record a document named "*Declaration of Removal*." It must contain each of these things:

- ❖ A legal description of the property being removed.
- ❖ An affidavit signed by two officers of the Association stating that a Majority of the Owners voted to remove the property from this Declaration and from the Master Project.
- ❖ The written consent of the Lenders of Owners who make up the Majority of the Owners who voted for the removal.
- ❖ The written consent of the Developer so long as the Developer owns, or holds mortgages on, at least fifty (50) Vacation Interests in the Master Project or one or more whole Units.
- ❖ A statement that the property is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**2) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded:

(a) The property described in it will no longer be subject to this Declaration nor part of the Master Project.

(b) The Master Project Easements granted or reserved in the Master Association Documents will no longer apply to the property removed.

(c) The Association may then sell the property and keep the money from the sale.

### C. THE OWNERS' RIGHTS.

**1) WHEN THE OWNERS' CAN REMOVE A PARTICIPATING PROPERTY.** Owners may remove a legally subdivided parcel of the Master Project from the operation of this Declaration and the Master Project in these circumstances:

(a) If all of the Owners of a Parcel that is not part of a Vacation Plan agree to do so, and if their Lenders consent, they may remove that Parcel from the Master Project.

(b) If all of the Owners of Vacation Interests in a legally subdivided parcel of real property agree to do so, and if their Lenders consent, they may remove that real property from the Master Project. For example, if all Owners of Vacation Interests in a single condominium apartment in the Ocean Resort Villas Vacation Ownership Plan agree to do so, and if their Lenders consent, they may remove that apartment from the Master Project.

In either case, the Owners may not remove property without first getting the Developer's written (if the Developer owns, or holds mortgages on, at least fifty (50) Vacation Interests in the Master Project or one or more whole Units).

**2) STEPS TO REMOVE A UNIT.** To remove a parcel, the Owners must record a document named "*Declaration of Removal*." It must contain all of these things:

- ❖ A legal description of the property being removed.
- ❖ An affidavit of the Owners saying that they own the property and that they desire to remove it from this Declaration and from the Master Project.
- ❖ A letter from the Master Association, acting under Section 15.5B.1)(a), showing that all Assessments and Personal Charges relating to the property being removed have been paid.
- ❖ The written consent of each such Owner's Lenders.
- ❖ The written consent of the Developer so long as the Developer owns, or holds mortgages on, at least fifty (50) Vacation Interests in the Master Project or one or more whole Units.
- ❖ A statement that the property is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**3) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded:

(a) The property described in it will no longer be subject to this Declaration nor part of the Master Project.

(b) The Master Project Easements granted or reserved in the Master Association Documents will no longer apply to the property removed.

#### **D. DAMAGED OR CONDEMNED UNITS.**

**1) WHEN THE MASTER ASSOCIATION CAN REMOVE A UNIT.** The Master Association, through the Board, may remove a legally subdivided parcel of property from the Master Project if the property is destroyed and a decision is made not to rebuild it, or if the property is condemned or is to be transferred under threat of condemnation. The Board may remove the property even if all Assessments and Personal Charges with respect to that Parcel have not been paid.

**2) STEPS TO REMOVE A UNIT.** To remove a parcel, the Master Association must record a document named "*Declaration of Removal*." It must contain each of these things:

(a) A legal description of the property being removed.

(b) An affidavit signed by any two officers of the Master Association. It must say either (i) that the property was destroyed and is not being rebuilt, or (ii) that the property was condemned or is being transferred under threat of condemnation.

(c) A statement that the property is no longer subject to this Declaration. This Declaration must be identified by title and recording data.

**3) EFFECT OF REMOVAL.** After the Declaration of Removal is recorded:

(a) The property described in it will no longer be subject to this Declaration nor part of the Master Project.

(b) The Master Project Easements granted or reserved in the Master Association Documents will no longer apply to the property removed.

(c) The Owners of the property will still be personally liable for all Assessments and Personal Charges owed by them even though the property is no longer part of the Master Project, and

(d) The Master Association's Secured Lien and security interest will remain on the property and any money received from the sale of it, until all Assessments and Personal Charges (including interest, late fees, and attorneys' fees) are paid in full. The Master Association may sign a

document releasing its lien in connection with any sale of the property.

### **19. REVISING, TERMINATING, AND INTERPRETING THIS DECLARATION**

#### **19.1 AMENDMENTS.**

**A. OWNERS'S RIGHTS.** This Declaration may be "*amended*" (changed) from time to time by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Parcel), and (ii) a Majority of the Owners Voting (not counting the Developer's Parcels and votes); provided that the Owners voting for the amendment must hold at least twenty-five percent of the total number of votes for all Parcels (not counting the Developer's Parcels and votes). There is an exception to this rule: Some parts of the Master Association Documents require the approval of more than a Majority of the Owners before taking certain actions (a "*super-majority*"). Such a provision cannot be amended unless (1) Owners casting votes equal to or exceeding the same super-majority required to take action under that provision vote in favor of that amendment, and (2) if the Developer owns, or holds a mortgage on, any Parcel, the Developer signs the amendment. No amendment will take effect until it is signed by any two officers of the Master Association and recorded.

**B. DEVELOPER'S RIGHTS.** Without the consent or approval of any person, including any Owner and anyone having a contract to buy a Parcel, the Developer may change this Declaration at any time:

1) And for any purpose before any First Deed or Agreement of Sale is recorded.

2) To comply with the laws and regulations of the State of Hawaii.

3) To comply with the real estate laws of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with the registration of: (i) any Resort, the Master Project, or any Vacation Plan that includes Participating Property, or (ii) the Club (if any Owner is a Club Member), or (iii) the Network (if any Owner is a Network Member).

4) To satisfy requests for changes made to the Developer by any institutional lender loaning money to 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.

5) In any Declaration of Annexation to the extent permitted by Section 18.2.

No amendment under Subsections 19.1B.3) or 19.1B.4) will be effective, however, unless:

(i) The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental authorities) having authority over the Master Project as a result of the registration of it (or a Resort, Vacation Plan, the Club or the Network) with that governmental authority, and

(ii) The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

An amendment made by the Developer under this Section 19.1B will take effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

#### C. LIMITS ON AMENDMENTS.

1) Unless it is signed by the Owner and the Owner's Lender (if any), no amendment may:

(a) Take away the Member's Easement.

(b) Change the right of the Owner to cast the number of votes provided in Section 12.3.

2) No amendment may change the rights and privileges of the Developer unless the Developer signs it.

3) No amendment may change the rights and privileges of the Club Operator unless the Club Operator signs it or unless no Owners are Club Members.

**D. BINDING EFFECT.** If an amendment complies with these provisions, it will be binding on every Parcel and the Common Area, and on everyone, including for example any Owners and their Lenders, who has any interest in a Parcel or the Common Area.

**19.2 TERMINATING THIS DECLARATION.** This Declaration will remain in effect for sixty (60) years from the day it is recorded. After that, it will continue in effect for additional ten (10) year periods until an amendment canceling it is recorded. This Declaration may be terminated earlier if:

- ❖ All of the Participating Properties are removed from the Declaration under Section 18.4 above, or
- ❖ All of the Master Association Amenities are destroyed and a decision not to repair, rebuild, or restore them is in the manner provided in the Resort Documents for the Resort in which they are located, or

- ❖ All the Common Area or all of the Participating Properties are taken in condemnation proceedings or under threat of condemnation, or
- ❖ All of the Common Area is located in a single condominium and the condominium terminates.

When this Declaration terminates, (a) all Owners will remain personally liable for all Assessments and Personal Charges owed by them, and (b) the Master Association's Secured Lien and security interest will remain on each Owner's Parcel and each Owner's interest in the Master Association and any money received from the sale of the Owner's Parcel or the Common Area, until all Assessments and Personal Charges (including interest, late fees, and attorneys' fees) are paid in full and the Master Association's affairs are finally settled. Except as otherwise provided in Section 18.4, if this Declaration terminates, the Master Association may sell the Common Property free and clear of this Declaration and the Master Project Easements. All money received from the sale of any Common Property will be distributed to the Developer and the Owners as provided by the Hawaii Nonprofit Corporation Act and the Master Association Documents.

#### 19.3 THE RULE AGAINST PERPETUITIES.

**A. GENERAL NATURE OF THE RULE.** The "Rule Against Perpetuities") (the "RAP") is a legal rule. It limits the amount of time that may pass between (i) the date when an interest in real estate is created, and (ii) the date when the interest "vests" such as when the Owner of that interest becomes entitled to possession of the property. The RAP creates a deadline for this to happen. This deadline is called the "RAP Deadline" in this Declaration. In legal terms, the interest becomes "vested" in the future. For convenience, however, we will say that the transfer "takes effect in the future".

**B. APPLYING THE RULE.** No matter what else this Declaration says, if any part of this Declaration violates the RAP or any other limit imposed by law on the duration of the part, then that part will be effective only until the earlier of:

- ❖ the maximum period permitted by law, or
- ❖ 21 years after the death of the last survivor of the now living descendants of Joseph and Rose Kennedy of Massachusetts and George H. W. Bush of Texas.

**19.4 EFFECT OF INVALID PROVISIONS.** The provisions of this Declaration are "severable". This means that if any part of it is not legal or valid, that part can be ignored. But the rest of this Declaration will remain in effect and everyone must obey it.

**19.5 EFFECT OF FAILURE TO ENFORCE.** A violation of any part of the Master Association Documents by one person does not excuse that person or anyone else from his or her duty to

obey that and all other parts of the Master Association Documents. Any failure to enforce any provision of the Master Association Documents does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked.

**19.6 INTERPRETING THIS DECLARATION.** To make this Declaration easier to read and understand, some Chapters or Sections include an introduction. The introduction is intended to help you understand what the Chapter or Section is about by giving you a general explanation. Likewise, captions have been added to many Sections. These are intended to help you find particular parts of this Declaration. But it is important to realize that the captions and introductions have been included as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of the provisions of this Declaration. You should read with care each and every part of this Declaration, not just the captions or the introductions.

Where this Declaration or the other Master Association Documents say things like "for example", it means that there may be other examples besides the examples described in the document.

**19.7 PRONOUNS.** Pronouns (for example, "his" or "her") used in the Master Association Documents include the male, female, and neuter genders and include the singular and plural numbers, as the case may be.

## **20. MISCELLANEOUS PROVISIONS AND GLOSSARY OF LEGAL TERMS**

### **20.1 TRANSFER OF DEVELOPER'S RIGHTS.**

**A.** If the Developer signs and records a document that expressly transfers some or all of its rights or duties as the Developer under the Master Association Documents to someone else, then that person will become the "Developer" to the extent of the rights and duties transferred.

**B.** The Developer may transfer its rights as collateral for a loan. If so, the Lender will not have the rights or duties of the "Developer" until (i) it forecloses the loan, (ii) it holds the rights of the Developer outright, and (iii) it notifies the Master Association that this has happened and provides a copy of the legal documents by which it holds the rights of the Developer. Under Section 20.1A, the Developer may also transfer its rights and duties to a Lender in place of foreclosure.

**C.** A transfer of all rights of the Developer will automatically transfer the Developer's Easements to the same person. This will happen even if the transfer document does not say so.

**20.2 NOTICES.** Except as otherwise expressly provided in this Declaration or in the Bylaws, all notices must be given as follows:

**A. NOTICE TO OWNERS.** Notice to an Owner may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to his or her address as it is shown on the membership list. If more than one person is the "Owner" of a Parcel, notice to all Owners of that Parcel may be given by providing notice to any one of them.

**B. NOTICE TO THE MASTER ASSOCIATION.** Notice to the Master Association must be given to the president, vice-president, secretary, or any director. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to them at their addresses as shown on the membership list, or to any other address that they designate by notice to the Developer and to all Owners and Lenders.

**C. NOTICE TO THE MANAGING AGENT.** Notice to the Managing Agent must be mailed or delivered to the Managing Agent at its address as shown on in the Management Contract, or to any other address that the Managing Agent designates by notice to the Master Association from time to time.

**D. NOTICE TO THE DEVELOPER.** Notice to the Developer must be given to the president of the Developer. The notice may be given personally or by mail, fax, or messenger service. The notice must be mailed or delivered to the president of the Developer at the address shown on the membership list, or to any other address that the Developer designates by notice to the Master Association from time to time.

**E. NOTICE TO A LENDER.** Notice to a Lender or to an insurer or guarantor of a mortgage may be given delivering it in person or by mail, fax, or messenger service. The notice must be mailed or delivered to its address as it is shown on the membership list, or to any other address that it designates by notice to the Board.

**F. CHANGE OF ADDRESS.** All notices must be in writing. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Master Association's records. Regardless of the prior two sentences, notices of addresses and changes of addresses will be deemed given only when they are actually received. The addresses for purposes of this Section 20.2 may be changed by giving written notice of the change. Unless written notice of an address change is received, the last address will remain effective for all purposes.

**20.3 SPECIAL POWER OF ATTORNEY.** Whenever this Declaration provides that an Owner or other person gives a "power of attorney" or appoints someone as "attorney-in-fact", the following Rules apply:

A. The power of attorney appointment is permanent. In legal terms, it is *coupled with an interest*, it is *irrevocable*, it is a *durable power of attorney*, and it will not be affected by the death or disability of the person who gives it.

B. It includes "*full power of substitution*". This means that the person given the power of attorney can let someone else act in his or her place as a substitute attorney-in-fact.

C. Each Owner (or other person) gives the power of attorney whether or not it expressly says so in the deed, mortgage or other document by which he or she obtained any interest in the Master Project or the Master Association.

D. It is a "*special power of attorney*." This means that the attorney-in-fact has the power to do only the things stated or intended by the Master Association Documents; this includes, however, the power to do anything else necessary or convenient to accomplish the stated or intended goal. Ambiguities must be resolved in favor of giving, not denying, the attorney-in-fact the power to act.

E. If asked by the attorney-in-fact, the person who is giving the special power of attorney must promptly deliver a signed and notarized special power of attorney in the form requested by the attorney-in-fact.

#### **20.4 GLOSSARY OF LEGAL TERMS.**

A. "**AGREEMENT OF SALE**" means a recorded contract which binds the seller to sell and the buyer to buy a Parcel and under which the seller keeps the title to the Parcel as collateral for payment of the sales price. The buyer, however, is considered the Owner of the Parcel and can use it so long as the buyer makes all payments and keeps his or her promises under the Agreement of Sale.

B. "**ATTACHMENT**" refers to the act or process of seizing property under a court order.

C. "**CONDOMINIUM PROPERTY ACT**" means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, or any law that replaces that law.

D. "**EASEMENT**" means any right to use property possessed by someone else.

E. "**ENCUMBER**" refers to putting a legal claim or "encumbrance" on property.

F. "**ENCUMBRANCE**" means a right or interest in property held by someone other than the owner of that property.

G. "**INCUR**" means to pay or to become obligated to pay, or both.

H. "**JOINT AND SEVERAL LIABILITY**" means that two or more people are each fully responsible to keep a promise or pay a sum of money. This means that each person may be required to pay the whole amount due, not just part of it or his or her share of it.

I. "**LENDER**" means anyone who has a mortgage on a Parcel.

J. "**LIEN**" means a claim against property. For example, a mortgage on a Parcel is a claim on the Parcel as collateral for the payment of money.

K. "**MAJORITY OF THE OWNERS**" mean Owners of more than fifty percent (50%) of the total number of votes for all Parcels. Any reference to a specific percentage of Owners means Owners having that percentage of the total number of votes for all Parcels. When it refers to having a quorum or taking a vote, these terms mean Owners of a majority or other specific percentage of the votes for all Parcels then entitled to vote. The Bylaws explain how and when an Owner's voting rights may be suspended.

L. "**MAJORITY OF THE OWNERS VOTING**" mean Owners of more than fifty percent (50%) of the total number of votes held by Owners present and casting votes on the matter at hand. Any reference to a specific percentage of "Owners Voting" means Owners having that percentage of the total number of votes held by Owners present and casting votes on the matter. When it refers to having a quorum or taking a vote, only the votes of Parcels then entitled to vote will be considered. The Bylaws explain how and when an Owner's voting rights may be suspended.

M. "**MORTGAGE**" when used as a noun means a recorded mortgage or deed of trust by which an Owner's Parcel becomes collateral for the repayment of a loan. Usually, if the loan isn't repaid, the Parcel will be sold and the money will be used to repay the loan. When used as a verb, "mortgage" refers to making a Parcel subject to a mortgage or deed of trust.

N. "**PERSON**" means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity. Terms like "*somebody*", "*nobody*", "*someone*", "*anyone*", and so on refer to a "person" and, depending on the context, may refer to a person who is an "Owner."

O. "**PLANNED COMMUNITY ASSOCIATION ACT**" means Chapter 421J, Hawaii Revised Statutes, or any law that replaces that law.

P. "RECORD", "RECORDED", "RECORDING", and similar terms mean recorded in the Land Court. Hawaii law may be changed to require that deeds, mortgages, notices of liens, amendments to the Master Association Documents, or other documents, be recorded in the Bureau. After any such law takes effect, "record", "recorded", "recording" and similar terms will mean and refer to recording in the Bureau to the extent provided by the change in the law.

1) "BUREAU" means the Bureau of Conveyances of the State of Hawaii.

2) "LAND COURT" means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Q. "SUBORDINATE TO" means governed by. For example, if a mortgage is "subordinate to" the Declaration then the mortgage will be governed by and will not affect the Declaration. If something in the mortgage does not agree with the Declaration, then the Declaration will control and must be obeyed.

R. "TENANTS IN COMMON" refers to the relationship between co-Owners of property. When the co-Owners are tenants in common, then each person owns an undivided interest or Ownership Share in the property. An Owner may mortgage or sell his or her Ownership Share. The Owner may also leave it to someone else in his or her will.

S. "TIME SHARE ACT" means the Hawaii Time Share Act, Chapter 514E, Hawaii Revised Statutes, or any law that replaces that law.

T. "TRANSFER" means any way one person may receive a Parcel from another, including for example a voluntary sale, an involuntary sale (such as a foreclosure sale), a recorded lease, an inheritance or a gift.

U. "UNDIVIDED INTEREST" refers to the ownership of property by two or more persons as tenants in common. Each person owns a share in the property, sometimes called an "Ownership Share". For example, if two people own a condominium apartment, each person would own a one-half Ownership Share. If four people own it, each would own a one-fourth Ownership Share, also called a one-fourth undivided interest. In the Ocean Resort Villas Vacation Ownership Plan, each Owner of an Every-Year Vacation Ownership Interest owns a one-fifty-second (1/52nd) undivided interest in a condominium apartment as tenants in common with the other Owners of Vacation Ownership Interests in that apartment. An Owner of an Every-Other-Year Vacation Ownership Interest owns a one-one-hundred and fourth (1/104th) undivided interest in a condominium apartment as tenants in common with the other Owners of Vacation Ownership Interests in that apartment.

The Developer signed this Declaration on September 5, 2001.

SVO PACIFIC, INC.

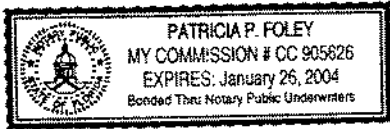
By 

Name Raymond L. Gallein, Jr.

Office Chairman of the Board

STATE OF FLORIDA     )  
                                      ) ss:  
COUNTY OF ORANGE    )

On this 5th day of September, 2001 before me personally appeared RAYMOND L. GELLEIN Jr 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.



Patricia P. Foley  
Name: Patricia P. Foley  
Notary Public, State of Florida  
My Commission expires: 1-26-04

## EXHIBIT "A"

### FIRST:

Apartments 102 (the "Arcade Apartment") of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, (herein with any amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with any amendments called the "Condominium Map").

### **TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents.

### SECOND:

An undivided 0.000333940 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, and/or (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237, (herein with any amendments called the "Declaration of Merger"), and

**SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger; and
2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION** of the premises described in Transfer Certificate of Title No. 569,700, issued to SVO Pacific, Inc., a Florida corporation, as tenant in severalty.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.

**NOTE:** For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is the "Club Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

**END OF EXHIBIT "A"**

## EXHIBIT "B"

### FIRST:

Those certain one hundred and three (103) Apartments, as listed in Exhibit "C", of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, (herein with any amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with any amendments called the "Condominium Map").

### **TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents.

### SECOND:

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "C", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, and/or (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237, (herein with any amendments called the "Declaration of Merger"), and

**SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger; and

2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION** of the premises described in Transfer Certificate of Title No. 569,700, issued to SVO Pacific, Inc., a Florida corporation, as tenant in severalty.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.

2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.

3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.

4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.

**END OF EXHIBIT "B"**

EXHIBIT "C"  
TO  
OCEAN RESORT MASTER DECLARATION

Apartment No.	Relative Valuation	Common Interest		Apartment No.	Relative Valuation	Common Interest
<b>First Floor</b>				<b>Third Floor</b>		
2108/10	52,000.00	0.003382575		2300/02	52,000.00	0.003382575
2109/11	52,000.00	0.003382575		2301	43,873.44	0.002853946
2112/14	52,000.00	0.003382575		2303	43,873.44	0.002853946
2113/15	52,000.00	0.003382575		2304/06	52,000.00	0.003382575
2116/18	52,000.00	0.003382575		2305/07	52,000.00	0.003382575
2117/19	52,000.00	0.003382575		2308/10	52,000.00	0.003382575
2120/22	52,000.00	0.003382575		2309/11	52,000.00	0.003382575
2121/23	52,000.00	0.003382575		2312/14	52,000.00	0.003382575
2124	43,873.44	0.002853946		2313/15	52,000.00	0.003382575
2125	43,873.44	0.002853946		2316/18	52,000.00	0.003382575
2126/28	71,653.10	0.004661000		2317/19	52,000.00	0.003382575
2127/29	71,653.10	0.004661000		2320/22	52,000.00	0.003382575
2130/31	52,000.00	0.003382575		2321/23	52,000.00	0.003382575
				2324	43,873.44	0.002853946
				2325	43,873.44	0.002853946
				2326/28	71,653.10	0.004661000
				2327/29	71,653.10	0.004661000
				2330/31	52,000.00	0.003382575
<b>Second Floor</b>				<b>Fourth Floor</b>		
2200/02	52,000.00	0.003382575		2400/02	52,000.00	0.003382575
2201	43,873.44	0.002853946		2401	43,873.44	0.002853946
2203	43,873.44	0.002853946		2403	43,873.44	0.002853946
2204/06	52,000.00	0.003382575		2404/06	52,000.00	0.003382575
2205/07	52,000.00	0.003382575		2405/07	52,000.00	0.003382575
2208/10	52,000.00	0.003382575		2408/10	52,000.00	0.003382575
2209/11	52,000.00	0.003382575		2409/11	52,000.00	0.003382575
2212/14	52,000.00	0.003382575		2412/14	52,000.00	0.003382575
2213/15	52,000.00	0.003382575		2413/15	52,000.00	0.003382575
2216/18	52,000.00	0.003382575		2416/18	52,000.00	0.003382575
2217/19	52,000.00	0.003382575		2417/19	52,000.00	0.003382575
2220/22	52,000.00	0.003382575		2420/22	52,000.00	0.003382575
2221/23	52,000.00	0.003382575		2421/23	52,000.00	0.003382575
2224	43,873.44	0.002853946		2424	43,873.44	0.002853946
2225	43,873.44	0.002853946		2425	43,873.44	0.002853946
2226/28	71,653.10	0.004661000		2426/28	71,653.10	0.004661000
2227/29	71,653.10	0.004661000		2427/29	71,653.10	0.004661000
2230/31	52,000.00	0.003382575		2430/31	52,000.00	0.003382575

EXHIBIT "C"  
TO  
OCEAN RESORT MASTER DECLARATION

Apartment No.	Relative Valuation	Common Interest
<b>Fifth Floor</b>		
2500/02	52,000.00	0.003382575
2501	43,873.44	0.002853946
2503	43,873.44	0.002853946
2504/06	52,000.00	0.003382575
2505/07	52,000.00	0.003382575
2508/10	52,000.00	0.003382575
2509/11	52,000.00	0.003382575
2512/14	52,000.00	0.003382575
2513/15	52,000.00	0.003382575
2516/18	52,000.00	0.003382575
2517/19	52,000.00	0.003382575
2520/22	52,000.00	0.003382575
2521/23	52,000.00	0.003382575
2524	43,873.44	0.002853948
2525	43,873.44	0.002853946
2526/28	71,653.10	0.004661000
2527/29	71,653.10	0.004661000
2530/31	52,000.00	0.003382575
<b>Sixth Floor</b>		
2600/02	52,000.00	0.003382575
2601	43,873.44	0.002853946
2603	43,873.44	0.002853946
2604/06	52,000.00	0.003382575
2605/07	52,000.00	0.003382575
2608/10	52,000.00	0.003382575
2609/11	52,000.00	0.003382575
2612/14	52,000.00	0.003382575
2613/15	52,000.00	0.003382575
2616/18	52,000.00	0.003382575
2617/19	52,000.00	0.003382575
2620/22	52,000.00	0.003382575
2621/23	52,000.00	0.003382575
2624	43,873.44	0.002853946
2625	43,873.44	0.002853946
2626/28	71,653.10	0.004661000
2627/29	71,653.10	0.004861000
2630/31	52,000.00	0.003382575

## **Exhibit “D”**

### **Bylaws of the Ocean Resort Master Association**

**Please refer to Exhibit “2” of the First Amendment to the Declaration of  
Covenants, Conditions, Easements and Restrictions  
For Ocean Resort Master Association  
For  
The Amended and Restated Bylaws of the  
Ocean Resort Master Association**

Certified to be a true and correct copy of the document  
on 8/8/00 at 1:00 pm,  
in the Office of the Assistant Registrar of the Land Court.

State of Hawaii, as Document No. 2974211

Island Title Corporation

By [Signature]

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

McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
— pages

ITC 198298

TMK No. (2) 4-4-14-3 CPR No.s: [Not yet assigned]

## *Ocean Resort Master Association*

### DECLARATION OF ANNEXATION

THIS DECLARATION OF ANNEXATION is made on this 5<sup>th</sup> day of August, 2003, by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND INFORMATION

A. The Developer filed a document called the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946. That document is called the "Master Declaration" in this document. All terms defined in the Master Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "New Property"). The Developer desires to include the New Property in the Master Project.

## SUBMISSION OF THE PROPERTY TO THE MASTER DECLARATION

The Developer declares that from now on:

1. The New Property, and all rights of the Developer in it, is subject to the Master Declaration and the other Master Association Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the New Property to the Master Association Documents).

2. Each of the individual Apartments comprising the New Property is a Participating Property and is a part of the Master Project. In legal terms, the New Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any of the New Property must obey the Master Association Documents.

3. The Master Association Documents will be binding on the New Property. They will also be binding on, and are intended to benefit, these persons:

A. The Developer.

B. The Master Association.

C. Each Member.

D. Anyone else who owns all or any part of the New Property, or who has any rights or other interests in it or in any Membership in the Master Association. This includes, for example, all present and future Parcel Owners and their Lenders.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when someone obtains an interest in the Property or any Membership, or whether they ever signed the Master Association Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents. In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.


4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Resort Documents as the Resort Developer of any particular Resort

(including, for example, the Ocean Resort Villas Condominium), and (ii) as the Vacation Plan Developer of any particular Vacation Plan (including, for example, the Ocean Resort Villas Vacation Ownership Plan). The Developer alone may exercise the Developer's Reserved Rights under the Resort Documents and/or under the Vacation Plan Documents. Those rights will not be subject to the Master Association Documents, and they will not be transferred to the Master Association or to any of its Members, unless the Resort Developer or Vacation Plan Developer signs and records a document that clearly says so.

5. The Relative Valuation for each Apartment is listed in Exhibit B which is attached to and part of this document.

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

By: 

Name: Susan Werth

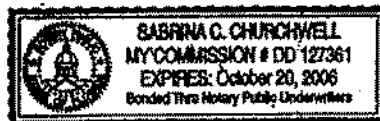
Its: Senior Vice President/Law, Secretary

STATE OF Florida )  
 ) ss:  
COUNTY OF Orange )

On this 5th day of August, 2003, before me personally appeared Susan Werth, Senior Vice President/Law, Secretary of SVO Pacific, Inc., a Florida corporation 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.

Sabrina C. Churchwell  
Name: SABRINA C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006



## EXHIBIT "A"

### FIRST:

Those certain one hundred and seventy-seven (177) Apartments, as listed in the attached Exhibit "B", of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238, as amended and restated by that certain Amended and Restated Declaration of Condominium Property Regime of Ocean Resort Villas, dated and recorded concurrently herewith (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;

prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

## **SECOND:**

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, and/or (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237 (herein with any amendments called the "Declaration of Merger"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger; and

2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and

**BEING THE PREMISES** described in the Transfer Certificate of Title No. 569,700 issued to SVO Pacific, Inc., a Florida corporation.

## **SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.

2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.

3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.

4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; (iv) the Condominium Map; and (v) the Declaration of Merger.

NOTE: For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is a part of the "Club Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

EXHIBIT B  
TO  
OCEAN RESORT MASTER ASSOCIATION  
DECLARATION OF ANNEXATION

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
<b>MAKANIKAI BUILDING</b>		
<b>First Floor</b>		
3101/03	52,000.00	0.003382575
3102	43,873.44	0.002853946
3104/06	52,000.00	0.003382575
3105/07	52,000.00	0.003382575
3108/10	52,000.00	0.003382575
3109/11	52,000.00	0.003382575
3112/14	52,000.00	0.003382575
3113/15	52,000.00	0.003382575
3116/18	52,000.00	0.003382575
3117/19	52,000.00	0.003382575
3120/22	52,000.00	0.003382575
3121/23	52,000.00	0.003382575
3124	43,873.44	0.002853946
3125	43,873.44	0.002853946
3126/28	71,653.10	0.004661000
3127/29	71,653.10	0.004661000
3130/31	52,000.00	0.003382575
<b>Second Floor</b>		
3200	43,873.44	0.002853948
3201/03	52,000.00	0.003382575
3202	43,873.44	0.002853946
3204/06	52,000.00	0.003382575
3205/07	52,000.00	0.003382575
3208/10	52,000.00	0.003382575
3209/11	52,000.00	0.003382575
3212/14	52,000.00	0.003382575
3213/15	52,000.00	0.003382575
3216/18	52,000.00	0.003382675
3217/19	52,000.00	0.003382575
3220/22	52,000.00	0.003382575
3221/23	52,000.00	0.003382575
3224	43,873.44	0.002853946
3225	43,873.44	0.002853946
3226/28	71,853.10	0.004661000
3227/29	71,853.10	0.004661000
3230/31	52,000.00	0.003382575
<b>Third Floor</b>		
3300	43,873.44	0.002853946
3301/03	52,000.00	0.003382575
3302	43,873.44	0.002853948
3304/08	52,000.00	0.003382575
3305/07	52,000.00	0.003382575
3308/10	52,000.00	0.003382575

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
3309/11	52,000.00	0.003382575
3312/14	52,000.00	0.003382575
3313/15	52,000.00	0.003382575
3316/18	52,000.00	0.003382575
3317/19	52,000.00	0.003382575
3320/22	52,000.00	0.003382575
3321/23	52,000.00	0.003382575
3324	43,873.44	0.002853946
3325	43,873.44	0.002853948
3326/28	71,853.10	0.004661000
3327/29	71,853.10	0.004661000
3330/31	52,000.00	0.003382575

#### Fourth Floor

3400	43,873.44	0.002853946
3401/3403	52,000.00	0.003382575
3402	43,873.44	0.002853946
3404/06	52,000.00	0.003382575
3405/07	52,000.00	0.003382575
3408/10	52,000.00	0.003382575
3409/11	52,000.00	0.003382575
3412/14	52,000.00	0.003382575
3413/15	52,000.00	0.003382575
3418/18	52,000.00	0.003382575
3417/19	52,000.00	0.003382575
3420/22	52,000.00	0.003382575
3421/23	52,000.00	0.003382575
3424	43,873.44	0.002853948
3425	43,873.44	0.002853946
3426/28	71,853.10	0.004661000
3427/29	71,853.10	0.004661000
3430/31	52,000.00	0.003382575

#### Fifth Floor

3500	43,873.44	0.002853946
3501/03	52,000.00	0.003382575
3502	43,873.44	0.002853948
3504/06	52,000.00	0.003382575
3505/07	52,000.00	0.003382575
3508/10	52,000.00	0.003382575
3509/11	52,000.00	0.003382575
3512/14	52,000.00	0.003382575
3513/15	52,000.00	0.003382575
3516/18	52,000.00	0.003382575
3517/19	52,000.00	0.003382575
3520/22	52,000.00	0.003382575
3521/23	52,000.00	0.003382575
3524	43,873.44	0.002853946
3525	43,873.44	0.002853946
3528/28	71,853.10	0.004661000
3527/29	71,853.10	0.004661000
3530/31	52,000.00	0.003382575

#### Sixth Floor

3600	43,873.44	0.002853946
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Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
3601/03	52,000.00	0.003382575
3602	43,873.44	0.002853946
3604/06	52,000.00	0.003382575
3605/07	52,000.00	0.003382575
3608/10	52,000.00	0.003382575
3609/11	52,000.00	0.003382575
3612/14	52,000.00	0.003382575
3613/15	52,000.00	0.003382575
3616/18	52,000.00	0.003382575
3617/19	52,000.00	0.003382575
3620/22	52,000.00	0.003382575
3621/23	52,000.00	0.003382575
3624	43,873.44	0.002853946
3625	43,873.44	0.002853946
3626/28	71,653.10	0.004661000
3627/29	71,653.10	0.004661000
3630/31	52,000.00	0.003382575

#### WHELAN BUILDING

##### First Floor

4100/01	52,000.00	0.003382575
4102/04	71,653.10	0.004661000
4103/05	71,653.10	0.004661000
4106/08	52,000.00	0.003382575
4107/09	52,000.00	0.003382575
4114/16	52,000.00	0.003382575
4115/17	52,000.00	0.003382575
4118/20	71,653.10	0.004661000
4119/21	71,653.10	0.004661000
4122/23	52,000.00	0.003382575

##### Second Floor

4200/01	52,000.00	0.003382575
4202/04	71,653.10	0.004661000
4203/05	71,653.10	0.004661000
4206/08	62,000.00	0.003382675
4207/09	52,000.00	0.003382575
4211	43,873.44	0.002853946
4213	43,873.44	0.002853946
4214/18	52,000.00	0.003382576
4215/17	52,000.00	0.003382575
4218/20	71,653.10	0.004661000
4219/21	71,653.10	0.004661000
4222/23	52,000.00	0.003382575

##### Thlrd Floor

4300/01	62,000.00	0.003382575
4302/04	71,653.10	0.004661000
4303/05	71,653.10	0.004661000
4306/08	52,000.00	0.003382576
4307/09	52,000.00	0.003382575
4311	43,873.44	0.002853946
4313	43,873.44	0.002853946
4314/16	52,000.00	0.003382575
4315/17	52,000.00	0.003382575

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
4318/20	71,653.10	0.004661000
4319/21	71,853.10	0.004661000
4322/23	52,000.00	0.003382675

#### Fourth Floor

4400/01	52,000.00	0.003382575
4402/04	71,653.10	0.004661000
4403/05	71,853.10	0.004661000
4406/08	52,000.00	0.003382575
4407/09	52,000.00	0.003382575
4411	43,873.44	0.002853946
4413	43,873.44	0.002853948
4414/16	52,000.00	0.003382575
4415/17	52,000.00	0.003382575
4418/20	71,653.10	0.004661000
4419/21	71,653.10	0.004861000
4422/23	52,000.00	0.003382575

#### Fifth Floor

4500/01	52,000.00	0.003382575
4502/04	71,653.10	0.004661000
4503/05	71,653.10	0.004661000
4506/08	52,000.00	0.003382575
4507/09	52,000.00	0.003382575
4511	43,873.44	0.002853946
4513	43,873.44	0.002853946
4514/16	52,000.00	0.003382575
4515/17	52,000.00	0.003382575
4518/20	71,853.10	0.004661000
4519/21	71,853.10	0.004681000
4522/23	52,000.00	0.003382575

#### Sixth Floor

4600/01	52,000.00	0.003382575
4602/04	71,653.10	0.004661000
4603/05	71,653.10	0.004661000
4606/08	52,000.00	0.003382575
4607/09	52,000.00	0.003382575
4611	43,873.44	0.002853946
4613	43,873.44	0.002853946
4614/16	52,000.00	0.003382575
4615/17	52,000.00	0.003382575
4618/20	71,653.10	0.004661000
4619/21	71,853.10	0.004681000
4622/23	52,000.00	0.003382575

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Certified to be a true and correct copy of the document  
recorded on 8-26-03 at 8:02 am.  
in the Office of the Assistant Registrar of the Land Court,  
State of Hawaii, as Document No. 2982410.

Island Title Corporation

By [Signature]

LAND COURT

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AFTER RECORDATION, RETURN BY MAIL ☒ ]

PICK-UP ☐ ]

McCorriston Miller Mukai MacKinnon LLP (CEP)  
Five Waterfront Plaza, Suite 400  
500 Ala Moana Blvd.  
Honolulu, Hawaii 96813

ITC 198298

This Document Contains 45 Pages

TMK No. (2) 4-4-14-3  
CPR Nos.: [Not assigned yet]  
TCT No.s [See Exhibit 1]

## ***Ocean Resort Master Association***

### **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR OCEAN RESORT MASTER ASSOCIATION**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR OCEAN RESORT MASTER ASSOCIATION (this "Amendment") is made this 21 day of August, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND

The Developer is developing the Ocean Resort Villas condominium (the "Condominium"). The Developer is also developing the Ocean Resort Villas Vacation Ownership Plan (the "Plan"). It consists of certain resort apartments in the Condominium. The Developer may also develop other condominium projects, hotels, vacation ownership or time share projects, and/or fractional ownership projects on land next to the Condominium or elsewhere in Ka'anapali North Beach.

The Condominium includes various amenities. The Developer wants to be sure that the owners and occupants of the resort apartments in the Condominium may use these amenities and

DECLARATION OF MASTER - FIRST AMENDMENT (8.21.03).DOC

perhaps certain other amenities. It also wants to provide a way to make these amenities available to owners and occupants of other projects located in Ka'anapali North Beach.

To accomplish this, the Developer created the Master Association. The Master Association owns, or will own, an apartment in the Ocean Resort Villas condominium. Certain amenities of the condominium are "limited common elements" of that apartment. This means that the Master Association, as the owner of that apartment, will have the right to use those amenities. The Master Association will, in turn, make these amenities available to the members of the Master Association and their guests.

The Master Association is a Hawaii nonprofit corporation. It is governed by its articles of incorporation, bylaws, and that certain Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association, dated September 5, 2001, in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2,737,946 (the "Master Declaration") and noted on the Transfer Certificates of Title listed in Exhibit "1" to this document. All terms defined in the Master Declaration will have the same meaning in this Amendment.

The Developer intends to register the Plan in the State of California. The California Department of Real Estate has required that the Developer make certain changes to the Master Declaration as a condition to the registration of the Plan. Section 19.1B.3) of the Master Declaration authorizes the Developer to change the Master Association Documents in connection with the registration of the Plan in California.

#### AMENDMENT

THE DEVELOPER HERE AND NOW AMENDS THE MASTER DECLARATION as follows:

- I. Section 8.3D of the Master Declaration is amended to read as follows:

**D. AVAILABILITY OF MASTER ASSOCIATION AMENITIES.** Master Association Amenities available at one time may not continue to be available, or available to Owners or other Occupants, in the future. The Board may determine which, if any, Master Association Amenities to add, continue, change, eliminate, replace, or upgrade; provided, that so long as the Developer holds a majority of the voting power of the Master Association, the Master Association shall make no material adverse change to the Master Association Amenities without the approval of the independent director elected pursuant to Section 6.4C of the Bylaws.

2. The Master Bylaws attached as Exhibit "D" to the Master Declaration are entirely deleted and the Amended and Restated Bylaws of the Ocean Resort Master Association attached to this Amendment as Exhibit "2" are substituted in their place.

### CERTIFICATE OF ADOPTION

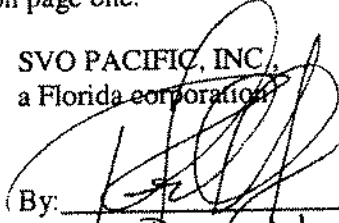
The Developer certifies that it has given notice of this Amendment, and a copy of it, to each governmental authority (other than Hawaii governmental authorities) having authority over the Plan as a result of the registration of it (or the Condominium, the Club, or SVN).

Attached as Exhibit "3" is an affidavit signed by the Developer and stating that approval or acceptance of this Amendment by any such governmental authority is not necessary.

The Master Declaration and Master Bylaws, as amended by this Amendment, are here and now ratified and confirmed and remain in full force and effect. The Developer signed this Amendment effective as of the date stated on page one.


Developer:

SVO PACIFIC, INC.,  
a Florida corporation

By:   
Name: Raymond L. Gellein, Sr.  
Its: Chairman

STATE OF FLORIDA       )  
                                  ) ss:  
COUNTY OF ORANGE    )

On this 21 day of August, 2003, before me personally appeared Raymond L. Gellein, Sr. 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.

  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida  
My Commission expires: 10/20/2006



45194.7

DECLARATION OF MASTER - FIRST AMENDMENT (8.21.03).DOC



RETURN BY MAIL ( ) PICKUP ( ) TO:

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

This document contains \_\_\_\_ pages.

Tax Map Key: 2<sup>nd</sup> Div , 4-4-14.3

AMENDED AND RESTATED BYLAWS

OF THE

*Ocean Resort Master Association*

Copyright © 1983, 1996, 2000, 2001, 2003 Charles E. Pear, Jr. &  
Starwood Vacation Ownership, Inc.

Exhibit 2

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## **1. GENERAL PROVISIONS.**

**1.1 THE MASTER ASSOCIATION; ITS NAME AND ADDRESS.** The "Association" is a non-profit Hawaii corporation. Its name is "Ocean Resort Master Association." Its principal office is at the Ocean Resort Villas condominium located at Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761. From time to time, the Board of Directors may choose a new principal office elsewhere in Hawaii.

**1.2 DEFINITIONS.** This Section defines certain words or phrases having special meanings in these Bylaws. Other terms are defined elsewhere in these Bylaws in order to put them in context. Defined terms will have these special meanings except where the context clearly requires otherwise. In addition to the terms defined in these Bylaws, the Declaration also defines a number of key words and phrases. Terms defined in the Declaration have the same meaning in these Bylaws unless the context clearly indicates otherwise.

**A. "DECLARATION"** means the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association", and all changes and additions properly made to it from time to time. It was recorded with these Bylaws.

**B. "ARTICLES"** means the "Articles of Incorporation of Ocean Resort Master Association". It also includes all changes and additions properly made to them from time to time.

**C. "MEMBER" and "OWNER"** mean the same thing.

**1.3 POWERS AND DUTIES OF THE MASTER ASSOCIATION.** Except as limited by the Declaration, the Articles, these Bylaws, or by law, the Master Association has and may exercise any or all of these powers and has each of these duties and obligations:

- ❖ It has the powers, duties and obligations granted to or imposed on the Master Association in the Declaration or these Bylaws.
- ❖ It has the powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.
- ❖ It has the powers, duties and obligations of a planned community association as provided in Chapter 421J, Hawaii Revised Statutes.
- ❖ It has any other powers, duties and obligations that it has by law or that are necessary or helpful to carry out the functions of the Master Association under the Declaration or these Bylaws, or that otherwise promote the general benefit of the Owners.

**1.4 WHO MUST OBEY THESE BYLAWS.** These Bylaws apply to anyone who now or later owns all or any part of the Master Project or has any rights or other interests in all or any

part of the Master Project, or in any Membership in the Master Association. This includes, among others (i) all present and future Owners, Lenders, Exchange Users, Occupants, and Guests, and (ii) all of their officers, directors, employees and agents. Anyone who has or acquires any interest in the Property or in any Membership, or who uses any Unit or the Common Area, automatically accepts, approves and agrees to obey the Master Association Documents.

**1.5 CONFLICTS AMONG THE DOCUMENTS.** The Declaration controls over any inconsistent provision in the Articles. The Declaration and the Articles control over any inconsistent Bylaw. If any part of the Master Association Documents is inconsistent with any law that applies, the law will control.

## **2. MEMBERSHIP**

**2.1 QUALIFICATIONS FOR MEMBERSHIP.** "Owner" is defined in the Declaration. Anyone (including the Developer) who is the Owner of a Parcel automatically is a Member of the Master Association. If more than one person is the "Owner" of a Parcel, each of them is a Member. An Owner will be a Member for so long as he or she is the Owner of a Parcel. A person's Membership ends automatically when he or she is no longer the "Owner" of a Parcel, such as when an Owner deeds it to someone else. Being the Owner of a Parcel is the sole qualification for Membership.

**2.2 MEMBERSHIP GOES WITH THE PARCEL.** Anyone who transfers a Parcel also automatically transfers the Membership for that Parcel to its new Owner. An Owner cannot separate his or her Master Association Membership from his or her Parcel. He or she cannot sell, transfer, mortgage or otherwise deal with it separately from the Parcel. Any attempt to do so will not be effective. It will be void. There are two exceptions:

**A.** An Owner may Pledge or transfer voting rights to a Lender having a mortgage on his or her Parcel; and

**B.** The seller under an Agreement of Sale may retain legal title and the right to vote on certain matters. The buyer may transfer his or her entire interest under the Agreement of Sale, but nothing less.

## **3. ASSESSMENTS AND PERSONAL CHARGES**

**3.1 MEMBERSHIP ASSESSMENTS AND PERSONAL CHARGES.** Each Member must pay Assessments and Personal Charges as provided in the Declaration. The Board will set, levy, collect and enforce the Assessments and Personal Charges as provided in the Declaration.

**3.2 ENFORCEMENT; LIEN RIGHTS.** The Master Association has the lien rights described in the Declaration to enforce and collect Assessments and Personal Charges. The Board can

enforce those rights in the manner described in the Declaration. The Board also has and may use all other rights and remedies available under the Declaration or by law or in equity.

**3.3 FISCAL YEAR.** The Master Association's fiscal year ends on December 31st of each year unless the Board chooses a different date.

#### **4. MEMBERSHIP RIGHTS AND PRIVILEGES**

**4.1 MEMBERS' RIGHT AND DUTIES.** Each Member has the rights, duties and obligations described in the Master Association Documents.

**4.2 AUTHORITY OF MEMBERS.** Unless the Board approves it, no Member can exercise any powers or perform any acts delegated by the Master Association Documents to the Master Association or the Board.

**4.3 MASTER ASSOCIATION RULES.** The Managing Agent may adopt, publish and enforce such rules and regulations as it may deem advisable relating to the Common Property or use by Occupants of the common elements or common areas of any Resort. These are called the "Master Association Rules". The Developer adopted the initial rules. The Managing Agent may change the Master Association Rules from time to time with the approval of the Board. The Board cannot withhold its approval unreasonably. At any meeting of the Master Association, a Majority of the Owners may change the Master Association Rules so long as the notice of meeting stated that the change would be considered at the meeting. So long as the Developer owns, or holds mortgages on, at least fifty Parcels, no change to the Master Association Rules will be effective without the Developer's written consent.

**4.4 SUSPENSION OF PRIVILEGES; FINES.** If any Member or the Member's Guest violates the Master Association Documents (including but not limited to the failure of the Member to pay any Assessment or Personal Charge on time), the Master Association may charge him or her a money penalty and/or suspend his or her rights under the Master Association Documents. For example, the Board may suspend a Member's right to participate in any vote under the Master Association Documents. The Declaration contains detailed requirements that must be satisfied in order for the Master Association to do these things. Each of those requirements is made a part of these Bylaws, just as if they were repeated here. The Board may delegate to the Managing Agent the power to carry out any disciplinary actions imposed by the Board. The Board may also delegate to the Managing Agent the authority to perform the Board's disciplinary duties. This includes the right to conduct hearings and to fine a Member and/or to suspend a Member's right to use the Master Association Amenities when the Owner has not paid all Assessments or Personal Charges due, and temporarily for gross misconduct or similar reasons.

#### **5. MEETINGS OF MEMBERS**

**5.1 MEETING OF THE MASTER ASSOCIATION.** Subject to Section 5.14, and unless otherwise expressly authorized by the Master Association Documents:

A. All action required or permitted to be taken by the Members may only be taken at a meeting of the Master Association;

B. The Master Association must give proper notice of the meeting; and

C. Enough Members must attend to have a quorum.

**5.2 ANNUAL MEETINGS.** The Master Association must hold the first annual meeting of the Master Association within twelve (12) months from the Starting Date. In the years after that, the Master Association will hold an annual meeting each year on a day that the Board chooses. If the Board does not choose a meeting date by the first day of September of each year, then the meeting will be held at the Ocean Resort Villas condominium at 11:00 a.m. on the third Wednesday in October. The Developer may set the date and time for the first annual meeting. At each annual meeting the Members:

A. Will elect, by written ballot, Directors as provided in these Bylaws; and

B. May transact any other Master Association business that properly comes before them.

**5.3 SPECIAL MEETINGS.** A special meeting of the Master Association may be called at any time for any one or more purposes. It may be called by: (i) the Master Association President; (ii) a majority of the Directors; (iii) the Developer; or (iv) a petition signed by Members holding at least five percent (5%) of the total voting power of all Members (not counting the Developer's votes). The Members may transact only that business the general nature of which is described in the notice of the special meeting.

**5.4 MEETING PLACE.** The Master Association will hold its meetings at the Ocean Resort Villas condominium unless the Board chooses another place.

#### **5.5 NOTICE OF MEETINGS AND OTHER NOTICES.**

A. **NOTICE REQUIRED.** Notice must be given for each meeting of the Master Association, whether it is an annual or special meeting.

B. **CONTENTS.** The notice must meet these requirements:

- ❖ It must be in writing.
- ❖ It must state the authority for calling the meeting.
- ❖ It must state the place, date and time of the meeting.

- ❖ It must state whether it is an annual or special meeting. If it is a special meeting, it must state the matter or matters for which the meeting was called.
- ❖ It must include the name, address and a brief biographical sketch of each Member who has announced his or her intention to stand for election to the Board (but only if Directors are to be elected at the meeting).
- ❖ It must list the items on the agenda. The agenda must include anything that, as of the day when the notice is prepared: (i) the Board expects to present; or (ii) a Member expects to present, but only if the Member has given written notice of it to the Board. Note: A Member may still present any other proper business at any annual meeting unless notice of that business is specifically and expressly required by another part of the Master Association Documents.

**C. STANDARD PROXY FORM.** The Board may include with the notice a standard proxy form authorized by the Master Association. It may also include any other necessary or helpful information

**D. WHEN NOTICE MUST BE SENT.** Notice of each annual and special meeting must be given at least thirty (30) days but not more than sixty (60) days before the meeting date; provided that if Chapter 414D, Hawaii Revised Statutes, permits it and if the Board adopts a resolution permitting it, the notice may be given up to ninety (90) days before the date of the meeting.

**E. WHO MUST SEND THE NOTICE.** The Secretary will give the notice except when these Bylaws provide otherwise. The Secretary may delegate this task to the Managing Agent. If neither the Secretary nor the Managing Agent sends the notice within thirty (30) days after an officer of the Association receives a proper demand for a special meeting, a person or persons signing the demand may set the time and place of the meeting and give notice in the manner required by law and these Bylaws.

**F. WHO IS ENTITLED TO NOTICE.** Notice must be sent to each person entitled to vote as of the Record Date. Notice must also be sent to each holder, insurer or guarantor of a mortgage on a Parcel if, as of the Record Date, it has made a proper request for copies of such notices.

**G. DELIVERY.** The notice must be given: (a) by delivering it personally; or (b) by mailing it by first-class mail, postage prepaid or, (c) if the Planned Community Association Act or the Hawaii Nonprofit Corporation Act explicitly permit it, by posting notice on a world wide web site or by sending it by email. Any notice given by mail or email must be sent to the address listed in the Master Association's record of ownership.

**1) CHANGE IN ADDRESS.** Each Member and anyone who holds, insures or guarantees a mortgage must

inform the Master Association of any change in address at once.

**2) MULTIPLE OWNERS.** If more than one person is the Owner of a Parcel, notice to all Owners of that Parcel may be given by providing notice to any one of them.

**H. NOTICE DOES NOT HAVE TO BE RECEIVED.** If notice is given in the manner required by this Section 5.5, (i) nobody entitled to notice can object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid.

#### **I. WAIVER OF NOTICE.**

**1) ATTENDANCE.** Anyone who attends a meeting, in person or by proxy, gives up (in legal terms, "waives") any right to claim that notice was not given properly unless, when the meeting begins, he or she objects to holding it because notice was not given properly.

**2) WRITTEN WAIVER.** A Member may waive notice of any Master Association meeting by signing a document (i) that waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. All such documents must be filed with the Master Association records and made a part of the minutes of the meeting.

**3) WAIVER BY INACTION.** A Member automatically waives notice of any Master Association meeting if he or she does not file a written objection with the Secretary or the Managing Agent within fifteen (15) days after he or she receives written notice of any action taken at an Association meeting. A copy of the minutes, among other things, will be treated as written notice.

**4) EFFECT OF WAIVER.** If a Member waives notice under this Section 5.5I, the fact that notice was not given to that Member will not, by itself, make the meeting or any proceedings at the meeting invalid.

**J. WHO MAY OBJECT TO NOTICE.** A person entitled to receive notice may object if notice was not sent to him or her. A person cannot object that notice was not sent to someone else.

#### **5.6 RECORD DATE FOR NOTICES AND VOTING.**

**A. PURPOSE OF THE RECORD DATE.** The "Record Date" is the date used to determine who is entitled to receive notice and to vote at Association meetings or on any action to be taken without a meeting. The Record Date is also used to determine who may object to and waive lack of notice and exercise other such rights for or as a Member.

**B. SETTING THE RECORD DATE.** The Board may choose the Record Date. The Record Date for a meeting may not be more than seventy (70) days before the meeting date. The Record Date for action without a meeting may not be

more than thirty (30) days before the ballot or request for consent or approval is sent. Unless the Board chooses another date, the Record Date will be the date and time when the mailing list is prepared, or, if notice is waived, the last business day before the day of the meeting. If a meeting is adjourned and a new notice must be given, then a new Record Date must be set.

**C. EFFECT OF SETTING RECORD DATE.** When a Record Date is set, only the Members of Record on that date (or someone authorized to act for them) have the right to notice and to vote at a meeting or on a ballot or other request for consent or approval. This rule applies despite any issuance or transfer of a Membership in the records of the Master Association after the Record Date. A person holding a Membership as of the Record Date is considered to be the "Member of Record". A person who becomes a Member after the Record Date can, of course, act for the Member of Record by simply obtaining a proxy from the Member of Record. When these Bylaws refer to the "Owner" or "Member" with respect to notice (including waivers of notice) and voting, it means the Member of Record or someone authorized to act for the Member of Record.

**5.7 QUORUM.** The term "quorum" refers to the number or percentage of Owners who must be present at a meeting to conduct business. For all meetings of the Master Association, fifteen percent (15%) of the Owners (not counting the votes and Parcels of the Developer) must be present to have a quorum unless a different number is required or allowed by law, the Declaration or another part of these Bylaws.

**A. WHEN A MEMBER IS "PRESENT".** Members are "present" at a meeting if: (i) they attend it in person, or (ii) their Proxy Holder attends it for them, or (iii) someone else permitted by the Declaration or these Bylaws attends it for them.

**5.8 ASSOCIATION ACTION.** At any Association meeting at which a quorum is present, the acts and decisions of a Majority of the Owners Voting will be regarded as the acts and decisions of the Master Association, and will be binding on all Members for all purposes, unless a different percentage is required or allowed by law or by the Declaration or these Bylaws. If Owners of less than one-third of the votes are present, however, the Master Association may vote on only those matters of business, the general nature of which was described in the notice of meeting.

**5.9 RULES FOR CONDUCTING MEETINGS.** All meetings must be conducted in accordance with the latest available edition of Roberts Rules of Order.

**5.10 ADJOURNING ASSOCIATION MEETINGS.** Any meeting of the Master Association may be "adjourned" (temporarily ended, to resume later) to a date and time set by the vote of a Majority of the Owners Voting, whether or not a quorum is present. If no quorum is present, then the meeting must be adjourned *sine die*, which means that it cannot be resumed at a later date. If a meeting is adjourned for thirty (30) days or

more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 5.4. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Master Association may do anything that it could have done at the meeting as originally called. So long as the Developer owns, or holds mortgages on, at least fifty (50) Parcels, the Master Association cannot adjourn a meeting for more than seven days without the written consent of the Developer.

## **5.11 INSPECTORS FOR VOTING AND PROXIES.**

**A. APPOINTMENT.** At least ten (10) days before any meeting of the Master Association or before any ballot is sent to the Members pursuant to Section 5.14, the Board will appoint inspectors of the voting at the meeting, including voting for the election of Directors. The Board may appoint either one or three inspectors of voting. If the Board fails or chooses not to do so, then the Managing Agent will be the inspector of the voting.

**B. DUTIES.** The voting inspectors will have these duties:

- 1) They will determine the authenticity, validity and effect of proxies, Pledges, and other documents purporting to give any person the right to represent, act and vote for a Member.
- 2) They will receive votes, ballots and consents.
- 3) They will hear and determine all challenges, questions and conflicts relating in any way to the right to cast votes.
- 4) They will count and tabulate all votes and consents.
- 5) They will decide when the polls will close.
- 6) They will determine the results of all votes and elections.
- 7) They may do anything else appropriate to conduct the vote or election fairly as to all Members.

If there is more than one inspector, the decision, act or certificate of a majority of them will be effective. Any facts stated in any effective report or certificate are presumed to be accurate.

## **5.12 VOTING.**

**A. NUMBER OF VOTES.** Some parts of the Participating Property may be part of a Vacation Plan. Other parts may not. To accommodate this, the Owners will vote in this way:

1) If Parcel consists of a single Unit (such as a condominium apartment) the Owner will have one hundred and four (104) votes.

2) If a Parcel includes more than one whole Unit, then the Owner will have one hundred and four (104) votes for each Unit on that Parcel.

3) If the Vacation Owners in a particular Vacation Plan own undivided interests in the real property included in that Vacation Plan, then each Vacation Owner will be entitled to a vote equal to the undivided interest of the Vacation Interest multiplied by the amount determined under Subsections 1) or 2), above, whichever is appropriate.

For example, Owners of Vacation Interests in the Ocean Resort Villas Vacation Ownership Plan own either a 1/52<sup>nd</sup> or a 1/104<sup>th</sup> interest in a condominium apartment. In their case:

(a) A Vacation Owner who owns a 1/52<sup>nd</sup> interest in a Unit will have two (2) votes.

(b) A Vacation Owner who owns a 1/104<sup>th</sup> interest in a Unit will have one (1) vote.

B. If a Parcel is owned by more than one person, its co-Owners do not each receive separate votes. Instead, the co-Owners of that Parcel must share the votes for that Parcel. For example, only one vote may be cast for each Vacation Interest that includes a 1/104<sup>th</sup> interest in a Unit, regardless of the number of co-Owners of that Vacation Interest. Likewise, only two votes may be cast for each Vacation Interest that includes a 1/52<sup>nd</sup> interest in a Unit, regardless of the number of co-Owners of that Vacation Interest.

Where the Master Association Documents refer to a certain number or percentage of Members entitled to vote, this Section 5 and Section 4.4 govern the total number of available votes, the number of votes an Owner is entitled to cast, and how to cast the vote of each Parcel having more than one Owner.

### C. WHO MAY VOTE.

1) **GENERALLY.** Votes may be cast in person or by proxy by an Owner listed in the Master Association's records of ownership or by anyone lawfully acting for or on behalf of the Owner.

2) **LEGAL REPRESENTATIVES.** Sometimes a Parcel may be owned or controlled by a person acting as a personal representative, guardian, or trustee. At any meeting of the Master Association, that person may cast the vote of each Parcel held by him or her in this capacity. He or she may vote in person or by proxy. It does not matter whether the Master Association's record of ownership shows that the personal representative, guardian, or trustee owns or controls the Parcel so long as that person presents evidence satisfactory to the Secretary that he or she owns or controls it in that capacity.

3) **AGREEMENT OF SALE.** A person buying a Parcel under a recorded Agreement of Sale has the rights of an Owner. This includes the right to vote except on matters where, under the Agreement of Sale and as permitted by law, the seller expressly retains the right to vote.

4) **PLEDGES.** Except as otherwise limited by law, an Owner may transfer or pledge the Owner's voting rights to someone else in a mortgage or in any other lawful document. Or a court order may transfer an Owner's voting rights to someone else. For simplicity, these arrangements are called a "Pledge" in this paragraph, and the person to whom the voting rights are transferred is called the "Proxy Holder". If a true copy of a document containing a Pledge is filed with the Secretary before the Record Date for a meeting, only the Proxy Holder may vote in person or by proxy at that meeting. The Proxy Holder may, however, substitute someone else to vote for it as the Proxy Holder. The Proxy Holder will have the right to vote at all later meetings until someone files with the Secretary satisfactory evidence that the Pledge has ended or has been released.

D. **CO-OWNER DISPUTES.** If a Parcel is owned by more than one person and they cannot agree on how to cast the vote or votes of that Parcel, they lose their right to vote on the matter in question. Fractional (split) votes are not allowed. When one or more co-Owners of a Parcel casts its vote, it is conclusively presumed for all purposes that he or she acted with the authority and consent of all its co-Owners unless (i) another co-Owner files a written objection with the Secretary or the chairperson of the meeting, or (ii) another co-Owner casts an inconsistent vote.

5.13 **PROXIES.** An Owner may appoint someone else to represent the Owner at meetings of the Master Association.

A. **PROXY REQUIREMENTS.** To be effective, the appointment must be stated in a document (a "proxy") signed by the Member and filed as required by Section 5.13B. Any proxy distributed by the Master Association to the Members must be in the form and contain any information required by law. It must also meet these requirements:

1) It must state the name of the person picked to represent the Owner (the "Proxy Holder").

2) It must provide a way for the Member to indicate whether he or she approves or disapproves each matter or group of matters of business proposed to be considered.

3) It must provide that if the Member makes a choice, the vote of the Member will be cast according to the choice(s) made.

B. **FILING OF PROXY.** A proxy, to be valid, must be filed with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day before the date of the meeting; provided that if the Planned Community Association Act permits it, the Board may require that proxies be filed at

an earlier date not to exceed seven (7) business days before the date of the meeting.

**C. USE OF DUPLICATES OF PROXIES.** A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used instead of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction must be a complete reproduction of the entire original proxy.

**D. DURATION.** Unless otherwise provided in the proxy, no proxy will be valid after eleven months from the date it is signed.

**E. PROXY COUPLED WITH AN INTEREST.** The requirements of Sections 5.13A through 5.13D do not apply to voting rights transferred by an Agreement of Sale under 5.12C.3) or a Pledge under Section 5.12C.4).

**5.14 ACTION WITHOUT A MEETING.** Except as otherwise limited by law, any action that may be taken at a meeting of the Members (such as, for example, electing Directors) also may be taken without a meeting and without advance notice if the action is taken in the manner permitted by Section 414D-104, Hawaii Revised Statutes, or if each of these requirements are met:

**A.** A written ballot must be sent to each Member entitled to vote. The ballot must be sent as though it were a notice of meeting and the rules of Section 5.5F will apply.

**B.** The ballot form must meet each of these requirements:

- ❖ It must state the proposed action and provide a way for the Member to indicate whether he or she approves or disapproves the proposal.
- ❖ It must state the deadline by which the ballot must be returned to count.
- ❖ It must provide a reasonable time for the ballot to be returned.

**C.** The number of ballots cast within the time period specified must equal or exceed the quorum required to be present at a meeting authorizing the action.

**D.** The number of approvals must equal or exceed the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots cast.

An Owner may cancel or change his or her ballot by sending a letter or other document to the Master Association. It will take effect when the Secretary receives it, and only if it is received before the deadline for returning ballots.

## **6. BOARD OF DIRECTORS**

**6.1 NUMBER OF DIRECTORS.** The Board of Directors will consist of five (5) persons.

**A.** The Master Association may increase or decrease the number of Directors from time to time by amending these Bylaws.

**B.** The number of Directors for the Association of Apartment Owners of the Ocean Resort Villas condominium may increase or decrease. This might happen if the developer of that Condominium builds more Apartments. It might also happen if that condominium is merged for administrative purposes with another condominium as permitted under the Declaration of Merger. If this happens, the Board may amend these Bylaws so that the Master Association has the same number of Directors as the Association of Apartment Owners of the Ocean Resort Villas condominium. The Board may do this without a vote by the Owners. So long as the Developer owns, or holds mortgages on, at least 50 Parcels, the Board must have the consent of the Developer before it changes the number of Directors under this Subsection 6.1B.

**C.** In no case may the number of Director positions be less than three (3) nor more than five (5).

**6.2 POWERS AND DUTIES OF THE BOARD.** Except as limited by law or by the Master Association Documents, the Board may exercise all powers of the Master Association and must perform all of its duties. The Board may not, however, take any action that, by law or under the Master Association Documents, must be taken, authorized or approved by the Members of the Master Association, or by some part or percentage of them. The Board may delegate its powers to the officers of the Master Association or to one or more professional managers hired by the Master Association, including but not limited to the Managing Agent. This authority is subject to any limits contained in the Declaration or these Bylaws. The Board may not act on behalf of the Master Association to amend the Declaration or to terminate the Master Project.

### **6.3 QUALIFICATIONS OF DIRECTORS.**

**A.** All Directors, except for Directors appointed by the Developer, must be Owners, co-Owners, or an officer of any corporate Owner, or in the case of fiduciary Owners, the fiduciary or officers of corporate fiduciaries. For purposes of this Section:

- ❖ The partners in a general partnership and the general partners of a limited partnership are considered to be the Owners of a Parcel owned by their partnership.
- ❖ The general partners of a limited liability partnership are considered to be the Owners of a Parcel owned by their partnership.

- ❖ The managers of a manager-managed limited liability company are considered to be the Owners of a Parcel owned by such a company.
- ❖ The members of a member-managed limited liability company are considered to be the Owners of a Parcel owned by such a company.

**B.** So long as the Planned Community Association Act prohibits it, there can be no more than one representative on the Board from any one Parcel. This rule does not apply to the Developer.

**C.** No person may serve as a Director for more than six (6) years in a row. No person may be elected or appointed as a Director if serving out his or her full term as a Director would result in a violation of the rule against serving more than six years in a row. This Subsection 6.3B does not apply to Representatives of the Developer who serve as Directors.

#### **6.4 ELECTION OF DIRECTORS.**

**A. ELECTION.** The first Directors will be any persons appointed by the Developer. They will serve until their replacements are elected at the first meeting of the Master Association and qualified. At each annual meeting of the Master Association after the first meeting, and at any special meeting called for that purpose, the Members will elect a new Director to replace each Director whose term has expired or to fill any vacancy caused by any increase in the number of Directors. Directors will be elected by secret ballot.

**B. CUMULATIVE VOTING.** When electing Directors, an Owner may cumulate his or her votes. This means the Owner can give to one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors being elected multiplied by the number of votes which that Owner has the right to cast. The candidates who receive the highest number of votes, up to the number of available positions, are elected.

**C. INDEPENDENT DIRECTOR.** So long as the Developer holds a majority of the voting power of the Master Association, at least one Director will be elected solely by the votes of the Members, other than the Developer, who are Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan. At the first annual meeting of the Master Association, one Director will be elected solely by the Members (other than the Developer) who are Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan. At each later election of Directors, one Director will be elected solely by the Members, other than the Developer, who are Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan if there is then no such Director remaining on the Board. The election of this Director will be handled according to the following special election procedures:

- 1) The notice of the meeting must state that one Director will be elected by Members, other than the

Developer, who are the Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan.

2) Members who are the Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan (other than the Developer) will then elect that Director by written ballot before the regular election of the remaining Directors. The rest of the Directors will then be elected by all Members according to the regular election procedures set forth in these Bylaws.

#### **6.5 NOMINATIONS.**

**A. BY THE BOARD.** Each year, the Board will will nominate people for election to the Board at the annual meeting. The Board must do so before the Secretary gives notice of the annual meeting. The Secretary will send to each Member, with the notice of meeting required by Section 5.4, a list of the people nominated.

**B. FLOOR NOMINATIONS.** Any Member may nominate one or more candidates during an Association meeting.

#### **6.6 TERM OF OFFICE OF ELECTED DIRECTORS.**

**A.** Five (5) Directors will be elected at the first meeting of the Master Association. The term of office of the three (3) Directors receiving the most votes will end when the second annual meeting after their election ends. The term of office of the remaining two (2) Directors will end when the next annual meeting ends.

**B.** After the term of office of each of the initial elected Directors expires, each replacement Director will hold office until the end of the third annual meeting after his or her election. This should be a term of about three (3) years.

**C.** Each Director will continue to have the powers and duties of the office until someone else is elected or appointed to replace him or her.

#### **6.7 REMOVING DIRECTORS.**

##### **A. BY VOTE OF THE OWNERS.**

1) The Master Association may remove any one or more Directors from office, with or without cause, at any annual meeting or at any special meeting called for that purpose. Any Director whose removal is proposed must have an opportunity to be heard at the meeting. A Director will be removed if a Majority of the Owners Voting vote to remove him or her; provided that:

(a) Unless the entire Board is removed, no individual Director may be removed if the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect a Director if voted cumulatively (see Section 6.4B) at an election at which the same number of votes were cast and the entire number of Directors authorized to be

elected at the most recent election of the Directors were then being elected.

(b) A Director who was elected solely by the votes of the Members, other than the Developer, who are Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan according to the special election procedure set forth in Section 6.4C, may be removed only by the vote of the Members (other than the Developer) who are Owners of Vacation Interest in the Ocean Resort Villas Vacation Ownership Plan.

2) If a Director is removed, the Master Association must then and there elect a replacement Director. The replacement will hold office for the rest of the term of the person replaced.

**B. BY VOTE OF THE DIRECTORS.** If any Director misses three (3) regular Board meetings in a row, the Board, by a vote of a majority of the other Directors, may remove him or her. The Board may do this at the third or any later meeting. But if the Director attends a Board meeting before being removed, the Director must miss at least three (3) more regular meetings in a row before the Board can remove him or her.

#### 6.8 VACANCIES.

**A. FILLING VACANCIES.** Vacancies in the Board caused by any reason other than removal of a Director by the Master Association may be filled by the vote of a majority of the remaining Directors, even if there are not enough Directors remaining to have a quorum. A vacancy exists when any authorized position of Director is not filled. For example, a vacancy exists when:

- ❖ A Director dies or resigns. Unless required by its terms, a resignation does not have to be accepted by the Board to be effective. Instead, it will take effect as of the time stated. If no time is stated, it will take effect when the Board receives it. If a resignation will take effect at a later date, a majority of the remaining Directors can elect a replacement to take office when the resignation takes effect.
- ❖ A Director is removed by the other Directors. See Section 6.7B.
- ❖ A Director is no longer qualified to serve as a Director. See Section 6.3.
- ❖ The Members increase the authorized number of Directors but the Members fail to fill the new positions at the same meeting.
- ❖ An authorized position is not filled for any other reason by a properly elected Director.

**B. TERM OF OFFICE OF APPOINTED DIRECTORS.** Except as otherwise required by law, a replacement Director will hold office for the rest of the term of the person replaced.

A Director appointed because the Members fail to elect a Director will hold office for the term that he or she would have held it if he or she had been elected by the Members.

**6.9 PLACE OF BOARD MEETINGS.** Board meetings will be held at or near the Ocean Resort Villas condominium unless the Board decides that meeting elsewhere would significantly reduce the costs to the Master Association and/or any inconvenience to the Directors.

**6.10 ANNUAL MEETING OF THE BOARD.** Immediately after each annual meeting of the Master Association, the Board must hold a regular meeting at the same place. This meeting will be held to organize the Board. The Board must also elect any required officers. The Board may transact any other business. Except as otherwise required by law, no call or notice of this meeting is necessary.

#### 6.11 OTHER REGULAR MEETINGS.

**A. MEETING REQUIREMENTS.** In addition to the annual meeting, the Board must hold other regular meetings. The number of meetings and the time and place of these meetings will be set from time to time by a majority of the Directors.

**B. NOTICE.** Notice of regular Board meetings must be given to each Director. The notice may be given personally or by mail, email, telephone, fax, or messenger service. It must be given at least thirty (30) days before the date of the meeting. If the notice is mailed, it will be deemed given and received seventy-two (72) hours after it is put in the United States mail. If the notice is faxed, it will be deemed given upon electronic confirmation of delivery by the fax machine at the fax phone number shown on the Master Association's records.

**C. WHEN NOTICE MUST BE RECEIVED.** If notice is not given in writing, then it must actually be received to be effective. In all other cases, if notice is given in the manner required by this Section, (i) Directors cannot object or complain if they do not actually receive the notice; and (ii) the fact that they did not actually receive the notice will not, by itself, make the meeting or any proceedings at the meeting invalid.

#### 6.12 SPECIAL MEETINGS.

**A. HOW CALLED.** The President or any two Directors may call a special Board meeting for any purpose and at any reasonable time.

**B. NOTICE.** Except in an emergency, as determined by the President, notice of special meetings of the Board must be given in the same manner as notice of a regular meeting except that: (i) it must be given at least fifteen (15) days, instead of thirty days, before the meeting date, and (ii) the notice must state the nature of the special business to be considered. The provisions of Subsection 6.11C will also apply to notices of special meetings.

### 6.13 WAIVER OF NOTICE.

**A. ATTENDANCE.** Any Director who attends a meeting, in person or by proxy, gives up (in legal terms "waives") any right to claim that notice was not given properly unless, when the meeting begins, that Director objects to holding it because notice was not given properly.

**B. IN WRITING.** A Director may waive notice of any Board meeting by signing a document that (i) waives notice, or (ii) that consents to or approves the action taken at the meeting, or (iii) that approves the minutes of the meeting. If this happens, the fact that notice was not given to that Director will not, by itself, make the meeting or any proceedings at the meeting invalid. All such documents must be filed with the Master Association records and made a part of the minutes of the meeting.

**6.14 QUORUM.** When referring to the Board, "*quorum*" means the number or percentage of Directors who must be present at a meeting for the Board to conduct business. A majority of all Directors will be a quorum of the Board. "All Directors" means all the authorized number of Directors, even if a position is not filled.

**A. WHEN A DIRECTOR IS "PRESENT".** Directors are "present" at a Board meeting if they attend it in person or by telephone or other similar equipment as provided in Section 6.18. No Director can vote by proxy at Board meetings.

**6.15 DECISIONS OF THE BOARD.** At any Board meeting at which a quorum is present, the acts and decisions of a majority of the Directors present will be regarded as the acts and decisions of the Board unless a different percentage is required or allowed by law or by the Declaration or these Bylaws.

**6.16 RULES FOR CONDUCTING BOARD MEETINGS.** All meetings of the Board must be conducted in accordance with the latest available edition of Robert's Rules of Order.

### 6.17 MEMBERS MAY ATTEND MOST BOARD MEETINGS.

**A. OPEN MEETINGS.** All Board meetings are open to all Members of the Master Association. Members who are not on the Board may participate in any deliberation or discussion unless a majority of a quorum of the Board vote not to let them do so. If there is not enough room for all the Members wishing to attend at the place of the meeting, the Board must adjourn and reconvene the meeting as soon as possible in a place that has enough room. Any Member may ask to be connected to any meeting being held by telephone conference call or similar device. If the number of Members asking to be connected makes the meeting impractical or impossible, the meeting may not be held by telephone conference or similar device.

**B. PRIVATE MEETINGS.** The Board, with the approval of a majority of a quorum of the Directors, may adjourn a meeting and reconvene in "*executive session*". This means that only Board Members and persons invited by the Board

may attend. In executive session the Board may discuss and vote on personnel matters, lawsuits and other legal proceedings in which the Master Association is or may become involved, other matters of a similar nature, and as may be necessary to protect the attorney-client privilege of the Master Association. The general nature of any and all business to be considered in executive session must first be announced in open session.

**6.18 MEETINGS BY TELEPHONE.** Regardless of any other provision of these Bylaws, and unless the law provides otherwise, one or more Directors may take part in any meeting by telephone or other communications equipment. They may do so only if everyone authorized to participate in and actually participating in the meeting (including Owners who are not on the Board and who may listen and/or participate pursuant to Section 6.17A) can hear and be heard by each other. The Board may carry on all business within the Board's authority as if everyone participating by telephone or other communications equipment were physically present at the meeting.

**6.19 ADJOURNING BOARD MEETINGS.** Any meeting of the Board may be "*adjourned*" (temporarily ended, to resume later) to a date and time set by the vote of a majority of the Directors voting, whether or not a quorum is present. If a meeting is adjourned for fifteen (15) days or more, or if the law requires a new notice, then a new notice must be given in the manner required by Section 6.11B or 6.12B. In all other cases, notice may be given by simply announcing it at the meeting being adjourned. When an adjourned meeting is resumed, and if a quorum is present, the Board may do anything that it could have done at the meeting as originally called.

**6.20 ACTION WITHOUT A BOARD MEETING.** Any action that the Board is required or permitted to take, by law or by the Master Association Documents, also may be taken without a meeting if all Directors consent in writing to that action. Each written consent must describe the action taken, be signed by the Director, and be included in the minutes of the meetings of the Board. Any action taken in this way has the same force and effect as a unanimous vote of the Directors.

**6.21 CONFLICTS OF INTEREST.** Except as otherwise provided by law, any Member of the Board, any officer of the Master Association, and any Member of any Association committee (i.e. an "*interested party*") may be present at any Board or committee meeting, may be counted for quorum purposes, and may participate in the discussion of and voting on any matter on which the interested party, or any entity in which the interested party has any financial or other special interest, has an interest; provided that:

**A.** The interested party must first disclose his or her conflict of interest or, in the case of committee meetings, the conflict must be known to all the other persons considering the matter, and

B. If the vote of the interested party is necessary in order for the matter to be authorized, approved or ratified, the result must be fair and reasonable to the Master Association.

Any claim of the Master Association that such a matter is void or voidable or otherwise subject to change because the result was not fair or equitable to it, must be made within three (3) years from the date the matter was authorized, approved or ratified. Before pursuing any such claim, the Master Association must make reasonable efforts to modify the result so as to make it fair and equitable.

## **6.22 PAYMENTS TO DIRECTORS AND OFFICERS.**

A. **PAYMENT; EXPENSES.** No one will receive any compensation for acting as a Director or officer of the Master Association unless that compensation is specifically authorized by vote of a Majority of the Owners Voting (not counting the votes of the Developer) at an Association meeting. However, Directors and officers will be reimbursed for transportation expenses incurred and reasonable per diem payments for expenses incurred in connection with their attendance at regular and special meetings of the Board.

B. **OTHER WORK.** Nothing in these Bylaws prevents any Director or officer from serving the Master Association in any capacity other than as an officer or a Director and being paid for those services as authorized and approved by the Board. But regardless of what Section 6.21 says, he or she must be excluded from the discussions and voting by the Board on whether to hire him or her and how much to pay him or her for serving in that other capacity.

**6.23 MINUTES OF MEETINGS OF THE BOARD.** Minutes of the Board meetings must include the recorded vote of each Director on all motions except motions voted upon in executive session. When a Director discloses a conflict of interest, the minutes of the meeting must record the fact that a disclosure was made. A copy of the written minutes of any meeting of the Board, or a summary of the minutes, will be sent to all Members within 60 days after the meeting ends. If notice of a meeting was properly given but a Director is absent, the minutes must say so.

## **7. OFFICERS**

### **7.1 OFFICERS.**

A. **REQUIRED OFFICERS.** The Master Association must have a President, a Vice President, a Secretary, and a Treasurer.

B. **OTHER OFFICERS.** The Master Association may have any other officers as may be deemed necessary or useful or as required by the Articles. The Board will determine the title, term of office, authority and duties of these officers.

**7.2 QUALIFICATIONS OF OFFICERS.** Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The

President must be a Director. The Vice President, Secretary and Treasurer may be Directors but they do not have to be Directors.

**7.3 APPOINTMENT OF OFFICERS.** The Board will appoint the officers required by Section 7.1A at the annual meeting of the Board. The Board may appoint any other officers permitted by Section 7.1B, or it may authorize the President or another officer to do so. Officers may be appointed at any meeting of the Board by vote of a majority of the entire Board.

**7.4 TERM OF OFFICE.** All officers will take office upon appointment. They will hold office only for so long as the Board desires.

**7.5 REMOVAL OF OFFICERS.** The Board may remove any officer, with or without cause, by vote of a majority of the Directors at any regular meeting of the Board or at any special meeting called for that purpose. Removal of an officer will not affect any contract rights of the officer.

**7.6 VACANCIES.** If any required officer resigns or dies, or if his or her office otherwise becomes vacant, then the Board must appoint a replacement at once. A majority of the remaining Directors may appoint a replacement even if there are not enough Directors remaining to have a quorum.

**7.7 PRESIDENT.** The President is the chief executive officer of the Master Association. The President has these powers and duties:

- ❖ The President supervises, directs and controls the business and affairs of the Master Association subject, however, to the control of the Board.
- ❖ The President chairs all meetings of the Master Association and all meetings of the Board.
- ❖ The President is a member of all committees.
- ❖ The President has the general powers and duties of management usually authorized for the office of president of a Hawaii corporation. This includes, among others, the power to appoint committees from among the Owners from time to time as the President alone decides are appropriate to assist in conducting the affairs of the Master Association.
- ❖ The President has any and all other powers and duties assigned to the President by the Declaration or these Bylaws, or by the Board.

**7.8 VICE PRESIDENT.** If the President is absent or unable to act, or if that office is vacant, the Vice President performs all the duties of the President. When doing so, the Vice President has all the powers and duties of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

**A. OTHER TEMPORARY REPLACEMENT OF THE PRESIDENT.** If the Vice President is also absent or unable to act, or if that office is also vacant, the Board must appoint another of its members to take the place of the President temporarily. The Board must do so even if there are not enough Directors remaining to have a quorum. The Director who is so appointed and acting will also have all of the powers and duties of, and is subject to all the restrictions on, the President.

**7.9 SECRETARY.** The Secretary has these powers and duties:

- ❖ The Secretary must keep the minutes of all meetings of the Master Association, the Board and all committees. For this purpose, the Secretary is a member of all committees.
- ❖ The Secretary must give all required notices of those meetings.
- ❖ The Secretary must keep a list of (i) all Owners, and (ii) anyone who is holding, insuring, or guaranteeing a mortgage and who has requested copies of all notices or other Association information and whose name is furnished as required by these Bylaws or the Declaration.
- ❖ The Secretary must keep all other books, records and documents of the Master Association except for financial records kept by the Treasurer.
- ❖ The Secretary has the general powers and duties of management usually authorized for the office of secretary of a Hawaii corporation.
- ❖ The Secretary has any other powers and performs any other duties assigned to him or her from time to time by the President, the Board, the Declaration, or these Bylaws.

The duties of the Secretary may be delegated to and performed by the Managing Agent or any other person appointed for that purpose. If the Secretary is absent or unable to act at any meeting, or if the office is vacant, another person must be appointed to act as the Secretary at least temporarily.

**7.10 TREASURER.** The Treasurer is the chief financial officer of the Master Association. The Treasurer has these powers and duties:

- ❖ The Treasurer must keep full and accurate financial and books and records of the properties and business transactions of the Master Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus.
- ❖ The Treasurer must deposit all money and other valuables in the name and to the credit of the Master Association with the depositories (such as a bank) chosen by the Board.
- ❖ The Treasurer must pay out the funds of the Master Association as ordered by the Board.

- ❖ The Treasurer must prepare all financial statements and reports requested by the President or the Board.
- ❖ The Treasurer has the general powers and duties of management usually authorized for the office of treasurer of a Hawaii corporation.
- ❖ The Treasurer has any other powers and performs any other duties assigned to him or her by the President, the Board, the Declaration, or these Bylaws.

The duties of the Treasurer may be delegated to and performed by the Managing Agent, accountants, or other suitable persons providing professional financial services. If the Treasurer is unable to act or if the office is vacant, another person must be appointed to act as the Treasurer at least temporarily.

## **8. INDEMNIFICATION**

**8.1 DEFINITIONS.** For the purpose of this Section 8:

A. "*Agent*" means any person who is or was a director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise. An Agent is considered to be serving an employee benefit plan at the corporation's request if the Agent's duties to the Association also impose duties on, or otherwise involve services by, the Agent to the plan or to participants in or beneficiaries of the plan. "Agent" also includes, unless the context requires otherwise, the estate or personal representative of an "Agent."

B. "*Proceeding*" means any threatened, pending, or completed action or proceeding (such as a lawsuit), whether formal or informal. It could be for example, a civil suit, a criminal matter, or an administrative or investigative proceeding.

C. "*Expenses*" includes, but is not limited to, attorneys' fees and costs.

D. "*Liability*" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable Expenses actually incurred with respect to a proceeding.

**8.2 THE MASTER ASSOCIATION WILL INDEMNIFY (REIMBURSE) ITS AGENTS.** To the extent allowed by law, the Association must indemnify (which means that it will reimburse) each of its Agents with respect to any liability incurred by the Agent in any proceeding. The Hawaii Nonprofit Corporations Act defines how, when, and under what conditions the Association can make those reimbursements. These bylaws authorize and require the Association to make those reimbursements, and to make advances for expenses, to the full extent allowed by law. If

available, the Association must buy insurance to cover the reimbursements. The Association may, but need not, buy insurance that provides for payment of liabilities of an Agent in circumstances where the Association does not have the power to indemnify the Agent for those liabilities.

## **9. ASSOCIATION RECORDS**

### **9.1 THE MASTER ASSOCIATION'S BOOKS AND RECORDS.**

#### **A. WHAT THE MASTER ASSOCIATION MUST KEEP.**

The Master Association must keep (i) correct and complete books and records of account of the Master Association; (ii) minutes of the meetings and all other proceedings of the Master Association, Board, and any committee; (iii) all notices, objections, waivers, consents, dissents, and other matters related to these meetings; (iv) the original or a copy of all of the Master Association Documents; and (v) anything else required by law. The Master Association will keep the books and records of account, minutes, and other documents at the principal place of business of the Master Association or any other place or places selected by the Board.

#### **B. MEMBER'S RIGHT TO INSPECT.**

##### **1) CURRENT FINANCIALS AND BOARD MINUTES.**

Upon approval by the Board, the most current financial statements of the Master Association, and minutes of the most recent meeting of the Board (other than minutes of executive sessions) will be available for examination by any Owner at no cost, during reasonable hours, at a location designated by the Board.

**2) MINUTES.** The approved minutes of other meetings of the Board (other than executive sessions) and the approved minutes of the Master Association for the current and prior year will be available for examination by Members during reasonable hours at a location designated by the Board. Copies of those meeting minutes will be provided to any Member upon the Member's request if the Members pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

**3) FINANCIAL RECORDS.** Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers (or other comparable lists or schedules), insurance policies, contracts and invoices of the Master Association for the current and prior year and any documents regarding delinquencies of ninety (90) days or more will be available for examination by the Members during reasonable hours at a place designated by the Board; provided that:

(a) The Board must require the Member to furnish to the Master Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the Master Association or its Members or both; and

(b) The Member must pay for all costs associated with the examination of the documents.

Copies of these items will be provided to any Member upon such Member's request if the Member pays a reasonable fee for duplicating, postage and stationery and other administrative costs associated with handling the request.

**C. VOTING RECORDS.** The Members have the right to view proxies, tally sheets, ballots, Owners' check-in lists and the certificate of election for a period of thirty (30) days following any meeting of the Master Association; provided that:

1) The Board must require Owners to furnish to the Master Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Master Association or its Members or both; and

2) The Owner must pay all costs associated with the examination of the documents.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, Owners' check-in lists and the certificate of election from the most recent meeting of the Association will be provided to any Owner if the Owner requests it, provided that the Owner pays a reasonable fee for duplicating, postage, stationery and other administrative costs associated with handling such request.

**D. OTHER RECORDS.** Owners may file a written request with the Board to examine other documents of the Master Association. The Board must give written authorization or written refusal with an explanation of the refusal within sixty (60) calendar days of receipt of the request. The Board may condition its approval of any such request upon payment of reasonable fees. However, books and records kept by or on behalf of the Master Association may be withheld from inspection and copying to the extent that they concern any of the following:

- ❖ Personnel records.
- ❖ An individual's medical records.
- ❖ Records relating to business transactions that are currently in negotiation.
- ❖ Communications that are privileged because of the attorney-client privilege or any other applicable privilege of the Master Association.
- ❖ Complaints against individual Members.
- ❖ Any records, the release of which could violate any law, ordinance, rule or regulation.
- ❖ Any similar records.

**E. DIRECTOR'S RIGHT TO INSPECT.** Except as provided in Section 9.2, each Director has the absolute right at any reasonable time to inspect the books and records of account, minutes, papers and other books and records of the Master Association and the physical properties owned or controlled by the Master Association.

**9.2 LIST OF MEMBERS.** At all times, the Master Association must use good faith efforts to keep an accurate and current list of the names and addresses of all Members of the Master Association.

A. The Master Association will furnish a copy of the list within a reasonable time after any Member asks for it in writing, pays a reasonable fee (to be determined by the Board), and complies with any other requirements of the Declaration or these Bylaws. The Declaration contains detailed requirements that must be satisfied before the Master Association is allowed (i) to furnish the list of Members or any copy of it, or any other documents from which a Membership list may be compiled, or (ii) to let anyone inspect or make copies or extracts of the list or any other documents from which a list may be compiled. Those provisions of the Declaration are made a part of these Bylaws, just as if they were repeated here.

B. The Master Association will furnish a copy of the list to the Club Operator (at any time when any Owner is a Club Member) or to the Developer within a reasonable time after either of them requests it. The requirements of the Declaration governing release of the list to the Members do not apply to the Developer or the Club Operator.

C. The Board may impose other reasonable conditions intended to assure the confidentiality of the list of Members and that the list is not used (i) for commercial purposes by anyone other than the Developer or any company related to the Developer, or (ii) for any other improper purpose.

**9.3 CERTIFICATE OF MEMBERSHIP.** The Board may, but is not obligated to, issue to the Members certificates of membership in the Master Association in any form the Board chooses.

## **10. MISCELLANEOUS**

**10.1 WHO CAN SIGN CHECKS AND SO ON.** All checks, drafts or other orders for payment of money, notes, or similar documents issued by or payable to the Master Association must be signed or endorsed as stated in a resolution adopted by the Board. If no resolution is adopted, they must be signed by any two of the President, Vice President, Secretary or Treasurer. The same rule applies to signing and delivering other documents authorized by the Master Association Documents or by action of the Board or the Master Association.

**10.2 WHO CAN SIGN CONTRACTS AND OTHER DOCUMENTS.** Except as otherwise provided in these Bylaws, the Board may

authorize any officer or officers, agent or agents, to enter into any contract or sign any document for the Master Association. This authority may be general or it may be limited to specific things. Unless authorized by the Board, no officer, agent or employee has any power or authority to bind the Master Association or to pledge its credit or to make it liable for any purpose or for any amount.

## **10.3 AMENDMENTS.**

**A. THE MASTER ASSOCIATION'S RIGHTS.** These Bylaws may be "amended" (changed) from time to time by the vote or written consent of (i) the Developer (if it owns, or holds a mortgage on, a Parcel), and (ii) a Majority of the Owners Voting (not counting the Developer's Parcels and votes) provided that the Owners voting for the amendment must hold at least ten percent of the total number of votes for all Parcels (not counting the Developer's Parcels and votes). There is an exception to this rule: Some parts of the Master Association Documents require the approval of a Majority or more than a Majority of the Owners before taking certain actions (a "super-majority"). Such a provision cannot be amended unless (1) the number of votes cast by Owners voting in favor of that amendment equals or exceeds the number of votes required to take action under that provision (i.e., a super-majority), and (2) if the Developer owns, or holds a mortgage on, any Parcel, the Developer signs the amendment. No amendment made under this Subsection 10.3A will take effect until it is signed by any two officers of the Master Association and recorded.

**B. THE DEVELOPER'S RIGHTS.** Without the consent or approval of any person, including any Owner and anyone having a contract to buy a Parcel, the Developer may change these Bylaws at any time:

1) And for any purpose before any First Deed or Agreement of Sale is recorded.

2) To comply with the laws and regulations of the State of Hawaii.

3) To comply with the real estate laws of any other place (for example, the State of Maine) or the requirements of any government agency (such as the California Department of Real Estate) in connection with the registration of: (i) any Resort, the Master Project, or any Vacation Plan that includes Participating Property, or (ii) the Club (if any Owner is a Club Member), or (iii) the Network (if any Owner is a Network Member).

4) In any Declaration of Annexation to the extent permitted in the Declaration. See Section 18.2 of the Declaration.

No amendment under Subsections 10.3B.3) will be effective, however, unless:

(i) The Developer gives written notice of the proposed amendment (and a copy of the amendment) to each governmental authority (other than Hawaii governmental

authorities) having authority over the Master Project as a result of the registration of it (or a Resort, Vacation Plan, the Club or the Network) with that governmental authority, and

(ii) The amendment includes as an attachment a copy of a letter or other document showing either that the amendment has been accepted or approved by that governmental authority or an affidavit signed by the Developer and stating that approval or acceptance is not necessary.

An amendment made by the Developer under this Section 10.3B takes effect when it is signed by the Developer and recorded. It does not have to be signed by anyone else.

**10.4 CAPTIONS.** The Developer has tried to divide these Bylaws into useful Sections and to provide captions describing each Section. The captions are here only for convenience and as a matter of reference. They do not define, limit or describe the scope or intent of the provisions of these Bylaws. Members must read with care each and every part of these Bylaws, not just the captions.

**10.5 PRONOUNS.** Pronouns (for example, "his" or "her") used in the Master Association Documents include the male,

female, and neuter genders and include the singular and plural numbers, as the case may be.

**10.6 ENFORCEMENT.** A violation of any part of these Bylaws by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of these Bylaws. Any failure to enforce any provision of these Bylaws does not limit or take away the right to enforce that provision later. This will be true no matter how many times a violation is overlooked.

**10.7 INTERPRETATION.** These Bylaws should be liberally interpreted to carry out the purpose of creating a uniform plan for sharing the ownership, expenses and use of the Common Property under which the Master Association carries out and pays for the operation and maintenance of the Common Property and the Master Association.

**10.8 EFFECT OF INVALID PROVISIONS.** The provisions of these Bylaws are "severable". This means that if any part of them is not legal or valid, that part can be ignored. But the rest of these Bylaws will remain in effect and everyone must obey them.

#### **END OF BYLAWS**

3/24/03  
45190.6

**Ocean Resort  
Master Association**

**DEVELOPER AFFIDAVIT TO THE FIRST AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR  
OCEAN RESORT MASTER ASSOCIATION**

This AFFIDAVIT ("Affidavit") to the First Amendment To Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association ("Amendment") is made this 21 day of August, 2003. It is made by SVO Pacific, Inc., a Florida corporation (the "Developer"). The Developer is the developer of Ocean Resort Villas Vacation Ownership Plan (the "Plan") and the Ocean Resort Master Project (the "Master Project").

The Developer hereby affirms that (i) written notice of the proposed Amendment (and a copy of it) has been given to each governmental authority having authority over the Master Project as a result of the registration of the Master Project (or the Condominium, the Plan, the Club, or SVN) and (ii) it is not necessary to obtain the approval or acceptance of the content of the Amendment by any such governmental authority as a condition to adopting the Amendment.

The Developer signed this Affidavit on the date referenced above.

SVO PACIFIC, INC.,  
a Florida corporation

By: 

Name: Raymond L. Gellen, Jr.

Its: Chairman

STATE OF FLORIDA       )  
                                      ) ss:  
COUNTY OF ORANGE    )

On this 21 day of August, 2003, before me personally appeared Raymond L. Gellen, Jr. 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.



Name: Sabrina C. Churchwell  
Notary Public, State of Florida  
My Commission expires: 10/20/2006

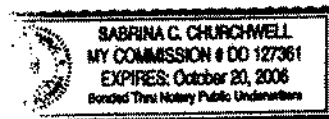


Exhibit 3



L-702 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED  
MAY 10, 2005 03:00 PM

Doc No(s) 3266461  
on Cert(s) 635,744



20 4/7 Z1

/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

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

4  
McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
2 pages

TMK No. (2) 4-4-14-4 CPR Nos.: [Not yet assigned]

## *Ocean Resort Master Association*

**DECLARATION OF ANNEXATION  
(APARTMENT 102);  
RESERVATION OF EASEMENTS; AND AMENDMENT**

THIS DECLARATION OF ANNEXATION is made on this 9th day of May, 2005, by SVO Pacific, Inc., a Florida corporation (the "Developer").

### BACKGROUND INFORMATION

A. The Developer filed a document called the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946. That document is called the "Master Declaration" in this document. All terms defined in the Master Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "New Property"). The Developer desires to include the New Property in the Master Project.

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C. The Master Declaration allows the Developer to include in any Declaration of Annexation any provision that the Developer may consider appropriate. The Developer also has the right to amend the Master Declaration in any Declaration of Annexation.

D. The Developer considers it appropriate to reserve the right and an easement to establish, operate, maintain, repair, relocate, and replace concession stands on certain parts of the Common Area that is located in the Ocean Resort Villas North condominium, similar in nature to the rights held by the Developer with respect to the Ocean Resort Villas condominium, as provided in Section 5.2D of the Master Declaration.

#### DECLARATION, RESERVATION OF EASEMENTS, AND AMENDMENT

The Developer declares that from now on:

1. The New Property, and all rights of the Developer in it, is subject to the Master Declaration and the other Master Association Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the New Property to the Master Association Documents).

2. The New Property is a Common Area and is a part of the Master Project. In legal terms, the New Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any of the New Property must obey the Master Association Documents.

3. The Master Association Documents will be binding on the New Property. They also will be binding on, and are intended to benefit, these persons:

A. The Developer.

B. The Master Association.

C. Each Member.

D. Anyone else who owns all or any part of the New Property, or who has any rights or other interests in it or in any Membership in the Master Association.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when someone obtains an interest in the Property or any Membership, or whether they ever signed

the Master Association Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents. In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.

4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Resort Documents as the Resort Developer of any particular Resort (including, for example, the Ocean Resort Villas North Condominium), and (ii) as the Vacation Plan Developer of any particular Vacation Plan (including, for example, the Ocean Resort Villas North Vacation Ownership Plan). The Developer alone may exercise the Developer's Reserved Rights under the Resort Documents and/or under the Vacation Plan Documents. Those rights will not be subject to the Master Association Documents, and they will not be transferred to the Master Association or to any of its Members, unless the Resort Developer or Vacation Plan Developer signs and records a document that clearly says so.

5. The Developer also reserves to itself the right and an easement to establish, operate, maintain, repair, relocate, and replace on the part of the Common Area that is located in the Ocean Resort Villas North condominium no more than four (4) concession stands apiece in each of the Courtyards of that condominium (as the Courtyards are identified in the condominium declaration for Ocean Resort Villas North) and no more than four (4) more concession stands on the portion of the grounds of that condominium that is part of the Common Area but that is not part of any Courtyard. The stands may be used only for the purposes allowed by Sections 5.2D.(1) and (2) of the Master Declaration.

The Developer's easement under this Paragraph 5 includes the right to connect the concession stands with utility services. However, each month the Developer must pay to the Master Association an amount equal to the estimated cost of utility services. Any concession stands must be built, set up, operated, and maintained in accordance with the Resort Documents and all laws that apply. The Developer must pay all costs to build, set up, operate, maintain, repair, relocate, and replace any concession stands. The design of all such concession stands must be consistent with a first class destination resort. The Developer may operate the concession stands itself or it may contract with someone else to operate some or all of them. It may also rent them to someone else. The Developer has the right to keep all money it receives in connection with the operation of the concession stands.

If it is necessary to the establishment or exercise of the Developer's rights and easements under this Paragraph 5, then the Developer here and now amends the Master Declaration to provide for these rights and easements as described above.

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

By: 

Name: Victoria H. Carter

Its: Vice President

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this 5<sup>th</sup> day of May, 2005, before me personally appeared Victoria H. Carter, Vice President of SVO Pacific, Inc., a Florida corporation, 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.

Sabrina C. Churchwell  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006



## EXHIBIT "A"

### FIRST:

That certain Apartment No. 102 of the condominium property regime known as the "Ocean Resort Villas North" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas North, dated April 25, 2005, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 32666 459 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1115 (herein with all amendments called the "Condominium Map").

### **TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall(s), if any, described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to

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prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

**SECOND:**

An undivided 0.0020767 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in the Condominium Declaration, and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in the Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_ (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION OF THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions,

Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.

NOTE: For purposes of that certain Notice of Time Share Plan, as amended, recorded as Land Court Document No. 3237196, this instrument is a part of the "Master Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. 3266462

DATE            TIME 3:00

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

McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
1 pages

TMK No. (2) 4-4-14: 3 & 4 CPR Nos.: [See Exhibits A & B]

*Ocean Resort Master Association*

**DECLARATION OF ANNEXATION  
AND IMPOSITION OF ASSESSMENTS  
ON COMMERCIAL APARTMENTS  
(RETENTION BASIN EASEMENTS)**

**THIS DECLARATION OF ANNEXATION** is made on this 9th day of May, 2005, by SVO Pacific, Inc., a Florida corporation (the "Developer") and by Ocean Resort Master Association, a Hawaii non-profit corporation (the "Master Association").

**BACKGROUND INFORMATION**

A. The Developer filed a document called the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946. That document is called the "Master Declaration" in this document. All terms defined in the Master Declaration will have the same meaning in this document unless otherwise defined in this document.

B. The Developer has now submitted to the Master Declaration all Resort Apartments in the Ocean Resort Villas condominium (the "Phase I Resort") as established by the Condominium

Documents described in Exhibit "A". The Phase I Resort is located on Lot 98 as shown on Land Court Map 86, of Land Court Application 1744 filed by Pioneer Mill Company, Limited ("Lot 1").

C. Immediately after this document, the Developer intends to submit to the Master Declaration certain Resort Apartments in the Ocean Resort Villas North condominium (the "Phase II Resort") as established by the Condominium Documents described in Exhibit "B". The Phase II Resort is located on Lot 101 as shown on Land Court Map 86, of Land Court Application 1744 filed by Pioneer Mill Company, Limited ("Lot 2").

D. The Condominium Documents for the Phase I Resort and the Phase II Resort each provide that most of the grounds and landscaping of the Resorts are Limited Common Elements of Apartments owned or to be owned by the Master Association.

E. The Master Declaration provides that the Master Association is responsible to manage and maintain the grounds and landscaping of the Phase I and II Resorts and possibly for other Resorts in Ka'anapali North Beach.

F. The Master Declaration also provides in Section 13.2 J. that the Master Association must accept title to any real or personal property transferred to it by the Developer.

G. By that certain "Grant of Easement and Agreement Regarding Allocation of Retention Capacity (North Beach – Mauka Retention Basins)," dated October 20, 2004, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-214492 (the "Grant of Easements"), Ka'anapali Development Corp., a Hawaii corporation, granted certain right and easements in favor of Lot 1, Lot 2, the Developer and/or the Master Association. These rights include, but are not limited to the right and an easement to use certain "Retention Basins" for off-site storm water runoff retention and storage purposes as described in more detail in the Grant of Easements. The Developer arranged for Ka'anapali Development Corp. to transfer these property rights and easements to the Master Association as provided in Section 13.2J of the Master Declaration.

H. The Retention Basins are necessary to protect the grounds and landscaping of the Phase I and II Resorts from storm water runoff and are integral to the Master Association's ability and obligation to manage and maintain the grounds and landscaping of those Resorts.

I. The Developer and the Master Association intend to submit the rights and easements granted to the Master Association in the Grant of Easements (the "New Property") to the Master Declaration and to include the New Property in the Master Project.

J. The Grant of Easements requires that the Commercial Apartments of the Resorts pay a share of the annual costs and expenses for the maintenance and repair of the Retention Basins. The Developer and the Master Association intend to provide for such cost sharing in this document.

## SUBMISSION OF THE PROPERTY TO THE MASTER DECLARATION

The Developer and the Master Association declare that from now on:

1. The New Property, and all rights of the Master Association in it, is subject to the Master Declaration and the other Master Association Documents. (In legal terms, the Master Association is submitting all of its "estate, right, title and interest" in the New Property to the Master Association Documents).

2. The New Property is a Common Area and is a part of the Master Project. In legal terms, the New Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any of the New Property must obey the Master Association Documents.

3. The Master Association Documents will be binding on the New Property. They also will be binding on, and are intended to benefit, these persons:

A. The Developer.

B. The Master Association.

C. Each Member.

D. Anyone else who owns all or any part of the New Property, or who has any rights or other interests in it or in any Membership in the Master Association.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when someone obtains an interest in the New Property or any Membership, or whether they ever signed the Master Association Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents. In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.

4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has the Grant of Easements. Those rights will not be subject to the Master Association Documents, and they will not be transferred to the Master Association or to any of its Members, unless the Developer signs and records a document that clearly says so.

5. A. The Developer and the Master Association are the Owners of all of the Commercial Apartments in the Phase I Resort and the Phase II Resort. The current Commercial Apartments are described in Exhibit A (for the Phase I Resort), and Exhibit B (for the Phase II Resort). The Developer and the Master Association intend to impose on the Commercial Apartments and on any later Owner(s) of the Commercial Apartments, the obligation to pay and contribute to the Master Association on an annual basis a fair and equitable share of the total annual amount required to be assessed by the Master Association to pay the annual costs and expenses for the maintenance and repair of the Retention Basins. For that purposes, the Developer and the Master Association agree to pay a share equal to the total annual amount required to be assessed by the Master Association to pay the annual costs and expenses for the maintenance and repair of the Retention Basins pursuant to the Grant of Easements, multiplied by the following fraction:

The Relative Valuation of the Commercial  
Apartments

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The sum of the Relative Valuation of the  
Commercial Apartments PLUS the sum of the  
Relative Valuations under the Master Declaration  
for all Units for which Assessments have begun as  
provided in Section 14.4 of the Master Declaration

For purposes of this Section 5.A., the term "Relative Valuation of the Commercial Units" shall mean the sum of (i) the Relative Valuation (as stated in the Declaration of Condominium Property Regime for the Phase I Resort) of all Commercial Apartments in the Phase I Resort, plus (ii) upon issuance by the County of Maui of a certificate of occupancy for the Commercial Apartments in the Phase II Resort, the Relative Valuation (as stated in the Declaration of Condominium Property Regime for the Phase II Resort) of the Commercial Apartments in the Phase II Resort.

B. The Developer declares that from now on, the Commercial Units, and all rights of the Developer in them, are subject to the requirements of Section 5.A. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the Commercial Apartments to the requirements of Section 5.A.). The provisions of Section 5.A. constitute equitable servitudes and covenants running with the land that are binding on the Commercial Apartments and their present and future Owners, and that are intended to benefit the Master Association and its successors. Nothing in this document will be deemed to declare the Commercial Apartments to be part of the Master Project or subject to any of the terms and conditions of the Master Declaration with the sole exception of the provisions of this Section 5.

The Developer and the Master Association signed this document as of the date first written above.

SVO PACIFIC, INC.

By: 

Name: Victoria A. Carter

Its: Vice President

OCEAN RESORT MASTER ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_


SVO PACIFIC, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

OCEAN RESORT MASTER ASSOCIATION

By:  \_\_\_\_\_

Name: Thorp Thomas

Its: president

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this 5<sup>th</sup> day of May, 2005, before me personally appeared Victoria H. Carter, Vice President of SVO Pacific, Inc., a Florida corporation, 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.

Sabrina C. Churchwell  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/30/2006



STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_ of Ocean Resort Master Association, a Hawaii non-profit corporation, 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.

Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_ of SVO Pacific, Inc., a Florida corporation, 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.

Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this 5 day of may 2005, before me personally appeared Thorp Thomas, president of Ocean Resort Master Association, a Hawaii non-profit corporation, 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.

Holly Wagenseller  
Name: Holly Wagenseller  
Notary Public, State of FLORIDA  
My Commission expires: April 22, 2007



## EXHIBIT "A"

[Apartments in the Ocean Resort Villas Condominium]

### ITEM 1: Apartment 101 [CPR No. not assigned]

#### FIRST:

That certain Apartment No. 101 of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1431, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stalls described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

## **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

## **SECOND:**

An undivided .020005158 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, and/or (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237 (herein with any amendments called the "Declaration of Merger"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger; and
2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and

**BEING THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.

**ITEM 2: Arcade Apartment (Apartment No. 102) [CPR No.: not assigned]**

**FIRST:**

That certain Arcade Apartment (Apartment No. 102) of the condominium property regime known as the "Ocean Resort Villas" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734238 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No.1431, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stalls described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;

3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;

4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

#### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;

2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

#### **SECOND:**

An undivided .000333940 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in (i) the Condominium Declaration, and/or (ii) that certain Declaration of Merger of Condominium Phases of the Ocean Resort Villas Condominium, dated August 28, 2001, and recorded as Land Court Document No. 2734237 (herein with any amendments called the "Declaration of Merger"), and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in:

1. The Declaration of Merger; and
2. The Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2734239 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made; and

**BEING THE PREMISES** described in the Transfer Certificate of Title No. 569,700 issued to Ocean Resort Master Association, a Hawaii non-profit corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.
6. The "Master Association Documents" consisting of the following documents and any lawful amendments and supplements to them: (i) "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946, (ii) the Articles of Incorporation of the Ocean Resort Master Association, (iii) the Bylaws of the Ocean Resort

Master Association, and (iv) any rules and regulations adopted thereunder.

NOTE: For purposes of that certain Notice of Time Share Plan dated December 4, 2000, filed December 6, 2000, as Document No. 2669185 and recorded December 6, 2000, as Document No. 2000-171389, this instrument is a part of the "Club Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

## EXHIBIT "B"

[Apartments in the Ocean Resort Villas North Condominium]

### ITEM 1: Apartment 101 [CPR No: Not Yet Assigned]

#### FIRST:

That certain Apartment No. 101 of the condominium property regime known as the "Ocean Resort Villas North" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas North, dated April 25, 2005, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3266459 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 115, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall(s), if any, described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

**EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

**SECOND:**

An undivided 0.9880706 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in the Condominium Declaration, and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in the Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3246460 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION OF THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.

3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.

4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.

ITEM 2: Apartment 102 [CPR No: Not Yet Assigned]

FIRST:

That certain Apartment No. 102 of the condominium property regime known as the "Ocean Resort Villas North" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas North, dated April 25, 2005, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 326659 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 1115, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall(s), if any, described in the Condominium Declaration as being appurtenant to the Apartment;

2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;

3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;

4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

**EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;
3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;
4. Any other easements granted or reserved by the "Developer" in the Condominium Documents or the Master Association Documents.

**SECOND:**

An undivided 0.0020767 percentage interest in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND,** appurtenant easements described in the Condominium Declaration, and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in the Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3766460 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION OF THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.
5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.
6. The "Master Association Documents" consisting of the following documents and any lawful amendments and supplements to them: (i) "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946, (ii) the Articles of Incorporation of the Ocean Resort Master Association, (iii) the Bylaws of the Ocean Resort Master Association, and (iv) any rules and regulations adopted thereunder.

**NOTE:** For purposes of that certain Notice of Time Share Plan, recorded as Land Court Document No. 3237196, as amended, this instrument is a part of the "Master Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

**END OF EXHIBIT "B"**



L-704 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED  
MAY 10, 2005 03:00 PM  
Doc No(s) 3266463  
on Cert(s) 635,744



20 6/7 Z1

/s/ CARL T. WATANABE  
ASSISTANT REGISTRAR

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

6  
McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
10 pages

TMK No. (2) 4-4-14-4 CPR Nos.: [Not yet assigned]

## *Ocean Resort Master Association*

### DECLARATION OF ANNEXATION (OCEAN RESORT VILLAS NORTH - BUILDINGS 5 AND 6)

THIS DECLARATION OF ANNEXATION is made on this 9th day of May, 2005, by SVO Pacific, Inc., a Florida corporation (the "Developer").

#### BACKGROUND INFORMATION

A. The Developer filed a document called the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946. That document is called the "Master Declaration" in this document. All terms defined in the Master Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "New Property"). The Developer desires to include the New Property in the Master Project.

## SUBMISSION OF THE PROPERTY TO THE MASTER DECLARATION

The Developer declares that from now on:

1. The New Property, and all rights of the Developer in it, is subject to the Master Declaration and the other Master Association Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the New Property to the Master Association Documents).

2. Each of the individual Apartments comprising the New Property is a Participating Property and is a part of the Master Project. In legal terms, the New Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any of the New Property must obey the Master Association Documents.

3. The Master Association Documents will be binding on the New Property. They also will be binding on, and are intended to benefit, these persons:

A. The Developer.

B. The Master Association.

C. Each Member.

D. Anyone else who owns all or any part of the New Property, or who has any rights or other interests in it or in any Membership in the Master Association. This includes, for example, all present and future Parcel Owners and their Lenders.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when someone obtains an interest in the Property or any Membership, or whether they ever signed the Master Association Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

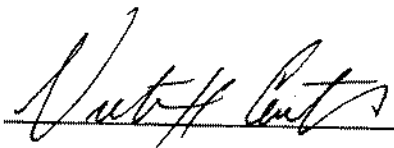
All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents. In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" that are binding on and for the benefit of all of the persons described in this section 3.

4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Resort Documents as the Resort Developer of any particular Resort (including, for example, the Ocean Resort Villas North Condominium), and (ii) as the Vacation Plan Developer of any particular Vacation Plan (including, for example, the Ocean Resort Villas North Vacation Ownership Plan). The Developer alone may exercise the Developer's Reserved Rights under the Resort Documents and/or under the Vacation Plan Documents. Those rights will not be subject to the Master Association Documents, and they will not be transferred to the Master Association or to any of its Members, unless the Resort Developer or Vacation Plan Developer signs and records a document that clearly says so.

5. The Relative Valuation for each Apartment is listed in Exhibit B which is attached to and part of this document.

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

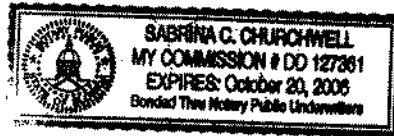
By:   
Name: Victoria H. Carter  
Its: Vice President

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF ORANGE )

On this 5<sup>th</sup> day of May, 2005, before me personally appeared Victoria H. Carter, Vice President of SVO Pacific, Inc., a Florida corporation, 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.

Sabrina C. Churchwell  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006



## EXHIBIT "A"

### FIRST:

Those certain one hundred forty-six (146) Apartments, as listed in the attached Exhibit "B", of the condominium property regime known as the "Ocean Resort Villas North" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas North, dated April 25, 2005, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3266459 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as aforesaid as Condominium Map No. 115 (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall(s), if any, described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;

2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in or under the Condominium Documents or the Master Association Documents.

**SECOND:**

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in the Condominium Declaration, and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in the Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 326659 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION OF THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.

4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.

NOTE: For purposes of that certain Notice of Time Share Plan, recorded as Land Court Document No. 3237196, as amended, this instrument is a part of the "Master Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

**EXHIBIT B**  
**To**  
**OCEAN RESORT MASTER ASSOCIATION**  
**DECLARATION OF ANNEXATION**

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
<b>BUILDING 5</b>		
<b>First Floor</b>		
5101/02	52,000	0.003837144
5103/04	52,000	0.003837144
5106/05	52,000	0.003837144
5108/07	52,000	0.003837144
5110/09	52,000	0.003837144
5111/12	52,000	0.003837144
5114/13	52,000	0.003837144
5115/16	52,000	0.003837144
5119/17	52,000	0.003837144
5120/18	52,000	0.003837144
5121/23	52,000	0.003837144
5122/24	52,000	0.003837144
<b>Second Floor</b>		
5201/02	52,000	0.003837144
5203/04	52,000	0.003837144
5206/05	52,000	0.003837144
5208/07	52,000	0.003837144
5210/09	52,000	0.003837144
5211/12	52,000	0.003837144
5214/13	52,000	0.003837144
5215/16	52,000	0.003837144
5219/17	52,000	0.003837144
5220/18	52,000	0.003837144
5221/23	52,000	0.003837144
5222/24	52,000	0.003837144
<b>Third Floor</b>		
5301/02	52,000	0.003837144
5303/04	52,000	0.003837144
5306/05	52,000	0.003837144
5308/07	52,000	0.003837144
5310/09	52,000	0.003837144
5311/12	52,000	0.003837144
5314/13	52,000	0.003837144
5315/16	52,000	0.003837144
5319/17	52,000	0.003837144
5320/18	52,000	0.003837144
5321/23	52,000	0.003837144
5322/24	52,000	0.003837144
<b>Fourth Floor</b>		
5401/02	52,000	0.003837144
5403/04	52,000	0.003837144
5406/05	52,000	0.003837144
5408/07	52,000	0.003837144
5410/09	52,000	0.003837144
5411/12	52,000	0.003837144
5414/13	52,000	0.003837144
5415/16	52,000	0.003837144
5419/17	52,000	0.003837144
5420/18	52,000	0.003837144
5421/23	52,000	0.003837144
5422/24	52,000	0.003837144

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
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#### Fifth Floor

5501/02	52,000	0.003837144
5503/04	52,000	0.003837144
5508/05	52,000	0.003837144
5508/07	52,000	0.003837144
5510/09	52,000	0.003837144
5511/12	52,000	0.003837144
5514/13	52,000	0.003837144
5515/16	52,000	0.003837144
5519/17	52,000	0.003837144
5520/18	52,000	0.003837144
5521/23	52,000	0.003837144
5522/24	52,000	0.003837144

#### Sixth Floor

5601/02	52,000	0.003837144
5603/04	52,000	0.003837144
5608/05	52,000	0.003837144
5608/07	52,000	0.003837144
5610/09	52,000	0.003837144
5611/12	52,000	0.003837144
5614/13	52,000	0.003837144
5615/16	52,000	0.003837144
5619/17	52,000	0.003837144
5620/18	52,000	0.003837144
5621/23	52,000	0.003837144
5622/24	52,000	0.003837144

### BUILDING 6

#### First Floor

6127/25	52,000	0.003837144
6128/26	52,000	0.003837144
6129/31	52,000	0.003837144
6130/32	52,000	0.003837144
6133/35	52,000	0.003837144
6136/34	52,000	0.003837144
6154/53	52,000	0.003837144
6156/55	52,000	0.003837144
6157/58	52,000	0.003837144

#### Second Floor

6227/25	52,000	0.003837144
6228/26	52,000	0.003837144
6229/31	52,000	0.003837144
6230/32	52,000	0.003837144
6233/35	52,000	0.003837144
6236/34	52,000	0.003837144
6240/38	52,000	0.003837144
6242/44	52,000	0.003837144
6254/53	52,000	0.003837144
6256/55	52,000	0.003837144
6257/58	52,000	0.003837144

#### Third Floor

6327/25	52,000	0.003837144
6328/26	52,000	0.003837144
6329/31	52,000	0.003837144
6330/32	52,000	0.003837144
6333/35	52,000	0.003837144
6336/34	52,000	0.003837144
6340/38	52,000	0.003837144
6342/44	52,000	0.003837144
6354/53	52,000	0.003837144
6356/55	52,000	0.003837144
6357/58	52,000	0.003837144

Apartment No.	Relative Valuation Per Unit	Common Interest Per Unit
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#### Fourth Floor

6427/25	52,000	0.003837144
6428/26	52,000	0.003837144
6429/31	52,000	0.003837144
6430/32	52,000	0.003837144
6433/35	52,000	0.003837144
6436/34	52,000	0.003837144
6440/38	52,000	0.003837144
6442/44	52,000	0.003837144
6446/45	52,000	0.003837144
6447/48	52,000	0.003837144
6450/49	52,000	0.003837144
6451/52	52,000	0.003837144
6454/53	52,000	0.003837144
6456/55	52,000	0.003837144
6457/58	52,000	0.003837144

#### Fifth Floor

6527/25	52,000	0.003837144
6528/26	52,000	0.003837144
6529/31	52,000	0.003837144
6530/32	52,000	0.003837144
6533/35	52,000	0.003837144
6536/34	52,000	0.003837144
6540/38	52,000	0.003837144
6542/44	52,000	0.003837144
6546/45	52,000	0.003837144
6547/48	52,000	0.003837144
6550/49	52,000	0.003837144
6551/52	52,000	0.003837144
6554/53	52,000	0.003837144
6556/55	52,000	0.003837144
6557/58	52,000	0.003837144

#### Sixth Floor

6627/25	52,000	0.003837144
6628/26	52,000	0.003837144
6629/31	52,000	0.003837144
6630/32	52,000	0.003837144
6633/35	52,000	0.003837144
6636/34	52,000	0.003837144
6646/45	52,000	0.003837144
6647/48	52,000	0.003837144
6650/49	52,000	0.003837144
6651/52	52,000	0.003837144
6654/53	52,000	0.003837144
6656/55	52,000	0.003837144
6657/58	52,000	0.003837144

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. Doc 3368582  
CTN 635,744  
DATE DEC 13, 2005 03:29 PM

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

2  
McCorriston Miller Mukai MacKinnon  
P.O. Box 2800 • Honolulu, Hawaii 96803-2800  
Five Waterfront Plaza, 4<sup>th</sup> Floor  
500 Ala Moana Blvd. • Honolulu, Hawaii 96813  
Attn: Charles E. Pear, Jr.

This document contains  
15 pages

TMK No. (2) 4-4-14-4 CPR Nos.: [Not yet assigned]

*Ocean Resort Master Association*

DECLARATION OF ANNEXATION  
(OCEAN RESORT VILLAS NORTH - BUILDINGS 7 AND 8)

THIS DECLARATION OF ANNEXATION is made on this 13<sup>th</sup> day of December, 2005, by SVO Pacific, Inc., a Florida corporation (the "Developer").

BACKGROUND INFORMATION

A. The Developer filed a document called the "Declaration of Covenants, Conditions, Easements and Restrictions for Ocean Resort Master Association" in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2737946. That document is called the "Master Declaration" in this document. All terms defined in the Master Declaration will have the same meaning in this document.

B. The Developer is the record owner of the property described in Exhibit "A" which is attached to and part of this document (the "New Property"). The Developer desires to include the New Property in the Master Project.

## SUBMISSION OF THE PROPERTY TO THE MASTER DECLARATION

The Developer declares that from now on:

1. The New Property, and all rights of the Developer in it, is subject to the Master Declaration and the other Master Association Documents. (In legal terms, the Developer is submitting all of its "estate, right, title and interest" in the New Property to the Master Association Documents).

2. Each of the individual Apartments comprising the New Property is a Participating Property and is a part of the Master Project. In legal terms, the New Property will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, obligations, easements, limitations, restrictions and other matters contained in the Master Association Documents. Anyone who occupies or uses any of the New Property must obey the Master Association Documents.

3. The Master Association Documents will be binding on the New Property. They also will be binding on, and are intended to benefit, these persons:

A. The Developer.

B. The Master Association.

C. Each Member.

D. Anyone else who owns all or any part of the New Property, or who has any rights or other interests in it or in any Membership in the Master Association. This includes, for example, all present and future Parcel Owners and their Lenders.

E. Anyone who, by law or by agreement, stands in the place of the persons listed in items A. to D., above. Such people are called, in technical legal terms, "heirs", "devisees", "personal representatives", "successors", and "assigns".

All of these people must obey the Master Association Documents. It does not matter how or when someone obtains an interest in the Property or any Membership, or whether they ever signed the Master Association Documents or expressly agreed to obey them. They must still obey them just as if they signed them.

All of these people also have the right to enforce the Master Association Documents in any way permitted by the Planned Community Association Act or by the Master Association Documents. In legal terms, the Master Association Documents "constitute equitable servitudes, liens and covenants running with the land" which are binding on and for the benefit of all of the persons described in this section 3.

4. Regardless of what sections 1 to 3 say, the Developer reserves to itself any and all rights it has (i) under the Resort Documents as the Resort Developer of any particular Resort (including, for example, the Ocean Resort Villas North Condominium), and (ii) as the Vacation Plan Developer of any particular Vacation Plan (including, for example, the Ocean Resort Villas North Vacation Ownership Plan). The Developer alone may exercise the Developer's Reserved Rights under the Resort Documents and/or under the Vacation Plan Documents. Those rights will not be subject to the Master Association Documents, and they will not be transferred to the Master Association or to any of its Members, unless the Resort Developer or Vacation Plan Developer signs and records a document that clearly says so.

5. The Relative Valuation for each Apartment is listed in Exhibit "B" which is attached to and part of this document.

[SIGNATURE ON THE FOLLOWING PAGE.  
THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

The Developer signed this document as of the date first written above.

SVO PACIFIC, INC.

By: 

Name: Susan Werth

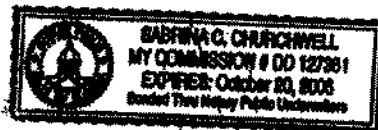
Its: Senior Vice President/Law

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss:

On this 3rd day of November, 2005, before me personally appeared Susan Werth  
Senior Vice President/Law of SVO Pacific, Inc., a Florida corporation, 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.

Sabrina C. Churchwell  
Name: Sabrina C. Churchwell  
Notary Public, State of Florida

My Commission expires: 10/20/2006



## **EXHIBIT "A"**

### **FIRST:**

Those certain one hundred twelve (112) Apartments, as listed in the attached Exhibit "B", of the condominium property regime known as the "Ocean Resort Villas North" (herein called the "Condominium"), as established by that certain Declaration of Condominium Property Regime of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3266459 (herein with all amendments called the "Condominium Declaration") and as shown on the plans of the Condominium filed as Condominium Map No. 1715, (herein with all amendments called the "Condominium Map").

**TOGETHER WITH** the following appurtenant easements:

1. The exclusive right to use the parking stall(s), if any, described in the Condominium Declaration as being appurtenant to the Apartment;
2. The right to use any other limited common elements described in the Condominium Declaration as being appurtenant to the Apartment together with such other persons, if any, having the right to use the same;
3. Nonexclusive easements for use of the common elements designed for such purposes for ingress to, egress from, and support, maintenance and repair of the Apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided in the Condominium Declaration; and in all other apartments and limited common elements of the building in which the Apartment is located for support;
4. If the Apartment or its limited common elements now or later encroaches on any other apartment, common elements or limited common elements, then a valid easement for the encroachment and the maintenance of it will remain in effect for so long as such encroachment continues. If any building is partly or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any part of the Condominium, minor encroachments of any parts of the common elements or apartments or limited common elements due to that construction, shifting, settlement or movement are permitted and valid easements for those encroachments and the maintenance of them will exist for so long as the encroachments continue.

### **EXCEPTING AND RESERVING AND SUBJECT TO:**

1. Easements for encroachments appurtenant to other apartments as they arise in the manner set forth in the preceding paragraph, now or hereafter existing thereon;
2. Easements for access to the Apartment from time to time during reasonable hours as may be necessary for the operation of the Condominium or for making emergency repairs therein to prevent damage to the common elements or to another apartment or apartments or for the installation, repair or replacement of any common elements;

3. Easements through the Apartment appurtenant to the common elements of the Condominium and to all other apartments of the Condominium for support and repair of both the common elements of the Condominium and all other apartments of the Condominium;

4. Any other easements granted or reserved by the "Developer" in or under the Condominium Documents or the Master Association Documents.

**SECOND:**

For each of said Apartments, an undivided percentage interest, as listed in Exhibit "B", in and to the common elements of the Condominium, including the land, as described in the Condominium Declaration, or such other percentage interest as hereafter established for the Apartment by any amendment of the Condominium Declaration, as tenant in common with the other owners of apartments in the Condominium. The land of the Condominium is described in the Condominium Declaration and that description, as it may be amended from time to time, is hereby incorporated herein by this reference.

**TOGETHER WITH, AS TO FIRST AND SECOND**, appurtenant easements described in the Condominium Declaration, and **SUBJECT TO** the easements, encumbrances, restrictions, covenants, agreements, obligations, conditions, exceptions, reservations, and other provisions set forth in the Condominium Declaration, the Bylaws of the Association of Apartment Owners of Ocean Resort Villas North recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3266460 (the "Condominium Bylaws"), any rules and regulations adopted thereunder (the "Condominium Rules"), as any of the same may be amended from time to time, and the Condominium Map, to which reference is hereby made.

**BEING A PORTION OF THE PREMISES** described in the Transfer Certificate of Title No. 635,744 issued to SVO Pacific, Inc., a Florida corporation.

**SUBJECT, HOWEVER, TO:**

1. The lien of real property taxes not yet due and owing.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A, Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.
3. All of the encumbrances described in Exhibit "A" to the Condominium Declaration, each of which is incorporated herein by this reference.
4. The "Ka'anapali North Beach Documents" consisting of the following documents and any lawful amendments to them: (i) that certain Declaration of Covenants, Conditions, Easements and Restrictions for Kaanapali North Beach dated December 6, 2000, filed December 6, 2000, as Document No. 2668967, and recorded December 6, 2000, as Document No. 2000-170917, (ii) the Articles of Incorporation of Ka'anapali North Beach Master Association, Inc., (iii) the Bylaws of Ka'anapali North Beach Master Association, Inc., and (iv) any rules and regulations adopted

thereunder.

5. The "Condominium Documents" consisting of the following documents and any lawful amendments to them: (i) the Condominium Declaration; (ii) the Condominium Bylaws; (iii) the Condominium Rules; and (iv) the Condominium Map.

NOTE: For purposes of that certain Notice of Time Share Plan, recorded as Land Court Document No. 3237196, as amended, this instrument is a part of the "Master Declaration" identified therein and, accordingly, the Notice of Time Share Plan is subordinate hereto as therein provided.

END OF EXHIBIT "A"

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

Apartment No.	Relative Valuation Per Apartment	Common Interest Per Apartment
<b>First Floor</b>		
7180/59	52,000	0.003837144
7161/62	52,000	0.003837144
7167/68	52,000	0.003837144
7170/69	52,000	0.003837144
7172/71	52,000	0.003837144
7174/73	52,000	0.003837144
7176/75	52,000	0.003837144
7178/77	52,000	0.003837144
7180/79	52,000	0.003837144
7182/81	52,000	0.003837144
7184/83	52,000	0.003837144
<b>Second Floor</b>		
7260/59	52,000	0.003837144
7261/62	52,000	0.003837144
7263/64	52,000	0.003837144
7265/66	52,000	0.003837144
7287/68	52,000	0.003837144
7270/69	52,000	0.003837144

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

<b>Apartment No.</b>	<b>Relative Valuation Per Apartment</b>	<b>Common Interest Per Apartment</b>
7272/71	52,000	0.003837144
7274/73	52,000	0.003837144
7276/75	52,000	0.003837144
7278/77	52,000	0.003837144
7280/79	52,000	0.003837144
7282/81	52,000	0.003837144
7284/83	52,000	0.003837144
<b>Third Floor</b>		
7360/59	52,000	0.003837144
7361/62	52,000	0.003837144
7383/64	52,000	0.003837144
7385/66	52,000	0.003837144
7367/68	52,000	0.003837144
7370/69	52,000	0.003837144
7372/71	52,000	0.003837144
7374/73	52,000	0.003837144
7376/75	52,000	0.003837144
7378/77	52,000	0.003837144
7380/79	52,000	0.003837144
7362/81	52,000	0.003837144

**Exhibit "E"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

Apartment No.	Relative Valuation Per Apartment	Common Interest Per Apartment
7384/83	52,000	0.003837144
<b>Fourth Floor</b>		
7460/59	52,000	0.003837144
7461/62	52,000	0.003837144
7463/64	52,000	0.003837144
7465/66	52,000	0.003837144
7467/68	52,000	0.003837144
7470/69	52,000	0.003837144
7472/71	52,000	0.003837144
7474/73	52,000	0.003837144
7478/75	52,000	0.003837144
7478/77	52,000	0.003837144
7480/79	52,000	0.003837144
7482/81	52,000	0.003837144
7484/83	52,000	0.003837144
<b>Fifth Floor</b>		
7560/59	52,000	0.003837144
7561/62	52,000	0.003837144
7563/64	52,000	0.003837144
7565/66	52,000	0.003837144
7567/68	52,000	0.003837144

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

Apartment No.	Relative Valuation Per Apartment	Common Interest Per Apartment
7570/69	52,000	0.003837144
7572/71	52,000	0.003837144
7574/73	52,000	0.003837144
7576/75	52,000	0.003837144
7578/77	52,000	0.003837144
7580/79	52,000	0.003837144
7582/81	52,000	0.003837144
<b>Sixth Floor</b>		
7660/59	52,000	0.003837144
7661/62	52,000	0.003837144
7663/64	52,000	0.003837144
7665/66	52,000	0.003837144
7670/69	52,000	0.003837144
7672/71	52,000	0.003837144
7674/73	52,000	0.003837144
7676/75	52,000	0.003837144
7678/77	52,000	0.003837144
<b>First Floor</b>		
8101/02	52,000	0.003837144

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

Apartment No.	Relative Valuation Per Apartment	Common Interest Per Apartment
8103/04	52,000	0.003837144
8105/06	52,000	0.003837144
8107/08	52,000	0.003837144
8110/09	52,000	0.003837144
8112/11	52,000	0.003837144
8114/13	52,000	0.003837144
<b>Second Floor</b>		
8201/02	52,000	0.003837144
8203/04	52,000	0.003837144
8205/06	52,000	0.003837144
8207/08	52,000	0.003837144
8210/09	52,000	0.003837144
8212/11	52,000	0.003837144
8214/13	52,000	0.003837144
<b>Third Floor</b>		
8301/02	52,000	0.003837144
8303/04	52,000	0.003837144
8305/06	52,000	0.003837144
8307/08	52,000	0.003837144
8310/09	52,000	0.003837144
8312/11	52,000	0.003837144

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

<b>Apartment No.</b>	<b>Relative Valuation Per Apartment</b>	<b>Common Interest Per Apartment</b>
8314/13	52,000	0.003837144
<b>Fourth Floor</b>		
8401/02	52,000	0.003837144
8403/04	52,000	0.003837144
8405/06	52,000	0.003837144
8407/08	52,000	0.003837144
8410/09	52,000	0.003837144
8412/11	52,000	0.003837144
8414/13	52,000	0.003837144
<b>Fifth Floor</b>		
8501/02	52,000	0.003837144
8503/04	52,000	0.003837144
8505/06	52,000	0.003837144
8507/08	52,000	0.003837144
8510/09	52,000	0.003837144
8512/11	52,000	0.003837144
8514/13	52,000	0.003837144
<b>Sixth Floor</b>		
8603/04	52,000	0.003837144
8605/06	52,000	0.003837144
8607/08	52,000	0.003837144

**Exhibit "B"**

**OCEAN RESORT VILLAS NORTH  
UNIT LISTING - BUILDINGS 7 & 8**

Apartment No.	Relative Valuation Per Apartment	Common Interest Per Apartment
8610/09	52,000	0.003837144
8612/11	52,000	0.003837144
8614/13	52,000	0.003837144

**Starwood Vacation Exchange Company Disclosure Guide**

**For Members of the Starwood Vacation Network**

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION REGARDING THE EXCHANGE PROGRAM OWNED AND OPERATED BY STARWOOD VACATION EXCHANGE COMPANY IN ACCORDANCE WITH APPLICABLE LAW.

**This does not constitute an offer to sell nor a solicitation of an offer to buy securities or any interest in real estate. For further information, please contact:**

**STARWOOD VACATION EXCHANGE COMPANY  
9002 San Marco Court  
Orlando, Florida 32819**

## I. Definitions

The capitalized terms used in this Disclosure Guide shall have the same meaning as the identical terms defined in the Starwood Vacation Network Rules and Regulations attached as Exhibit "A" unless the context otherwise requires.

## II. Information about SVN Operator

The SVN Operator, Starwood Vacation Exchange Company, is a Delaware corporation with principal offices located at 9002 San Marco Court, Orlando, Florida 32819. The sole shareholder of SVN Operator is Starwood Hotels & Resorts Worldwide, Inc., a Maryland corporation ("Parent"). The officers and directors of SVN Operator are as listed on the attached Exhibit "B." SVN Operator has no legal or beneficial interest in any developer, seller, or managing entity for any vacation ownership plan participating in SVN. However, one or more of the developers, sellers, or managing entities for SVN Resorts may also be subsidiaries or affiliates of the Parent. None of the officers and directors of SVN Operator have any legal or beneficial interest in any developer, seller, or managing entity for any vacation ownership plan participating in SVN, although one or more of them may also be an officer or director of such entities and/or a stockholder of the Parent. SVN Operator and its shareholder, officers, and directors reserve the right to act as developers or sellers of vacation ownership plans and multisite vacation ownership plans for future resorts which plans may or may not be affiliated with SVN.

## III. Membership in SVN

A purchaser of a Vacation Ownership Interest ("VOI") in a Club Resort automatically is enrolled as a Club Member and an SVN Member at the time that the purchaser acquires such VOI. There is no SVN contract separate and distinct from the purchaser's contract with the developer of the vacation ownership plan at a Club Resort, and the terms of such membership are as set forth in the Club Documents and SVN Documents. Membership in SVN is granted to all purchasers of Club Resort VOIs. A resort becomes a Club Resort by means of a Club Resort Affiliation Agreement between Club Operator and a developer or management company for a Club Resort under which the accommodations and facilities of that resort are included as a part of the Club. All Club Resorts are affiliated with SVN by means of an SVN Affiliation Agreement between the Club Operator and the SVN Operator. The purchaser's decision to use the SVN exchange program by making a reservation for a Vacation Period at an SVN Resort, or otherwise using StarOptions after the expiration of the Home Resort Preference Period is voluntary. If the SVN Member no longer owns a Club Resort VOI, the person no longer will be an SVN Member and the new owner of that Club Resort VOI automatically will become the SVN Member. Membership in SVN also is dependent on the continued affiliation between SVN and the Club Resort where the SVN Member owns a VOI.

A purchaser at a non-Club Resort is not automatically a member of SVN. To use and enjoy benefits of membership in SVN, such purchaser must be enrolled by SVN Operator, which will require the execution of an Owner Membership Agreement and the payment of any applicable fee, as determined by SVN Operator. The terms and conditions of such membership also may be set forth in the Resort Documents for that SVN Resort. Such SVN Member's decision to use SVN by reserving a Vacation Period at an SVN Resort, or otherwise using StarOptions after the expiration of the Home Resort Preference Period is voluntary. For so long as such SVN Member remains an SVN Member, such SVN Member's ability to reserve use of the Vacation Period related to the SVN Member's VOI, or any other SVN accommodations, is subject to the SVN Rules. Membership in SVN automatically terminates if the SVN Member voluntarily or involuntarily transfers the SVN Member's VOI and owns no other VOI, or if the SVN Member's Home Resort ceases to be an SVN Resort. Such SVN Membership is not transferable.

#### IV. SVN Procedures and Obligations

The terms and conditions of the purchaser's contractual relationship with SVN Operator and the procedures for using SVN's exchange program are set forth in the SVN Rules attached to this Disclosure Guide as Exhibit "A."

**The terms and conditions of this Disclosure Guide and the SVN Rules, including fees, benefits, and reservation procedures, are subject to change by SVN Operator without advance notice.**

**THE TERMS AND CONDITIONS OF MEMBERSHIP IN SVN WILL BE GOVERNED EXCLUSIVELY BY THE LAWS OF THE STATE OF FLORIDA. ANY ACTION AT LAW OR IN EQUITY BY AN SVN MEMBER TO CHALLENGE OR ENFORCE THE TERMS AND CONDITIONS OF MEMBERSHIP IN SVN MUST BE SUBMITTED EXCLUSIVELY TO THE JURISDICTION OF THE COURTS OF ORANGE COUNTY, FLORIDA, AND BY MAINTAINING MEMBERSHIP WITH SVN, EACH SVN MEMBER CONSENTS TO THE PERSONAL JURISDICTION OF THOSE COURTS. IF AN ACTION AT LAW OR IN EQUITY IS INITIATED BY EITHER AN SVN MEMBER OR SVN OPERATOR, THE LOSING PARTY SHALL PAY ALL COSTS INCURRED BY THE PREVAILING PARTY IN DEFENDING SUCH ACTION, INCLUDING REASONABLE ATTORNEYS' FEES AND LEGAL COSTS.**

Each SVN Member recognizes and acknowledges that:

1. SVN Operator does not sell, lease, or otherwise convey any interest in real property;
2. Because not all owners of vacation ownership interests in all SVN Resorts will become members of SVN, only a limited number of Vacation Periods at such SVN Resorts, if any, will be available from time to time for reservation by SVN Members. Consequently, purchasers should not rely on the status of a particular resort as an SVN Resort in determining whether to purchase a VOI in an SVN Resort;
3. SVN Resort accommodations and facilities vary by location and resort. In addition, VOI accommodations, which have been reserved, may differ in unit size, design, furnishing, or amenities from the VOI accommodations a particular SVN Member owns due to variations between resorts;
4. Fees, if any, incurred by an SVN Member for the use of amenities at a host SVN Resort are determined and collected by the host SVN Resort;
5. An SVN Member is responsible for payment of any personal expenses incurred while occupying a Unit received through a reservation confirmation, as well as for any damage, theft, or loss caused by the SVN Member or the SVN Member's guests;
6. If the Unit for which a reservation confirmation is provided becomes unavailable due to natural disaster, act of God, war, insurrection, or any other reason beyond SVN Operator's control, the SVN Member waives any and all claims against SVN Operator; and
7. SVN Operator is not liable for any claim or loss incurred in connection with participation in SVN or with respect to ownership of a VOI.

## V. Fees

SVN Members will be required to pay all SVN Membership Fees charged against them in accordance with the SVN Documents and the Resort Documents for each SVN Member's respective Home Resort. The Club Resort Operating Budget includes that Club Resort's share of charges by SVN Operator in connection with the operation of SVN. The SVN Membership Fees are charged to the SVN Members pursuant to a Club Resort Affiliation Agreement. These fees are listed on the attached Exhibit "C." A Biennial VOI shall be subject to the yearly SVN Membership Fee every fiscal year, not just in alternate years. An SVN Member who uses SVN to make a reservation other than a reservation during the Home Resort Preference Period shall be liable for any transaction fees charged by SVN Operator from time to time, as referenced in the SVN Fees Chart as may be amended by SVN Operator from time to time in its sole discretion, which fees currently range from \$1 to \$110 and which fees may be increased from time to time in accordance with the SVN Rules. Use of StarOptions may be restricted by SVN Operator if the SVN Member is not current in the payment of the SVN Member's Home Resort maintenance fees and taxes, all applicable SVN Membership Fees, or Vacation Ownership Interest mortgage or purchase money payments. SVN Operator also may require advance payment of estimated maintenance fees and taxes to the SVN Member's Home Resort Managing Entity and estimated SVN Membership Fees to SVN Operator before permitting use of StarOptions.

## VI. SVN Resorts

SVN Members may make reservations in accordance with the SVN Documents for any SVN Resort that is affiliated with SVN from time to time by SVN Operator. The names and addresses of all SVN Resorts currently participating in SVN are as follows:

### Resorts with 21-50 Units

<u>Name and Address</u>	<u>Number of Units</u>	<u>SVN Members</u>
Lakeside Terrace Condominium 340 Lake Street Avon, Colorado 81620	23	492
Villas of Cave Creek 38001 N. Schoolhouse Road Cave Creek, Arizona 85331	25	173
Village North Condominium 8700 Vistana Court Port St. Lucie, Florida 34986	42	2,027
Steamboat Villas Condominium 2200 Village Inn Court Steamboat Springs, Colorado 80477	21	213

### Resorts with over 51 Units

<u>Name and Address</u>	<u>Number of Units</u>	<u>SVN Members</u>
Bella Florida Condominium 12401 International Drive Orlando, Florida 32821	340	20,071
Key West Condominium 12401 International Drive Orlando, Florida 32821	170	8,363

Amelia Resort Condominium 12401 International Drive Orlando, Florida 32821	155	6,617
St. Augustine Resort Condominium 12401 International Drive Orlando, Florida 32821	180	6,315
Westin St. John Great Cruz Bay St. John, U.S. Virgin Islands 00830	92	3,984
Mountain Vista Condominium Benchmark Road and West Beaver Creek Boulevard Avon, Colorado	170	4,983
Mission Hills Villas 71777 Dinah Shore Drive Rancho Mirage, California 92270	158	9,241
Scottsdale Pinnacle Condominium 17700 N. Hayden Road Scottsdale, Arizona 86225	228	7,215
Broadway Palmetto Horizontal Property Regime 3301 Robert M. Grissom Parkway Myrtle Beach, South Carolina 29577	108	3,395
Broadway Plantation Horizontal Property Regime 3301 Robert M. Grissom Parkway Myrtle Beach, South Carolina 29577	314	11,942
Harborside Resort Condominium I Paradise Island Nassau, The Bahamas	80-165 (The exact number of units will depend on the number of individual one and two bedroom units actually sold in the resort.)	5,647
Harborside Resort Condominium II Paradise Island Nassau, The Bahamas	116-228 (The exact number of units will depend on the number of individual one and two bedroom units actually sold in the resort.)	9,319
Vistana Cascades Condominium 13800 State Road 535 Orlando, Florida 32821	426	13,006
Vistana Lakes Condominium 13800 State Road 535 Orlando, Florida 32821	216	5,516
Vistana's Beach Club Condominium 10740 South Highway A1A Jensen Beach, Florida 34957	76	1,214

Vistana Fountains Condominium 13800 State Road 535 Orlando, Florida 32821	234	3,048
Vistana Fountains II Condominium 13800 State Road 535 Orlando, Florida 32821	138	2,375
Vistana Falls Condominium 13800 State Road 535 Orlando, Florida 32821	112	0
Vistana Springs Condominium 13800 State Road 535 Orlando, Florida 32821	102	0
Vistana Spa Condominium 13800 State Road 535 Orlando, Florida 32821	248	0 (Use year beginning no sooner than 2011)
Vistana Condominium 13800 State Road 535 Orlando, Florida 32821	98	0 (Use year beginning no sooner than 2012)
Ocean Resort Villas Six Kai Ala Drive Lahaina, Maui Hawaii 96761	280	17,129
Ocean Resort Villas North 170 Kai Ala Drive Lahaina, Maui Hawaii 96761	258	17,114
The Westin Kierland Villas 15620 North Clubgate Drive Phoenix, Arizona 85254	298	10,637
The Westin Lagunamar Ocean Resort 12.5 Boulevard-Zona Hotelera P.O. Box 834 APDO Postal 834 Cancun, Quintana Roo 77500 Mexico	197	9,235
Princeville Ocean Resort Villas 3838 Wyllie Road Princeville, Kauai, Hawaii	179	9,032
Bay Vista Condominium Great Cruz Bay St. John, U.S. Virgin Islands 00830	54	944
Desert Willow Resort Condominium 39-500 Portola Avenue Palm Desert, California 92260	74	1,223

As of December 31, 2009, there were 193,570 SVN Members enrolled in SVN. If required by applicable law, an independent audit of SVN operations will be performed and reported through the period ending December 31st each year. The SVN Operator calculates the number of SVN Members based on the number of VOIs enrolled in SVN at each SVN Resort.

For the calendar year ending December 31, 2009, the percentage of confirmed exchanges (which is the number of reservations confirmed by SVN Operator divided by the number of reservation requests properly applied for) was 83% as shown on the annual audit report.

All exchanges are based on availability. Accordingly, SVN does not guarantee that SVN Members will receive a specific exchange choice. In order to exchange a Vacation Period, an SVN Member must: (a) pay all delinquent Home Resort maintenance fees, taxes, Club Dues, and VOI mortgage or purchase money payments attributable to the SVN Member's VOI; (b) not have placed the Vacation Period with another exchange company or program; and (c) the Vacation Period to be obtained must be within the same calendar year as the Vacation Period to be exchanged.

The SVN Operator receives improperly submitted exchange requests in the normal course of business. These requests cannot be honored as the SVN Member did not follow SVN's procedures by either improperly completing an exchange request form or failing to submit an exchange request within the minimum time required.

**The percentage of confirmed reservations contained in any annual audit report will be only a summary of the reservation requests entered in the year reported, and such percentage should not be relied on as an indication of the probability of an SVN Member being confirmed to any specific choice or range of choices.**

## Exhibit "A"

### Starwood Vacation Network Rules and Regulations for the Starwood Pacific Vacation Club

These SVN Rules are binding on all members of the Starwood Pacific Vacation Club, their guests, invitees, lessees, licensees, and designees.

#### I. Definitions and Abbreviations

The following terms have the meaning set forth below unless the context requires a different meaning:

Biennial Vacation Ownership Interest means a VOI in which the SVN Member's Use Year occurs every other year. Borrow means to use the SVN Member's StarOptions from the next succeeding Use Year in a preceding Use Year.

Check-in Day means the first day of use of a given 7-day Vacation Period. Each SVN Resort has established Check-in Days.

Club means the Starwood Pacific Vacation Club, the service name given to the variety of exchange and reservation services and vacation and travel benefits currently offered and the restrictions currently imposed by Club Operator for Club Resorts. Club Members reserve the use of the Units at a Club Resort and access an External Exchange Program through the Club reservation system pursuant to the priorities, restrictions, and limitations set forth in the Club Documents. The Club is not a legal entity or association of any kind.

Club Documents means those instruments governing the use and operation of the Club, including each Club Resort Affiliation Agreement and the Club Rules, as promulgated, executed, or amended by Club Operator from time to time.

Club Dues means the charges assessed by Club Operator in connection with the operation of the Club that are assessable to each Club Member or Club Resort each calendar year.

Club Member means an Owner in a Club Resort.

Club Operator means SVO Hawaii Management Inc., a Hawaii corporation, its successors, and assigns. The services provided by Club Operator include the operation of a reservation system for the Club.

Club Resort means a resort that has become affiliated with the Club from time to time pursuant to a Club Resort Affiliation Agreement, and in which membership in the Club is a condition of ownership of a VOI. For a resort in which membership in the Club is a condition of ownership of some but not all VOIs, the term "Club Resort" refers only to Club Resort VOIs in such resort.

Club Resort Affiliation Agreement means a Starwood Vacation Club Resort Affiliation Agreement between Club Operator and the developer or association for a resort under which the accommodations and facilities of that resort are included in the Club, such resort becomes a Club Resort and some or all owners of vacation ownership interests in the resort become Club Members as a condition of ownership.

Club Resort Operating Budget means the budget that accounts for the estimated annual common expenses and reserves of a given Club Resort, including any Club Dues assessable to that Club Resort.

Club Resort Vacation Ownership Interest means a VOI in a Club Resort.

Club Rules means the Starwood Pacific Vacation Club Rules and Regulations governing the reservation and use of Units and Club Resort facilities, as promulgated, adopted, or amended from time to time by Club Operator pursuant to the Club Documents. In accordance with the SVN Affiliation Agreement for Club Resorts, Club Operator has agreed to adopt the SVN Rules as the initial Club Rules.

Disclosure Guide means the Starwood Vacation Exchange Company Disclosure Guide promulgated by SVN Operator.

Even Year Biennial Vacation Ownership Interest means a Biennial VOI in which the Vacation Period associated with the SVN Member's VOI only occurs in calendar years ending in an even digit or zero.

Event Vacation Ownership Interest means a VOI for which a particular SVN Member has the right to use a Vacation Period during a special event, holiday, or similar occasion at the SVN Member's Home Resort as set forth in the Resort Documents for the SVN Member's Home Resort and in accordance with the SVN Rules. Event VOIs may not exist in every SVN Resort.

Event Vacation Period means the Vacation Period attributable to the Owner's Event VOI.

External Exchange Company means any company that provides services to the Club or to Club Members under an External Exchange Program.

External Exchange Program means the contractual arrangement pursuant to which an SVN Member may exchange the use of a Vacation Period, under certain conditions, for the use of accommodations in resorts other than SVN Resorts.

Fixed Vacation Ownership Interest means a VOI for which a particular SVN Member has the right to reserve the use of a Fixed Vacation Period at the SVN Member's Home Resort in accordance with the SVN Rules.

Fixed Vacation Period means a specific Vacation Period within a specific View type and/or Unit type, the exclusive use and occupancy of which may only be reserved by a particular SVN Member during the Home Resort Fixed Priority Period, subject to the Resort Documents and the SVN Rules.

Floating Vacation Ownership Interest means a VOI for which a particular SVN Member has the right to reserve the use of a Floating Vacation Period at the SVN Member's Home Resort in accordance with the SVN Rules.

Floating Vacation Period means a Vacation Period within a specific Unit type, View type and Season, the exclusive use and occupancy of which may be reserved by a particular group of SVN Members at an SVN Resort on a space available, first-come, first-served basis during the Home Resort Preference Period, subject to the Resort Documents and the SVN Rules.

Home Resort means, as to a particular VOI, the SVN Resort in which an SVN Member's VOI is located.

Home Resort Preference Period means the four (4)-month period beginning twelve (12) months and ending eight (8) months prior to the Check-in Day of the Vacation Period. The Home Resort Preference Period is comprised of the Home Resort Fixed Priority Period (12-10 months) and the Home Resort Float Period.

Home Resort Fixed Priority Period means the two (2)-month period beginning twelve (12) months and ending ten (10) months prior to the Check-in Day of the Vacation Period, during which each SVN Member owning a Fixed VOI has the exclusive right to reserve the SVN Member's Fixed Vacation Period without competition from other SVN Members, while each SVN Member owning a Floating VOI competes exclusively with other Owners of VOIs at the SVN Member's Home Resort to reserve Floating Vacation Periods at the Member's Home Resort, each subject to any limitations in the Resort Documents and the SVN Rules.

Home Resort Float Period means the period during which all SVN Members owning VOIs at a particular Home Resort have the exclusive right to compete to reserve the use of Vacation Periods within their Season, View type and Unit type at their Home Resort, subject to any limitations in the Resort Documents and the SVN Rules.

Lock-Off Unit means a Unit which allows the occupancy of less than the entire Unit during a Vacation Period such that an SVN Member may occupy a part of a Unit for a Vacation Period with the remaining part of the Unit being "locked off" and being subject to exclusive use by others.

Managing Entity means the condominium or owners' association, management company, or other entity responsible for operating and maintaining a given SVN Resort.

Odd Year Biennial Vacation Ownership Interest means a Biennial VOI in which the Vacation Period associated with the SVN Member's VOI only occurs in calendar years ending in an odd digit.

Owner means the owner of a VOI. During any period of time in which a purchaser has entered into a valid contract for the purchase of a VOI with a developer of an SVN Resort, has passed any applicable rescission period, and has not defaulted, such purchaser shall be considered an Owner.

Owner Membership Agreement means an agreement executed by an Owner and SVN Operator, pursuant to which agreement the Owner becomes an SVN Member on a voluntary basis in accordance with the terms of such agreement and the other SVN Documents.

Primary Contact means the individual designated by the multiple Owners of a single VOI to represent them in dealing with Reservation Services.

Reservation Services means the division of SVN Operator that handles and processes reservation requests and other SVN Member services from time to time.

Reservation Window means the annually recurring twelve (12) month period beginning one year prior to the first day of use of each Vacation Period. The Reservation Window consists of the Home Resort Preference Period, followed by the SVN Float Period, followed by the SVN Options Period.

Resort Documents means all of the documents, other than the SVN Documents and any applicable Club Documents, that create and govern the rights and relationships of the SVN Members who own VOIs in a given SVN Resort and govern the use and operation of that SVN Resort.

Season means that certain segment of a year within which a Vacation Period occurs. There may be one or more Seasons at any particular SVN Resort. Different Seasons indicate different levels of values and desirability. The Season of each Vacation Period during the Home Resort Preference Period is established by the Resort Documents. The Season of each Vacation Period also is one of the factors used by SVN Operator in assigning StarOptions as set forth in Section 3.1.

StarOption means the symbolic unit of use comparison assigned annually to an SVN Member's VOI by SVN Operator which enables the SVN Member to access SVN services and benefits. SVN Operator reserves the right to implement SVN tiers, pursuant to which SVN Operator could assign a tier or level for each VOI.

StarOptions Chart means the current chart detailing the StarOptions required to reserve the use of a given Vacation Period, as may be amended by SVN Operator from time to time.

Starwood means Starwood Hotels & Resorts Worldwide, Inc., a Maryland corporation.

Starwood Preferred Guest® Program means the vacation and travel benefits program created by Starwood, as more particularly set forth in the Terms & Conditions for the Starwood Preferred Guest Program. The Starwood Preferred Guest Program is a separate program and is not part of SVN or the Club. Eligible SVN Members may access the Starwood Preferred Guest Program through the Starpoints Conversion Program described in Section VII.

SVN means the Starwood Vacation Network, the service name given to the variety of exchange and reservation services and vacation and travel benefits currently offered and the restrictions currently imposed by SVN Operator for SVN Resorts. SVN is an exchange program offered by SVN Operator, an exchange company. SVN Members reserve the use of the Units through SVN, which may or may not include access to an External Exchange Program, as set forth in the applicable SVN Documents. SVN is not a legal entity or association of any kind.

SVN Affiliation Agreement means an agreement setting forth the terms and conditions that SVN Operator establishes from time to time, to make membership in SVN available to owners in SVN Resorts.

SVN Documents means those instruments governing the use and operation of SVN, including each SVN Affiliation Agreement, Owner Membership Agreement, if applicable, the Disclosure Guide, and the SVN Rules, as promulgated, executed, or amended by SVN Operator from time to time.

SVN Float Period means the period beginning eight (8) months prior to the Check-in Day for a given Vacation Period and ends ninety (90) days prior to the Check-in Day, during which all SVN Members compete for a reservation on a space available, first-come, first-served basis to reserve the use of a Vacation Period for which the SVN Member holds sufficient StarOptions, subject to the SVN Rules. The SVN Float Period begins immediately after the Home Resort Preference Period. .

SVN Member means an Owner who meets all of the terms and conditions for membership in SVN as determined by SVN Operator from time to time.

SVN Membership Fees means the charges of SVN Operator assessed to each SVN Member or SVN Resort each calendar year.

SVN Operator means Starwood Vacation Exchange Company, a Delaware corporation, its successors and permitted assigns.

SVN Options Period means the ninety (90)-day period immediately preceding the Check-in Day of a given Vacation Period during which all SVN Members compete for a reservation on a space available, first-come, first-served basis to reserve the use of a Vacation Period for which the SVN Member holds sufficient StarOptions, and have limited rights to Borrow StarOptions and reserve Vacation Periods of less than seven (7) days, subject to the SVN Rules. The SVN Options Period begins immediately after the SVN Float Period and ends the day prior to the Check-In Day of a given Vacation Period. The SVN Options Period includes the SVN Priority Period.

SVN Priority Period means the sixty (60)-day period immediately preceding the Check-in Day of a given Vacation Period, during which SVN Members have limited rights to reserve the Vacation Period, subject to the SVN Rules.

SVN Resort means a resort that is affiliated with SVN, including Club Resorts.

SVN Rules means the Starwood Vacation Network Rules and Regulations governing the reservation and use of Units and SVN Resort facilities, as promulgated, adopted, or amended from time to time by SVN Operator pursuant to the SVN Documents.

Ultra Premium Vacation Ownership Interest means a VOI for which a particular SVN Member has an automatic, confirmed reservation of a specified Vacation Period, View type and Unit type at the SVN Member's Home Resort as set forth in the Resort Documents for the SVN Member's Home Resort and in accordance with the SVN Rules. Ultra Premium Resort Intervals at Harborside Resort Condominium I and Harborside Resort Condominium II also include a right to reserve the specific Unit designated on the Owner's deed. Ultra Premium VOIs may not exist in every SVN Resort.

Ultra Premium Vacation Period means the Vacation Period attributable to the Owner's Ultra Premium VOI.

Unit means an accommodation of an SVN Resort that is subject to exclusive occupancy by one or more persons pursuant to the Resort Documents and SVN Documents and available for reservation by SVN Members.

Use Year means the annually recurring twelve (12) month period beginning on January 1st of each year or as otherwise agreed in writing by SVN Operator from time to time, during which each Vacation Period occurs once. SVN Members owning a Biennial VOI will have a Use Year that occurs every other year.

Vacation Ownership Interest or VOI means the vacation ownership estate or other real or personal ownership interest in a Unit that entitles the Owner to reserve a Vacation Period. Unless the context dictates otherwise, the term will include Biennial VOIs and Club Resort VOIs.

Vacation Period means that period of consecutive days during which an SVN Member with a reservation confirmation is entitled to the possession and use of a Unit. During the Home Resort Preference Period, only Vacation Periods of seven (7) days may be reserved, beginning on an established Check-In Day. During the SVN Float Period, Vacation Periods of seven (7) or more days may be reserved, subject to the SVN Rules. During the SVN Options Period, Vacation Periods of any length may be reserved, subject to the SVN Rules. SVN Operator reserves the right at any time to limit the reservation of Vacation Periods longer or shorter than seven (7) days, in its sole discretion.

## II. Club and SVN Operation

2.1 Membership. Membership in the Club is a condition of ownership of each Club Resort VOI pursuant to the terms of a Club Resort Affiliation Agreement, and is required of all purchasers of Club Resort VOIs. On recording of a deed or a memorandum of contract for deed to a Club Resort VOI, the Club Member is entitled to enjoy the benefits of membership in the Club. Pursuant to an SVN Affiliation Agreement between Club Operator and SVN Operator, a Club Member also is entitled to enjoy the benefits of membership in SVN. Membership in SVN is not an appurtenance to VOIs, and automatically terminates if such Club Member's Home Resort ceases to be an SVN Resort.

A purchaser at a non-Club Resort is not automatically a member of SVN. To use and enjoy benefits of membership in SVN, such purchaser must be enrolled by SVN Operator, which will require the execution of an Owner Membership Agreement and the payment of any applicable fee, as determined by SVN Operator. For so long as such SVN Member remains an SVN Member, such SVN Member's ability to reserve use of the Vacation Period related to the SVN Member's VOI, or any other SVN accommodations, is subject to the SVN Rules. Such Membership in SVN automatically terminates if the SVN Member voluntarily or involuntarily transfers the SVN Member's VOI and owns no other VOI, or if the SVN Member's Home Resort ceases to be an SVN Resort. Such SVN Membership is not transferable.

2.2 Management. The Club is operated and managed by Club Operator pursuant to the Club Documents. Club Operator has contracted with SVN Operator for SVN Operator to perform certain of Club Operator's responsibilities to operate the Club pursuant to the SVN Affiliation Agreement for the Club. SVN is operated and managed by SVN Operator pursuant to the SVN Documents. Club Operator and SVN Operator expressly are authorized to take such actions as they deem necessary or appropriate for the operation of the Club or SVN, respectively, including the implementation of all exchange program and reservation system duties as outlined in the SVN Rules.

2.3 Primary Contact. The Owners of each VOI which is owned by more than one person or by a business entity must designate a Primary Contact from time to time by notifying Reservation Services of same through a writing executed by all individuals holding the membership or by an authorized representative of the business entity. The Primary Contact will be the only designated individual with whom Reservation Services will deal with respect to making reservations, sending confirmations, and providing other services. Reservation Services may charge an administrative fee as Club Operator may determine from time to time, each time it is requested to change a Primary Contact designation. The SVN Operator will defer to the Primary Contact in the event of any conflict among the Owners regarding use of the VOI.

2.4 Club Dues and SVN Membership Fees.

a. Club Resorts. Charges incurred by Club Operator in connection with the operation of the reservation system and the delivery of other Club services and benefits, including SVN Membership Fees, constitute common expenses of the Club and will be charged as Club Dues to individual Club Members or each Club Resort, as more

specifically provided in the Club Resort Affiliation Agreement for each Club Resort. The Managing Entity of each Club Resort will have the responsibility for promulgating a Club Resort Operating Budget each calendar year in the manner required by applicable law, which budget must include the Club Resort's share of the Club Dues as charged by Club Operator in accordance with the Resort Documents.

b. Restrictions on Use of StarOptions. Use of StarOptions may be restricted by SVN Operator or Club Operator if the SVN Member is not current in the payment of the SVN Member's Home Resort maintenance fees and taxes, all applicable Club Dues, and other financial obligations attributable to the SVN Member's VOI (or has not paid such estimated payments for the current Use Year in accordance with Article VI). Except as otherwise provided in the Resort Documents, an SVN Member who uses SVN to make a reservation -- other than a reservation for a Vacation Period during the applicable Home Resort Preference Period -- will be liable for any transaction fees charged by SVN Operator from time to time.

2.5 Transaction Fees. In addition to Club Dues, Club Operator or SVN Operator has the right to charge such other transaction fees as it deems appropriate in its sole discretion from time to time. Such fees may be charged for transactions including additional reservation request fees, cancellation fees, borrowing fees, rental fees, SVN exchange fees, Starwood Preferred Guest redemption fees, daily use fees, fees for additional housekeeping, and such other items as provided in the SVN Fees Chart as may be amended by SVN Operator from time to time in its sole discretion. Daily housekeeping may be made available to guests on request subject to the payment of a fee to the Managing Entity of the SVN Resort in an amount to be published from time to time. SVN Members should inquire as to the amount of the current housekeeping fees with the Managing Entity at the time of check-in.

**Currently, the only transaction fees charged by Club Operator or SVN Operator are listed on the SVN Fees Chart as may be amended by SVN Operator from time to time in its sole discretion. These fees include those for the cancellation of a reservation as described in Section 4.7, a Starpoints Conversion Program conversion fee as described on the SVN Fees Chart; fees for additional housekeeping as described in Sections 3.4, 4.2.d and 4.3; daily housekeeping fees as described in this Article, and such other items shown on the SVN Fees Chart as may be amended by SVN Operator from time to time in its sole discretion.**

2.6 Basis for Addition. SVN Operator may decide to affiliate additional resorts with SVN from time to time. The affiliation of additional SVN Resorts is not subject to the approval of the SVN Members. Club Operator may affiliate additional resorts as Club Resorts, including the terms and conditions under which such resorts are affiliated, in its sole discretion. In making a decision to affiliate additional Club Resorts, Club Operator will use its reasonable business judgment, in good faith and based on all reasonably available evidence under the circumstances, to further the best interests of the Club Members as a whole concerning the Club Members' opportunity to use and enjoy all of the Units and facilities of the Club. In this regard, Club Operator will consider such factors as size, capacity, furnishings, maintenance impact, location (including geographic, topographic, and scenic considerations), recreational capabilities, and demand and availability for Club Member use and enjoyment.

2.7 Availability of SVN Resorts. Availability of Units in an SVN Resort, other than an SVN Member's Home Resort, is dependent on the number of Owners in such SVN Resort who become SVN Members from time to time, the continued affiliation of each SVN Resort with SVN, and the number of Vacation Periods available for reservation in such SVN Resort during the SVN Options Period.

### III. StarOptions

3.1 Assignment of StarOptions. For administrative convenience in the operation of the Club and in the determination of the respective rights of Club Members to enjoy the benefits of membership in the Club, each Club Member will receive an assigned number of points representing the reservation power of the Club Member's Vacation Period in relation to the other Vacation Periods currently in the Club. Currently, StarOptions serve as these points.

For administrative convenience in the operation of SVN and in the determination of the respective rights of SVN Members to enjoy the benefits of membership in SVN, each SVN Member will receive an assigned number of StarOptions representing the reservation power of the SVN Member's Vacation Period in relation to the other Vacation Periods currently in SVN. SVN Operator will assign StarOptions to each SVN Member for the SVN Member's Use Year. StarOptions will be assigned at the beginning of the SVN Float Period.

**The number of StarOptions assigned represents the reservation power of a given Vacation Period within SVN. The assignment of StarOptions with respect to Club Resorts is based on such factors as relative Club Member demand for use of Vacation Periods and the Club Resort, seasonality of the Vacation Period, Unit type, View type, Club Resort type, Club Member use patterns, and availability of Vacation Periods ("Assignment Factors"). SVN Operator reserves the right, in its sole discretion, to revise the number of StarOptions required for reservations within SVN annually, each without SVN Member consent. However, in making any revisions with respect to Club Resorts, SVN Operator will take into account the Assignment Factors and sufficient StarOptions shall be assigned to each SVN Member each year so as to enable each SVN Member to reserve or confirm a reservation for a seven (7)-day Vacation Period (as applicable) corresponding to the SVN Member's VOI, subject to and in accordance with the SVN Documents. Club Operator also reserves the right to revise the assignment of Club points based on the Assignment Factors. As a consequence, the relative reservation power of Club points in the Club may vary from the relative reservation power of StarOptions in SVN in the future.**

In those calendar years when Vacation Period 53 occurs (as defined in the Resort Documents for a given SVN Resort), Vacation Period 53 may be reserved for use by the person to whom such use is assigned pursuant to the SVN Affiliation Agreement or the Resort Documents. It may also be assigned to an External Exchange company; however, Vacation Period 53 may not be deposited with SVN, no StarOptions will be assigned to Vacation Period 53, and it may not be converted to Starpoints.

StarOptions will be allocated for reservation purposes in the order that they are assigned to the SVN Member, subject to the restrictions in the SVN Rules.

3.2 StarOptions Chart and Use of StarOptions. The number of StarOptions required to reserve the use of a given Vacation Period during the SVN Float Period is set forth in the StarOptions Chart. SVN Members may use StarOptions to reserve available Vacation Periods at SVN Resorts during the SVN Float Period, and to reserve available Vacation Periods or Borrow StarOptions during the SVN Options Period, pursuant to the SVN Rules. StarOptions are valid for immediate use as soon as the StarOptions are assigned to the SVN Member, subject to the SVN Rules. The StarOptions Chart is subject to change at the discretion of the SVN Operator.

**StarOptions are valid until the end of the Use Year for which the StarOptions are assigned, and may only be used to reserve Vacation Periods that occur before the end of such Use Year. If an SVN Member fails to use any or all of the SVN Member's StarOptions for Vacation Periods that occur before the end of the assigned Use Year, the StarOptions automatically will expire. StarOptions cannot be "banked" or carried**

**over to reserve Vacation Periods that occur during succeeding Use Years. SVN Members owning Biennial VOIs will be assigned StarOptions only for their Even or Odd Use Year. StarOptions assigned to the SVN Member owning more than one VOI will be allocated for reservation purposes to the Vacation Period with the shortest remaining time availability for the Use Year in which the reservation is being requested, subject to the SVN Rules.**

3.3 Additional StarOptions. If an SVN Member does not have sufficient StarOptions to make a desired reservation or access desired SVN benefits during a given Use Year, the SVN Member may Borrow StarOptions from the next Use Year as set forth in Section 3.5; or, if available, purchase an additional VOI to supplement the SVN Member's total StarOptions. SVN Members may not be able to rent or buy StarOptions for one-time use. The assignment or transfer by one SVN Member of the use of the SVN Member's StarOptions to another SVN Member is prohibited.

3.4 Use of Remaining StarOptions. After an SVN Member has used a portion of the SVN Member's StarOptions during a given Use Year, the balance of the SVN Member's StarOptions will remain available until the end of the Use Year for the SVN Member's use in reserving additional Vacation Periods or accessing SVN benefits. . Additional housekeeping fees will apply for additional Vacation Periods reserved during such Use Year. At the end of such Use Year, any unused StarOptions automatically will expire

3.5 Borrowing StarOptions. During the SVN Options Period, an SVN Member may Borrow all or a portion of the SVN Member's StarOptions from the succeeding Use Year for use in the current Use Year. The Borrowing of StarOptions is subject to the following restrictions:

a. An SVN Member may not Borrow StarOptions to make a reservation through an External Exchange Program.

b. An SVN Member relinquishes the Member's priority rights during the following Use Year's Home Resort Preference Period whenever the SVN Member Borrows StarOptions from such Use Year.

c. An SVN Member may only Borrow StarOptions at the time a reservation request is made. Only the number of StarOptions actually needed to confirm the requested 7-day reservation may be Borrowed.

d. If an SVN Member intends to Borrow all or a portion of the StarOptions from the SVN Member's next Use Year, the SVN Member must first pay, at the time of reservation, the SVN Member's total estimated Home Resort maintenance fees, taxes, and Club Dues for the following Use Year to SVN Operator, and if required by applicable law, SVN Operator will escrow such estimated maintenance fees, taxes, and Club Dues for the benefit of the Home Resort Managing Entity or the SVN Member.

e. SVN Operator reserves the right to prohibit an SVN Member from Borrowing the SVN Member's StarOptions during the first two (2) years of the term of any purchase-money financing related to the SVN Member's VOI.

f. An SVN Member will not be permitted to Borrow StarOptions any time the SVN Member is delinquent in the payment of Club Dues, Home Resort maintenance fees or taxes, or other financial obligations attributable to the SVN Member's VOI.

g. SVN Operator reserves the right, in its sole discretion, to revise the SVN Rules with regard to Borrowing at any time, and from time to time, including suspending or expanding the Borrowing activity.

h. An SVN Member who owns a Biennial VOI may only Borrow StarOptions during the Use Year associated with such Biennial VOI.

i. Borrowing is subject to the availability of StarOptions. SVN Operator may limit, in its sole and absolute discretion, the amount of StarOptions for a given Use Year that may be borrowed by SVN Members.

## IV. Reservations

The Club provides for the methods and means by which Club Members compete among themselves for the use of any Club accommodations and includes the reservation system. Pursuant to each Club Resort Affiliation Agreement, Club Operator is responsible for the operation of a reservation system for the Club. However, as indicated above and pursuant to the SVN Affiliation Agreement for the Club, Club Operator has contracted with SVN Operator for SVN Operator to perform this and other responsibilities of Club Operator.

### 4.1 Making a Reservation.

a. Reservation Window; First-Come, First-Served. Each SVN Member will be permitted to use a Vacation Period during such SVN Member's Use Year, subject to availability. SVN Members who own Biennial VOIs have a Use Year that occurs every other year. Other than a reservation for an Ultra Premium Vacation Period, an Event Vacation Period, or a Fixed Vacation Period during the Home Resort Fixed Priority Period, reservation requests for a particular Vacation Period will be taken on a first-come, first-served basis within the Vacation Period's Reservation Window, in accordance with the reservation periods set forth below. An SVN Member may only make a reservation for an available Vacation Period during that Vacation Period's Reservation Window.

b. Biennial Restrictions. Each SVN Member owning a Biennial VOI may request use of assigned StarOptions and be granted a confirmed reservation only for occupancy of a Vacation Period occurring during such SVN Member's Use Year, which occurs every other year.

During the Home Resort Fixed Priority Period, (a) an SVN Member owning an Even Year Biennial VOI can only reserve occupancy of such SVN Member's Fixed Vacation Period which occurs in calendar years ending in an even number or zero; and (b) an SVN Member owning an Odd Year Biennial VOI can only reserve occupancy of the such SVN Member's Fixed Vacation Period in calendar years ending in an odd number.

c. Submitting a Reservation Request. The SVN Member must submit a reservation request to SVN Operator in writing, by telephone, facsimile, e-mail, or such other electronic means acceptable to SVN Operator from time to time. In special circumstances, SVN Operator may, in SVN Operator's sole discretion at any time, require an SVN Member to submit reservation requests to SVN Operator only by electronic means. SVN Members may not make a reservation request that is received by SVN Operator earlier than the beginning of the Reservation Window for a particular Vacation Period. SVN Operator, on receipt of a valid reservation request, will assign the SVN Member the use of a designated Vacation Period if the Vacation Period requested is available. An SVN Member has no right to make a reservation unless the SVN Member has paid all Home Resort maintenance fees, SVN Membership Fees, taxes, and VOI mortgage or purchase money payments, pursuant to Article VI; furthermore, and as provided in Article VI, SVN Operator may require the advance payment of the estimated current Use Year's maintenance fee assessment and tax assessment which ultimately will become due to the Managing Entity and payment of the current Use Year's estimated SVN Membership Fees to SVN Operator, as a condition to acceptance by SVN Operator of a reservation request. An SVN Member may make a reservation in the name of a guest.

### 4.2 Reservation Window Priorities.

**Reservation requests for Floating Vacation Periods will be taken on a first-come, first-served basis, subject to the reservation priorities listed below. Since availability will vary, SVN Operator cannot guarantee confirmation of a reservation for any specific Floating Vacation Period at any specific SVN Resort at any time. The earlier a reservation request is submitted, the better the chance that a reservation confirmation can be secured.**

Reservation requests are subject to the following priorities:

a. Ultra Premium Vacation Periods and Event Vacation Periods.

(1) Ultra Premium Vacation Periods. SVN Members owning Ultra Premium VOIs have the exclusive right to receive confirmed reservations of their Ultra Premium Vacation Periods without competition from other SVN Members, subject to any limitations in the Resort Documents and the SVN Rules. Each Ultra Premium Vacation Period automatically will be reserved one (1) year prior to the Check-In Day for the Vacation Period, for the use of the Owner of the corresponding Ultra Premium VOI within a specific View type and/or Unit type, as set forth in the Resort Documents for the SVN Member's Home Resort.

During the Home Resort Preference Period, SVN Members owning Ultra Premium VOIs may voluntarily give up their rights to use their Ultra Premium Vacation Periods to compete with SVN Members at their Home Resort to reserve Floating Vacation Periods within their Season and Unit type at their Home Resort. During the SVN Float Period and the SVN Options Period, SVN Members owning Ultra Premium VOIs may use StarOptions to reserve Vacation Periods.

(2) Event Vacation Periods. SVN Members owning Event VOIs have the exclusive right to use their Event Vacation Periods without competition from other SVN Members, subject to any limitations in the Resort Documents and the SVN Rules. Each Event Vacation Period automatically will be reserved one (1) year prior to the Check-In Day for the Vacation Period, for the use of the Owner of the corresponding Event VOI within either a specific Unit or Unit type, as set forth in the Resort Documents for the SVN Member's Home Resort.

During the Home Resort Preference Period, SVN Members owning Event VOIs may voluntarily give up their rights to use their Event Vacation Periods to compete with SVN Members at their Home Resort to reserve Floating Vacation Periods within their Season, View type and Unit type at their Home Resort. During the SVN Float Period and the SVN Options Period, SVN Members owning Event VOIs may use StarOptions to reserve Vacation Periods.

Because the actual dates of the events on which some of the Event Vacation Periods are based are determined by parties other than SVN Operator, the dates on which certain Vacation Periods are designated as Event Vacation Periods may vary. However, SVN Operator shall designate which specific Vacation Periods during each calendar year shall be Event Vacation Periods at any time not less than two weeks and one year prior to the occurrence of the Event Vacation Periods, and shall publish the same to all SVN Members. Notice of the designation of Event Vacation Periods may be made by newsletter publication or annual mailings. All Christmas and New Year's holiday weeks are designated as Event Vacation Periods at Lakeside Terrace, Sheraton Mountain Vista, Westin Ka'anapali Ocean Resort Villas, Westin Ka'anapali Ocean Resort Villas North, Princeville Ocean Resort Villas, Westin Lagunamar Ocean Resort, Steamboat Villas Condominium and Riverfront Mountain Villas Condominium. In addition, all President's Day and July 4<sup>th</sup> holiday weeks are designated as Event Vacation Periods at Lakeside Terrace.

Event Week reservations are generally only accessible to SVN Members who own an Event VOI, depending upon the specific Resort Documents. SVN Members who own Floating Vacation Ownership Interests should not expect to reserve an Event Period during the Home Resort Preference Period.

b. Home Resort Preference Period. The Home Resort Preference Period begins twelve (12) months and ends eight (8) months prior to the Check-in Day of a given Vacation Period. The Home Resort Preference Period is comprised of the Home Resort Fixed Priority Period (12-10 months) and the Home Resort Float Period. During the Home Resort Preference Period, only 7-day Vacation Periods beginning on an established Check-In Day may be reserved, and no SVN Member may reserve a Vacation Period in a Season or Unit type different from the Season and Unit type of the SVN Member's VOI.

(1) Home Resort Fixed Priority Period. During the Home Resort Fixed Priority Period, SVN Members owning Fixed VOIs have the exclusive right to reserve their Fixed Vacation Periods without competition from other SVN Members, subject to any limitations in the Resort Documents and the SVN Rules. During the Home Resort Fixed Priority Period, an SVN Member owning a Fixed VOI in a Lock-Off Unit may exercise a priority right to reserve the use of either portion of the Lock-Off Unit during the SVN Member's Fixed Vacation Period.

Reservation requests for the remaining unreserved portion of the Lock-Off Unit will continue to be subject to the Reservation Window priorities. During the Home Resort Fixed Priority Period, SVN Members owning Floating VOIs have the exclusive right to compete with other SVN Members to reserve Floating Vacation Periods within their Season and Unit type at their Home Resorts, subject to any limitations in the Resort Documents and the SVN Rules. During the Home Resort Fixed Priority Period, an SVN Member owning a Floating VOI in a Lock-Off Unit may exercise a priority right to reserve the use of either portion of the Lock-Off Unit during a Floating Vacation Period. Reservation requests for the remaining unreserved portion of the Lock-Off Unit will continue to be subject to the Reservation Window priorities. During the Home Resort Fixed Priority Period, SVN Members owning Ultra Premium VOIs or Event VOIs may voluntarily give up their rights to use their Vacation Periods and compete with other SVN Members at their Home Resort to reserve Vacation Periods within their Season and Unit type at their Home Resort. No SVN Member may reserve a Vacation Period in a Season different from the Season assigned to the Vacation Period corresponding to the SVN Member's VOI.

(2) Home Resort Float Period. During the Home Resort Float Period, SVN Members have the exclusive right to reserve a Vacation Period in their Home Resorts without competition from SVN Members in other SVN Resorts, subject to any limitations in the Resort Documents. During the Home Resort Float Period, SVN Members must compete with other SVN Members owning VOIs in the SVN Members' Home Resorts for reservations on a first-come, first-served basis for a reservation for any available Vacation Period that the SVN Member has the right to reserve within the Member's Season and Unit type at the Member's Home Resorts. During the Home Resort Float Period, an SVN Member owning a VOI in a Lock-Off Unit may exercise a priority right to reserve the use of either portion of a Lock-Off Unit in the SVN Member's Home Resort during any available Vacation Period that the SVN Member has the right to reserve. Reservation requests for the remaining unreserved portion of the Lock-Off Unit will continue to be subject to the Reservation Window priorities. During the Home Resort Float Period, SVN Members owning Ultra Premium VOIs or Event VOIs may voluntarily give up their rights to use their Vacation Periods and compete with SVN Members owning VOIs at their Home Resort to reserve Vacation Periods within their Season and Unit type at their Home Resort.

(3) Home Resort Preference Period Options and Restrictions

(a) On receiving a reservation confirmation for a Vacation Period during the Home Resort Preference Period, an SVN Member may use the Vacation Period for personal use or for use by a guest.

(b) An SVN Member relinquishes the SVN Member's Home Resort Preference Period rights whenever the SVN Member voluntarily enters the SVN Float Period without obtaining a confirmed reservation during the Home Resort Preference Period or when an SVN Member owning an Ultra Premium VOI or Event VOI elects to reserve a Vacation Period other than the associated Ultra Premium Vacation Period or Event Vacation Period.

(c) An SVN Member relinquishes the SVN Member's Home Resort Preference Period rights when the SVN Member voluntarily seeks access to an External Exchange Program and the requested external exchange is confirmed.

(d) Once an SVN Member has reserved a Vacation Period during the Home Resort Preference Period, the SVN Member cannot cancel this reservation without relinquishing the SVN Member's Home Resort Preference Period rights and entering the SVN Float Period. If an SVN Member desires to reserve a Vacation Period after such a cancellation, the SVN Member must compete with other SVN Members for such reservation on a first-come, first-served basis.

(e) Club Operator or SVN Operator has the right to affiliate Club Resorts or resorts which are not Club Resorts that have Home Resort Preference Periods, Home Resort Fixed Priority Periods, or Home Resort Float Periods of varying lengths.

c. Bulk Banking for Anticipated External and Starwood Preferred Guest Program Exchanges. SVN Operator has the right, but not the obligation, to reserve a number of Floating Vacation Periods from time to time at any time thirty (30) days after the beginning of the Home Resort Fixed Priority Period, and any unreserved Vacation Period after the Home Resort Fixed Priority Period, for the purpose of depositing the reserved Vacation Periods with an External Exchange Program on behalf of SVN Members based on SVN Operator's determination, in its sole discretion, of anticipated SVN Member demand to access an External Exchange Program or the Starwood Preferred Guest Program. SVN Members may request an external exchange company assignment based upon the resort, unit and season being assigned by the SVN Member for an external exchange request.

d. SVN Float Period. The SVN Float Period begins eight (8) months prior to the Check-in Day for a given Vacation Period and ends ninety (90) days prior to the Check-in Day. It follows the Home Resort Preference Period for a given Vacation Period and precedes the SVN Options Period. During the SVN Float Period, all SVN Members must compete with other SVN Members for reservations on a first-come, first-served basis for a reservation for any available Vacation Period that the SVN Member has sufficient StarOptions to reserve. Due to the automatic reservation of Ultra Premium Vacation Periods and Event Vacation Periods as described in Section 4.2.a(2), the availability of such Vacation Periods may be limited.

SVN Members also will compete with SVN Operator for reservations during the SVN Float Period with respect to SVN Operator's rights to make reservations for bulk banking for external exchange and anticipating SVN Member demand to access the Starwood Preferred Guest Program as discussed above.

During the SVN Float Period, SVN Operator may permit Vacation Periods of more than seven (7) days to be reserved, provided such Vacation Period must either end or begin on an established Check-In Day, and must be reserved in a single Unit. StarOptions may not be Borrowed to reserve a Vacation Period during the SVN Float Period. Additional housekeeping fees may apply for reservations of more than seven (7) days. During the SVN Float Period, special requests for specific villa numbers, views or location will not be confirmed.

e. SVN Options Period. The SVN Options Period is the ninety (90)-day period immediately preceding the Check-in Day of a given Vacation Period, during which all SVN Members must compete with other SVN Members for reservations on a first-come, first-served basis for a reservation for any available Vacation Period that the SVN Member has sufficient StarOptions to reserve. During the SVN Options Period, Borrowing StarOptions is permitted as set forth in Section 3.5, and Vacation Periods of less than seven (7) days may be reserved in accordance with Section 4.3. SVN Members also will compete with SVN Operator for reservations during the SVN Options Period with respect to SVN Operator's rights to make reservations for bulk banking for external exchange and anticipating SVN Member demand to access the Starwood Preferred Guest Program as discussed above.

f. SVN Priority Period. The SVN Priority Period is the sixty (60)-day period immediately preceding the Check-in Day of a given Vacation Period. If a reservation request for a given Vacation Period has not been received by Reservation Services by the beginning of the SVN Priority Period, Reservation Services' ability to confirm a subsequent reservation request for the Vacation Period will be limited by and subject to the following:

(1) Any reservations made available by SVN Operator to the Managing Entity for maintenance purposes;

(2) Any reservations used by SVN Operator for rental to SVN Members; and

(3) Any reservations used by SVN Operator for its own purposes including exchange, promotional use, rental to third parties, or any other purpose as SVN Operator determines in its sole discretion.

4.3 Vacation Periods Less than Seven Days. During the SVN Options Period, SVN Members will be permitted to reserve Vacation Periods of less than seven days as permitted by SVN Operator from time to time. All such reservations are subject to the reservation request priorities for the Vacation Period containing the days in question, including those set forth in the Resort Documents. SVN Operator reserves the right in its sole discretion to designate those Vacation Periods in which daily reservations will be permitted to be reserved from time to time.

StarOptions required to reserve a Vacation Period of less than seven days are subject to change by SVN Operator from time to time pursuant to Article III. SVN Members on the Wait List (as more fully described in Section 4.8) shall have first priority to make a reservation for a cancelled Vacation Period before a Vacation Period reservation of less than seven (7) days may be accepted.

Full cleaning housekeeping fees apply to all reservations of Vacation Periods of less than seven days. SVN Operator may require payment to the Managing Entity of the SVN Resort in an amount to be published from time to time.

4.4 Failure to Make a Timely Reservation. If an SVN Member fails to make a reservation for a Vacation Period that occurs during the SVN Member's Use Year, the SVN Member's right to make a reservation for that Use Year automatically will expire and the StarOptions assigned for that Use Year automatically will expire. On the first day of each new Use Year, the SVN Member will again have the right to reserve a Vacation Period for use during that new Use Year in accordance with the SVN Rules. A Club Member unable to use any available Vacation Period is not relieved of the obligation to pay all Club Dues, maintenance fee assessments and taxes, and mortgage or purchase money payments associated with ownership of a VOI. SVN Operator shall have the right to rent or otherwise use all such unreserved Vacation Periods during the SVN Priority Period.

4.5 Owner Rental. Before an SVN Member may rent the SVN Member's Vacation Period, the SVN Member must receive a reservation confirmation for the SVN Member's Vacation Period at the SVN Member's Home Resort.

4.6 Confirmations; Accommodation Preferences. Confirmations will be provided to each SVN Member or Primary Contact by Reservation Services to confirm all reservations. Except for Owners who have a right to receive a reservation for a specific Unit, Reservation Services will not assign a specific Unit until the time of check-in. Special Unit assignments, such as ground level Units, cannot be guaranteed, but will be noted as a preference in the reservation confirmation.

4.7 Cancellations, Additional Reservation Requests, and No-Shows.

**An SVN Member may cancel a confirmed reservation by notifying SVN Operator by telephone prior to the Check-in Day of the assigned Vacation Period. Charges for cancellations are set forth on the SVN Fees Chart as amended by SVN Operator from time to time in its sole discretion. Reservations may be cancelled within twenty-four (24) hours of making the reservation request without payment of a cancellation fee unless the reservation was made less than thirty (30) days prior to the Check-in Day.**

Cancellations or changes in reservations made more than sixty (60) days prior to the Check-in Day for a reserved Vacation Period will result in unrestricted restoration of the related StarOptions to the SVN Member for further use during that Use Year and restoration of the SVN Member's ability to convert a reserved Vacation Period to Starpoints, although the SVN Member's related Home Resort Preference Period rights will not be restored.

An SVN Member who cancels sixty (60) or fewer days prior to the Check-in Day will still be able to make reservations during that Use Year, but only to reserve Vacation Periods that are available within sixty (60) days after the date the reservation is made. Such SVN Member will not be permitted to convert such reserved Vacation Period to Starpoints in such Use Year.

SVN Members who fail to arrive on the Check-in Day of the reserved Vacation Period must notify SVN Operator that they will be arriving subsequent to such Check-in Day or risk losing the reservation. A reservation confirmation must be cancelled by an SVN Member by notifying SVN Operator by telephone prior to the Check-in Day of the assigned Vacation Period. An SVN Member's StarOptions will not be restored to the SVN Member for further use if the SVN Member fails to cancel a reservation prior to the Check-in Day for a reserved Vacation Period. Borrowed StarOptions that were used to make a cancelled reservation will be returned to the succeeding Use Year without penalty; however, no refund of advance payment of estimated maintenance fees,

taxes, and Club Dues will be made, and Home Resort Preference Period rights associated with such Use Year will not be restored.

4.8 Wait Lists. SVN Operator may, in its sole discretion, institute a service whereby it will maintain wait lists for those SVN Members belonging to a designated tier or level of SVN membership (as identified from time to time by SVN Operator) who wish to make reservations for currently unavailable Vacation Periods. Wait list confirmations will be processed as SVN Operator receives cancellations of confirmed reservations for the Vacation Period in question, subject to the SVN Operator's reservation priority rights during the SVN Priority Period. SVN Operator has the right to cancel, modify or create certain restrictions regarding the use of wait lists from time to time. To be placed and remain on a Wait List, an eligible SVN Member must have sufficient StarOptions available to reserve the requested Vacation Period(s), and Borrowing StarOptions is not permitted for a Wait List request.

4.9 Multiple Reservation List. SVN Operator may, in its sole discretion, institute a service whereby it will maintain a list for Owners of multiple VOIs who wish to reserve multiple Vacation Periods in a given Use Year. Such Owners may notify SVN Operator of the requested Vacation Periods to be reserved no sooner than the beginning of the Reservation Window for the earliest Vacation Period requested. Reservation requests for all such Vacation Periods for which Reservation Windows have not yet begun will be held on the multiple reservation list. SVN Operator will make reservations for Vacation Periods on the multiple reservation list in accordance with the applicable Reservation Window for each Vacation Period. Reservations for requested Vacation Periods, if available in accordance with the SVN Rules, will be made by the SVN Operator during the beginning of SVN Operator's business hours on the first calendar day of the Reservation Window for the Vacation Period requested. SVN Operator will provide the Primary Contact for such multiple VOIs with confirmation of each reserved Vacation Period after each such reservation has been made by the SVN Operator, or will promptly notify such Primary Contact if any such Vacation Period is not available.

## V. External Exchange Program

In order to increase the range of options available to SVN Members, SVN Operator has made arrangements for each SVN Member to have access to an External Exchange Program. All external exchange requests will be handled by SVN Operator and the External Exchange Company provider. An SVN Member who is interested in an external exchange must contact Owner Services and indicate the SVN Member's preference for an exchange. An SVN Member may make an external exchange request up to one year in advance of the SVN Member's Season or VOI, or at any time prior to the end of the SVN Member's Use Year, subject to the limitations in Section 4.7 above. Following verification of the identity of the SVN Member and verification that the SVN Member is in good standing, an Owner Services representative and the SVN Member will discuss the SVN Member's specific time, destination, and type of room requests along with any special requests, and these requests will be noted by the Reservation Services representative. The SVN Member will confirm with the Owner Services representative the resort name, unit type and season that SVN Member is relinquishing for his/her external exchange request. The SVN Member may also be asked to designate more than one alternative set of exchange requests, in order to increase the SVN Member's chances of getting a desired exchange. SVN Member participation in an External Exchange Program will be governed by the terms and conditions of the External Exchange Program and the following:

(1) In identifying the SVN Member's resort, unit type and season being assigned for external exchange, the SVN Member acknowledges that he/she has relinquished all other use rights for that VOI.

(2) All rules and regulations that apply to the use of Units and SVN facilities by SVN Members also will apply to users of such Units and facilities through the External Exchange Program.

(3) If an SVN Member intends to assign a current or future use year to an External Exchange Company, the SVN Operator may require the SVN Member to pay in advance, at the time of assignment, the SVN Member's total estimated maintenance fees, taxes, and SVN Membership Fees for the Use Year being assigned provided that SVN Operator shall be obligated to remit such estimated maintenance fees, taxes, and SVN Membership Fees to the Home Resort as required by applicable law.

(4) The External Exchange Company provider will charge a SVN Member an exchange fee for each confirmed exchange through the External Exchange Program.

(5) SVN Members are neither required nor permitted to participate in the Deposit First or Request First exchange method that may be offered by the External Exchange Company provider to non-SVN members from time to time.

(6) Each Use Year, an SVN Member shall be permitted to request an External Exchange Company assignment for each eligible VOI owned by the SVN Member, regardless of the number of Vacation Periods such Member may be entitled to reserve in SVN through the use of StarOptions. An SVN Member owning a VOI in a Lock-Off Unit may request an exchange assignment for one or both portions of the Lock-Off Unit with the External Exchange Company and shall be permitted one external exchange per exchange assignment requested. Reservation requests for any remaining unassigned portion of the Lock-Off Unit will continue to be subject to the SVN Reservation Window priorities.

(7) With the exception of Vacation Periods reserved at the Home Resort, SVN Members are prohibited from renting to a third party any accommodation reserved through the SVN's exchange program, including accommodations of the External Exchange Program.

(8) Availability of accommodations within the External Exchange Program is dependent on the vacation ownership interests from various External Exchange Program member resorts that are deposited into it by other members of the External Exchange Program from time to time. An SVN Member can have no assurance that an External Exchange Company will be able to provide the SVN Member with an accommodation that meets the SVN Member's needs and desires when the SVN Member wants it or at a particular time. The exchange accommodation received may or may not be comparable in size, layout, furnishings, services, or amenities to those in SVN Resorts.

(9) External exchange assignments are valid for travel for up to 30 months from January of the use year of the assignment. As an example, an SVN Member requesting an external exchange assignment in January 2010 may travel on the deposit through June 30, 2012. An SVN Member requesting an external exchange assignment in August 2010 may travel on the deposit through June 30, 2012. Unredeemed external exchange assignments may not be extended past the expiration date under any circumstance.

(10) External exchange assignments may be cancelled no later than December 1<sup>st</sup> of the occupancy year. An SVN Member's use right will be reinstated based on availability at the time the exchange assignment is cancelled, and an SVN Member is not guaranteed availability at the Home Resort or an SVN resort.

## VI. Delinquency

Club Operator and SVN Operator reserve the right not to accept a reservation request from a Club Member if the Club Member is not current in the payment of all of the Club Member's Home Resort maintenance fees, taxes, Club Dues, and VOI mortgage or purchase money payments attributable to the Club Member's VOI. A Club Member who is delinquent in the payment of any maintenance fee assessment, tax assessment, Club Dues, or VOI mortgage or purchase money payment shall have no right to reserve a Vacation Period through Club Operator, SVN Operator, or any External Exchange Company, and any previously confirmed Vacation Period reservation may be cancelled, until the delinquency is satisfied in full. Club Operator or SVN Operator may collect any delinquent maintenance fee assessments, tax assessments, Club Dues, or VOI mortgage or purchase money payments by credit card. Furthermore, Club Operator or SVN Operator may require the advance payment of the estimated current Use Year's maintenance fee assessment and tax assessment which ultimately will become due to the Managing Entity and payment of the current Use Year's estimated Club Dues, as a condition to acceptance by Club Operator or SVN Operator of a reservation request, provided that any such prepaid maintenance fee and taxes for Club Resorts are held in escrow if required by applicable law.

## VII. Starpoints Conversion Program

In order to increase the range of available options, SVN Members may have the ability to exchange their reserved Vacation Period for Starpoints and to use these Starpoints to access the hotels and other benefits and services available through the Starwood Preferred Guest Program by means of the Starpoints Conversion Program. Starpoints are the symbolic unit of use medium that enables an eligible SVN Member to access the Starwood Preferred Guest Program. SVN Members who participate in the Starpoints Conversion Program must comply with the terms and conditions of this program, as set forth in the Starpoints Disclosure Statement and Starwood Preferred Guest Program terms and conditions. The Starwood Preferred Guest Program and the Starpoints Conversion Program are separate programs and are not part of SVN or the Club. Access to the Starpoints Conversion Program is not transferable and the terms of both the Starwood Preferred Guest Program and the Starpoints Conversion Program are subject to change at any time and without notice.

## VIII. Miscellaneous Provisions

8.1 Personal Use; Commercial Purposes. Use of the Units and facilities associated with SVN is limited solely to the personal use of SVN Members, their guests, invitees, exchangers, and lessees and for recreational use by corporations or other similar business entities owning VOIs. Purchase of a VOI or use of Units and facilities associated with SVN for commercial purposes, for contribution to or use in a different vacation ownership plan or vacation club (except as expressly permitted in the SVN Documents), or for any purpose other than the personal use described above is prohibited.

8.2 Club Member Rentals. A Club Member may reserve a Vacation Period at the Club Member's Home Resort and rent it on the Club Member's own account. All renters must comply with the rules and regulations of the Resort Documents affecting occupancy, and the renting Club Member will be responsible for the acts or omissions of the Club Member's renters or any other person or persons permitted by the Club Member to use the Unit. Rental by a Club Member of Units reserved through the Club or SVN (other than a Vacation Period reserved at the SVN Member's Home Resort) is prohibited.

8.3 Amendment of the SVN Rules. Except as provided in the Resort Documents, SVN Operator expressly reserves the right to amend the SVN Rules, with respect to SVN Resorts in all respects, in its sole discretion, from time to time, without the consent of SVN Members, for any purpose, including permitting banking of Vacation Periods and creating SVN tiers. SVN Operator shall deliver notice of any amendment to Club Operator as specified in the SVN Affiliation Agreement for the Club or each Primary Contact at the Primary Contact's last known address. Notice of amendments may be made by newsletter, annual mailings, facsimile, or e-mail.

8.4 Special Exchange Programs. SVN Operator reserves the right, from time to time, to enter into special exchange relationships with any entity other than an External Exchange Company pursuant to which SVN Members will have access to selected non-SVN resorts and non-SVN owners will have access to SVN accommodations after the Home Resort Preference Period. Any special exchange programs will be governed by reservation rules and regulations similar to those governing an External Exchange Program.

8.5 Amendment of SVN Documents. Each SVN Member's participation in SVN will be governed by the SVN Documents, as amended from time to time by SVN Operator. SVN Operator shall have the right to amend any portions of the SVN Documents that SVN Operator in its sole discretion determines are necessary or desirable to amend from time to time, without the consent of SVN Members, subject to Section 8.3 with respect to Club Resorts, and except as provided in the Resort Documents. SVN Operator shall deliver notice of any amendment in the same manner as described in Section 8.3.

8.6 Termination. If the SVN Affiliation Agreement, Owner Membership Agreement, or other instrument that affiliates an SVN Resort with SVN is terminated or expires in accordance with its own terms, the terminated SVN Resort will no longer be affiliated as a part of SVN. However, on termination of such instrument, all confirmed reservations of SVN Members (from the terminating SVN Resort and from the non-terminating SVN Resorts) will be honored at both the terminating SVN Resort and at non-terminating SVN Resorts.

8.7 Severability and Conflict. The invalidity in whole or in part of any covenant or restriction, or any article, section, subsection, sentence, clause, phrase, word, or other provision of the SVN Documents shall not affect the validity of the remaining portions.

8.8 Include. The term “include” and similar terms (e.g., includes, including, included, comprises, comprising, such as, e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not of limitation.

Exhibit "B"

Officers and Directors of Starwood Vacation Exchange Company  
(f/k/a Westin Vacation Exchange Company)

Officers

President, Chief Executive Officer  
Senior Vice President  
Senior Vice President, Secretary  
Vice President, Assistant Secretary  
Vice President, Assistant Secretary  
Vice President, Treasurer  
Vice President  
Assistant Treasurer  
Assistant Secretary

Sergio D. Rivera  
Thorp S. Thomas  
Victoria H. Carter  
Robin L. Suarez  
Angela K. Halladay  
Lisa Cassin  
Heather McGill  
Peter Morrow  
Kristen Prohl

Directors:

Thorp S. Thomas  
Sergio D. Rivera  
Victoria H. Carter

Exhibit "C"

## Chart for Starwood Vacation Network Fees

Note: This chart provides a summary of the fees that may be charged for the use of the Starwood Vacation Network. For additional information, please see the Starwood Vacation Network Rules and Regulations.

### Fees for Starwood Vacation Network Members

SVN Yearly Membership Fee <sup>1</sup>	US \$109 per year for the 1 <sup>st</sup> Vacation Ownership Interest (annual or biennial) in the Starwood Vacation Network  US \$33 per year for the 2nd Vacation Ownership Interest (annual or biennial) in the Starwood Vacation Network  US \$0 for all additional owned Vacation Ownership Interests in the Starwood Vacation Network
International Surcharge <sup>2</sup>	US \$25 per year
Starwood Preferred Guest® Program Conversion Fee <sup>3</sup>	US \$99 per conversion
Reservation Cancellation Fee	US \$29 per cancellation
Housekeeping Fees <sup>4</sup> (for Vacation Periods not occurring in a typical Use Week Period per stay at resort)	

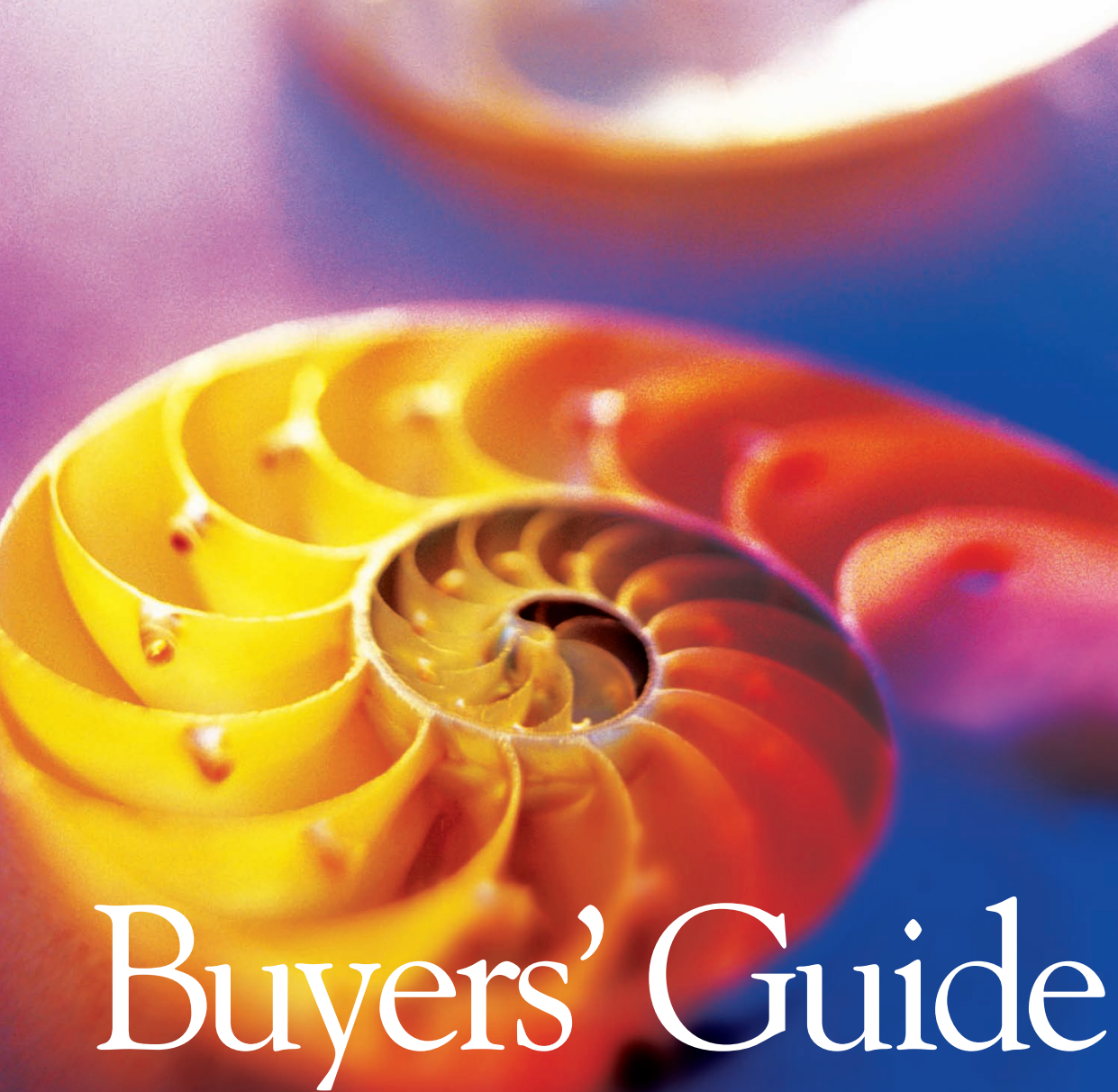
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<sup>1</sup> Your SVN fees include your Club Dues. For vacation ownership interests owned in the State of Hawaii, there is an additional 4% state tax added to the SVN fee amounts shown on this chart.

<sup>2</sup> The International Surcharge is charged to those owners living outside the U.S., Canada, Puerto Rico, Bermuda and most Caribbean Islands.

<sup>3</sup> For SVN Elite 4-Star and 5-Star Members, SPG Conversion Fees are waived.

<sup>4</sup> Additional requests for housekeeping services will be assessed when appropriate, based upon the number of confirmed reservations. Splitting your vacation period into two or more segments may require the payment of additional housekeeping fees. Please consult your owner services representative for the specific amount of additional housekeeping fees, if any, at the time you make your reservation.



This Buyers' Guide to the Interval International® Exchange Program contains important information concerning your exchange privilege. You should read this document prior to your purchase of a vacation interest. Unless otherwise stated, the information contained in this publication is correct as of May 31, 2010.

# Buyers' Guide **2010**

**FOR MEMBERS OF THE  
STARWOOD VACATION NETWORK**

interval

I N T E R N A T I O N A L

# Buyers' Guide

## 2010

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*\*Accurate as of December 31, 2009*

**INTERVAL  
INTERNATIONAL®**  
THE QUALITY VACATION EXCHANGE NETWORK

## DISCLOSURE INFORMATION ABOUT THE INTERVAL INTERNATIONAL® EXCHANGE PROGRAM FOR STARWOOD VACATION NETWORK MEMBERS

This guide is provided to explain the Exchange Program made available to members of the Starwood Vacation Network through Interval International, Inc. ("II"). You should review this information to ensure that you understand the terms and conditions of participation in the Exchange Program. The following are definitions of special terms which are included within the text of this guide.

### Definitions

1. **"Host Resort"** or **"Host Accommodations"** means the resort into which the Network Member has been issued a Verified Confirmation.
2. **"Interval International Resort Directory"** or **"Resort Directory"** refers to II's print and online publication which includes the Terms and Conditions of Individual Membership and Exchange as well as an overview of benefits of II membership and a descriptive listing of certain Member Resorts.
3. **"Member Resort"** means any resort, or vacation ownership club membership program, for which a developer or homeowners' association has entered into a formal multiyear affiliation agreement with II, as well as any resort or club program in which II provides exchange services directly to owners. Member Resorts include Network Resorts, except where expressly noted to the contrary.
4. **"Network"** means the STARWOOD VACATION NETWORK, which is the service name given to the variety of exchange and reservations services and vacation and travel benefits currently offered and the restrictions currently imposed through SVEC (defined hereunder), and which allows Network Members to reserve accommodations at any location included within the Network's operations.
5. **"Network Deposit"** means the deposit with II by SVEC of accommodations from Network Resorts in one-week increments which SVEC makes, or will make, from time to time, on behalf of Network Members.
6. **"Network Member"** means the owner of record of a SVN Vacation Ownership Interest at a Network Resort, who has complied with all of the terms and conditions for membership in the Network as determined by SVEC for that Network Resort and who is enrolled with the Exchange Program. A Network Member is said to be in good standing with II when said Network Member is current in the payment of all fees prescribed by II and is in compliance with all II terms and conditions then in effect.
7. **"Network Resort"** means a SVN Resort which, from time to time, is owned by the Network or, becomes affiliated with the Network by virtue of the execution of a resort agreement between the developer and/or managing entity of such resort and SVEC.
8. **"Network Rules"** means the Starwood Vacation Network Rules and Regulations governing the reservation and use of the Network accommodations and facilities, which rules and regulations have been promulgated and adopted by SVEC. The Network Rules are attached to the Starwood Vacation Exchange Company Exchange Program Disclosure Guide as Exhibit A thereto.
9. **"Other II Member"** means a person, persons, or entity who owns a vacation interest at a Member Resort, who is not a participating member of the Network, and who, by participating in the II Exchange Program, agrees to be bound by the terms and conditions of II membership and exchange.
10. **"Resort Assignment"** means the code used collectively by the Network and II to identify the Network Resort, season, unit size, and Use Year being relinquished by the Network Member for exchange.
11. **"Suspension"** or **"Suspended Resort"** means that a Member Resort is in violation of the affiliation agreement or other agreement with II or is not in compliance with II policies and procedures. While a Member Resort is suspended, processing of new memberships, membership renewals, and exchange requests may be temporarily halted.
12. **"SVEC"** means Starwood Vacation Exchange Company, a Delaware corporation, the manager and operator of reservation services and vacation and travel benefits for the Network.
13. **"SVN Vacation Ownership Interest"** means a Vacation Ownership Interest in a Network Resort for which membership in the Network is made in accordance with SVEC from time to time.
14. **"TDI"** or **"Travel Demand Index"** means the seasonal indexes that are updated periodically to reflect the cycles of relative weekly demand for a specific geographic area. The TDI is a vacation-planning tool offered by II to assist Members in determining which time periods offer the best opportunities for travel to a particular region and when accommodations are most likely to be available. The TDIs are not an indication of the quality or desirability of vacationing in any specific resort, geographic area, or season, nor are they necessarily an indication of the availability of a particular week in the Exchange Program.
15. **"Verified Confirmation"** means a written or electronic acknowledgment (with the exception of certain Flexchange® confirmations, which may be oral) that an exchange request has been fulfilled by II.

**Network Members should consult the Network's Program Disclosure Guide and the Network Rules and Regulations for the definitions of the terms Home Resort, Home Resort Preference Period, Reservation Services, Reservation Window, SVN Resort, Use Year, and Vacation Ownership Interest, and for further information, details, and explanations of the reservation and use of Network accommodations and facilities, and other terms, conditions, and information regarding the Network; II is not responsible for fulfilling any such terms and conditions, nor does II have any control over such terms and conditions. All information contained in these terms and conditions have been established by SVEC and are subject to change by SVEC.**

THE TERMS AND CONDITIONS SET FORTH HEREIN ARE DIFFERENT FROM II'S STANDARD TERMS AND CONDITIONS OF INDIVIDUAL MEMBERSHIP AND EXCHANGE FOR OTHER II MEMBERS WHICH STANDARD TERMS

AND CONDITIONS ARE SET FORTH IN THE *INTERVAL INTERNATIONAL RESORT DIRECTORY* AND OTHER II PUBLICATIONS FROM TIME TO TIME. THE TERMS AND CONDITIONS SET FORTH HEREIN HAVE BEEN SPECIALLY AGREED UPON BY SVEC AND II FOR OBTAINING RESORT ACCOMMODATIONS THROUGH THE II EXCHANGE PROGRAM. THEREFORE, WHEN PLACING A REQUEST FOR ACCOMMODATIONS WITH II YOU SHOULD REFER TO THESE TERMS AND CONDITIONS AND NOT THE STANDARD TERMS AND CONDITIONS THAT ARE SET FORTH IN THE *II RESORT DIRECTORY* AND IN OTHER II PUBLICATIONS. IN THE EVENT OF A CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND SUCH OTHER STANDARD TERMS AND CONDITIONS, THESE TERMS AND CONDITIONS SHALL PREVAIL.

## Who We Are

1. II is a Florida corporation offering an exchange service, and in certain circumstances other travel and leisure benefits (the "Exchange Program") for use by Network Members and Other II Members. II is a wholly owned subsidiary of Interval Holdings, Inc., a Delaware corporation. II's corporate headquarters is located at:

P.O. Box 431920  
6262 Sunset Drive  
Miami, Florida 33243-1920  
305.666.1861

The obligations of II, pursuant to this guide, may be performed by II, its authorized representatives, or designated licensees.

2. II is an independent exchange service company and is not operated or managed by any developer, seller, managing entity, or marketer of any Member Resort. No developer of any Member Resort is an agent or joint venturer with II. II does not sell, lease, or otherwise convey an interest in any real property. Neither II, nor any of its officers or directors, has any legal or beneficial interest in SVEC or any developer, seller, or managing entity of any resort participating in the Exchange Program. Therefore, you agree that II is not liable or responsible for any claim or loss incurred in connection with your ownership of a SVN Vacation Ownership Interest or your participation in the Network.
3. The following are the corporate officers and directors of II:

<b>Craig M. Nash</b> .....	Chairman, President, Chief Executive Officer, Director
<b>Jeanette E. Marbert</b> .....	Executive Vice President, Chief Operating Officer, Director
<b>John Galea</b> .....	Senior Vice President, Chief Financial Officer, Director
<b>David R. Clifton</b> .....	Managing Director, EMEAA
<b>David C. Gilbert</b> .....	Executive Vice President
<b>William L. Harvey</b> .....	Executive Vice President
<b>Marie A. Lee</b> .....	Senior Vice President and Chief Information Officer
<b>Victoria J. Kincke</b> .....	Senior Vice President and General Counsel, Secretary

<b>Thomas A. Bell</b> .....	Senior Vice President
<b>Mary Cheddie</b> .....	Senior Vice President
<b>Raul E. Estrada</b> .....	Senior Vice President
<b>Sharon Freed</b> .....	Senior Vice President
<b>Bryan Ten Broek</b> .....	Senior Vice President

4. SVEC and II entered into a contract pursuant to which, among other things, II will provide its Exchange Program for use by Network Members, subject to the terms and conditions of membership in the Network and in accordance with the terms and conditions set forth herein.

## Membership

1. The Network maintains a corporate membership in the Exchange Program, and each Network Member derives II membership benefits and exchange privileges through such corporate membership. The Network enrolls each Network Member in the Exchange Program. These Terms and Conditions of Individual Membership and Exchange, which are contained in the *Interval International Resort Directory* and are also summarized in the Network enrollment form, constitute the Network Member's contract with II, which is a separate and distinct contract from the contract with the developer or seller of the SVN Vacation Ownership Interest. Enrollment in the Exchange Program commences upon II's receipt and processing of the enrollment form and the applicable fee.
2. In subsequent years, the Network arranges for renewal of the corporate membership with II. At all times, participation in the Exchange Program by Network Members is voluntary.
3. **Benefits of the Exchange Program including, but not limited to, participation in Special Exchange Services and various incentive programs (which may be offered from time to time) will be provided so long as the Network Member and the Network are in good standing with II.** Additionally, the Network Member must be in good standing with the Network (i.e., Network Member is current in all contract and operating fund payments to the Network). Membership benefits other than the exchange privilege are subject to separate terms and conditions. Said benefits and their terms of use may be changed, substituted, or eliminated without prior notice. Some benefits are provided by independent third parties and II expressly disclaims responsibility for the acts or omissions of any persons or entities providing such benefits. Network Members are not required to exchange their SVN Vacation Ownership Interest to use any other benefits provided through II.
4. Participation in the Exchange Program is conditioned upon the Network's continued adherence (and the adherence of Network Resorts) to II's standards of service, appearance, management, and operation. The failure of the Network, or Network Resorts, to maintain these standards, or to timely renovate or construct vacation accommodations and/or amenities participating in, or committed to participate in, the Exchange Program, or failure of the Network to remain in good standing with II (e.g., failure to comply with contractual obligations, including the

obligation to enroll purchasers and remit fees; failure to comply with II policies and procedures), may result in suspension or termination of the Network's affiliation with II. **The Network's suspension or termination from the Exchange Program may result in the loss of Network Members' II benefits, including the exchange privilege.**

5. Representations concerning II and the Exchange Program are limited to materials supplied or otherwise approved by II in writing. All other representations are not valid or binding on II.

6. Not all Member Resorts are included in the *Interval International Resort Directory*. The failure to picture a Member Resort in the *Resort Directory*, however, does not necessarily mean that such Member Resort is not in good standing with II, or that its associated Network Member or Other II Member is not entitled to use the exchange privilege. Likewise, the inclusion of a Member Resort in the *Resort Directory* does not necessarily mean that such Member Resort is in good standing with II, or that the associated Network Member or Other II Member is entitled to use the exchange privilege. All reasonable efforts are made to ensure that published resort information is accurate. II, however, expressly disclaims liability in the event of omission or error.

7. Network Members acknowledge that:

- (a) Resort facilities, amenities, and services vary by country, location, and resort, and room accommodations vary in size, decor, and interior detail.
- (b) The description and amenities symbol provided in the *Resort Directory* for each Member Resort are representative of the features generally available at such Member Resort. However, unit amenities and views may vary from unit to unit within a Member Resort and II cannot guarantee specific selection of any such elements with respect to the Host Accommodations. Each Network Member should review the Verified Confirmation for specific information about his exchange accommodations.
- (c) The exchange privilege should not be the primary reason for purchasing a SVN Vacation Ownership Interest, and the relative demand indicated in a Travel Demand Index and assigned to any particular week should not be relied upon in determining the value of that week for exchange.
- (d) II is not liable for any damage to, loss of, or theft of personal property left in any Network Resort accommodations; nor is II liable for any damage to, loss of, or theft of personal property that occurs through Network Members' use of Host Accommodations.
- (e) II is not liable for any personal or bodily injury that occurs either at any Network Resort or at a Host Resort.
- (f) Upon each use of the Exchange Program, any and all claims against II are waived, and II is released from all liability, if any, arising out of participation that occurred prior to the use of same.

- (g) II's liability to a Network Member, if any, in connection with participation in the Exchange Program is limited to the fees paid to II by or on behalf of the Network Member.
- (h) All rules and regulations of the Network, as well as these terms and conditions, must be adhered to. Violation of such rules or these terms and conditions may result in the cancellation of the Network Member's ability to participate in the Exchange Program without further obligation by II.
- (i) If a SVN Vacation Ownership Interest is owned by a corporation, partnership, or trust, one corporate officer, partner, or trustee must be established as the primary contact or administrator to manage the membership.
- (j) Where multiple individuals are listed in a single membership record as the owners of a Vacation Interest(s), II may continue to provide membership and exchange benefits for all individuals listed until II receives verifiable documentation of any change of ownership of the Vacation Interest(s).
- (k) **Membership in II may be used only for personal and noncommercial purposes. Any other use of membership benefits may result in the suspension or termination of a Network Member's privileges, as well as any existing Confirmations and loss of fees associated with such Confirmations held by the Network Member.**
- (l) Telephone conversations between Network Members and II employees or representatives may be recorded and/or monitored for training and quality control purposes.
- (m) If II should fail or be delayed or impaired in the performance of any obligation hereunder, including, but not limited to, providing exchange accommodations, due to causes beyond the control of and without the fault or negligence of II, then II shall be excused from further performance upon written notice to the affected Network Member stating the reason for such nonperformance. Such causes may include, but are not limited to, acts of God or public enemy, fire, strikes, lock-out or other labor unrest, riot, explosion, civil disobedience, declared or undeclared war, revolution, insurrection, boycotts, acts of piracy, acts of terrorism, acts of public authorities, blockade, embargo, accident, epidemic or quarantine, delays or defaults caused by public or common carriers, and/or other circumstances materially impacting travel to a particular region or in general.
- (n) Although II submits this disclosure statement for approval by regulatory agencies having jurisdiction over timeshare and exchange programs in various states, such approval should not be interpreted as applying to any travel, leisure, or other benefit or service falling outside the jurisdiction of any such agency.
- (o) II is prohibited from doing business with certain entities, individuals and groups of individuals as may be set forth from time to time on

the Specially Designated Nationals and Blocked Persons Lists, and the Terrorism List (collectively, "Blocked Parties"). If II receives a Network enrollment form for a Network Member defined as a Blocked Party, II will refuse membership for such purchaser. If a Network Member subsequently becomes or is determined to be a Blocked Party, II will cancel the membership without refund or other obligation.

8. Network Members acknowledge and agree that II may upon occasion offer various products and services relating to individual membership benefits, including exchange and travel benefits offered by II.
9. The terms and conditions of participation in and use of the Exchange Program shall be construed under the laws of the State of Florida. By participating in the Exchange Program, Network Members consent to the exclusive subject matter and personal jurisdiction of the courts in Miami-Dade County, Florida. In the event of litigation between the parties, the prevailing party shall be entitled to all costs incurred, including reasonable attorneys' fees.
10. The terms and conditions of Individual Membership and Exchange, including any fees associated therewith may be changed by II in its sole discretion. Network Members will be provided written notice of any such changes through II's regular publications or at II's website, IntervalWorld.com.

### Exchange Procedures and Priorities

1. To utilize the exchange privilege, including Special Exchange Services, Network Members must be in good standing with II and the Network from the time a request is placed through the actual travel dates. In addition, the Network must be in good standing with II. For example, SVEC must comply with its obligations to timely and properly provide II with Network Deposits. **Failure to timely and properly make the Network Deposits may result in the loss of exchange privileges for Network Members.**
2. To submit a request for exchange accommodations, Network Members must first contact the Network's Owner Services Department during the Reservation Window to secure a Resort Assignment for exchange. The Network Member may then contact II or the Owner Services Department to place an exchange request. The Network will provide II with Network Resort accommodations on behalf of the Network Member after an exchange has been confirmed. Requests may not be submitted more than 12 months prior to the commencement date of the week being requested. Network Members acknowledge that the Network will assign an expiration date to each Resort Assignment, and that this expiration date will be based upon the Network Member's respective Club Use Year as it relates to the timing of the particular request being placed. Further, Network Members acknowledge that the requested travel must be completed prior to such expiration date. An expired Resort Assignment will not be extended by the Network or II.
3. The ShortStay Exchange<sup>SM</sup> program ("ShortStay Exchange") is an exchange service offered by II to members of the Interval Gold® membership program, in which resort accommodations for periods of less than seven days can be confirmed to Network Members who book such accommodations online at II's website, IntervalWorld.com. To participate in a ShortStay Exchange, a Network Member must contact the Network's Owner Services Department during the Reservation Window to secure a vacation period in order to secure up to two ShortStay Exchange Confirmations for one week of Network Resort accommodations. Generally, the resort accommodations available through a ShortStay Exchange will be confirmed 30 days or less prior to the first date of occupancy. Holiday, summer, and other highly demanded travel periods usually will not be available through a ShortStay Exchange. The domestic processing fee as defined below in Paragraph 4 under the Section entitled Fees, plus any applicable tax, must be submitted at the time a ShortStay Exchange Confirmation is made. **This exchange fee is nonrefundable. A cancellation of a ShortStay Exchange Confirmation results in the loss of the Resort Assignment unit week.** All other terms and conditions of the Exchange Program apply to this exchange service, except as noted to the contrary.
4. To submit a valid exchange request, a minimum of three different resorts and one time period, three different time periods and one resort, or two different resorts and two different time periods must be requested. Network Members may be automatically confirmed into any resort or time period requested. Requests through the Exchange Program currently must be for one-week increments.
5. **Regular exchange requests must be received by II at least 60 days in advance of the commencement date of the week requested.** For exchange requests made less than 60 days prior to the date requested, Flexchange is a service in which vacation exchange requests may be submitted from 59 days up until 24 hours in advance of the travel dates desired. Available Host Accommodations for the date requested will be offered and an instant Verified Confirmation will be issued if one of the availabilities offered at the time of the call is accepted. Holiday, summer, and other highly demanded weeks usually are not available through this late-request exchange service. All other terms and conditions of exchange apply to this service, except where expressly noted to the contrary. **Regardless of the methodology used, once an exchange request is submitted, it may be canceled only if notice (written or oral) of cancellation is received by II prior to Verified Confirmation of the request. Once issued, a Verified Confirmation may be canceled only in accordance with II's Exchange Cancellation Policy, as described in Paragraph 12 below.**
6. Requests for accommodations may be placed with II by telephone or at II's website at IntervalWorld.com. After contacting the Network's Owner Services Department, a request by telephone should be made by calling II's Starwood desk: 877.782.7088; or for Westin owners: 888.869.3784; or for Sheraton owners: 888.801.0089.
7. An exchange fee is required to be paid by the Network Member to II when placing an exchange request.
8. **Exchanges are arranged on a space-available basis, taking into consideration the "Comparable Exchange" concept explained in**

**Paragraph 15. Neither II, SVEC, nor any developer or marketer, can guarantee the fulfillment of a specific request.**

9. Deposited weeks are received on a random basis. II has no control over the timing, location, or number of weeks available to the Exchange Program. Network Members may exchange as many weeks as they own at a Network Resort, with a minimum exchange of one week.

10. **Some Network Members may be restricted from exchanging into resorts located within the same geographical area as the Network Member's Home Resort accommodations. There are currently restrictions in Aruba; Barbados; Cancún, Mexico; Cyprus; Dominican Republic; Door County, Wisconsin; Eastern British Columbia; Gatlinburg/Pigeon Forge, Tennessee; Grand Bahama Island; Grand Cayman Island; Guatemala; Hawaii (the Big Island); Hilton Head, South Carolina; Kauai, Hawaii; Kissimmee/Orlando, Florida; Lake Tahoe, California; Las Vegas, Nevada; Madeira, Portugal; Malta; Marco Island, Florida; Mazatlán, Mexico; Maui, Hawaii; Naples, Florida; Okaloosa/Walton County, Florida; Palm Desert, California; Palm Springs, California; Phuket, Thailand; Puerto Vallarta, Mexico; Riviera Nayarit, Mexico; St. Maarten, Netherlands Antilles; Stateline, Nevada; Summit County, Colorado; Virginia Beach, Virginia; and Williamsburg, Virginia. This restriction does not apply to Network Members from requesting an exchange to another Network Resort in the same geographic area. Additional geographic areas may be restricted in the future. Network Members affected by any future restrictions will be advised via II's regular publications.**

11. Only II can confirm vacation exchange requests, and only II written confirmations are valid, with the exception of certain late request confirmations, which may be oral. II will attempt to confirm a request until 48 hours before the latest travel dates requested; however, beginning on the 30th day prior to the latest travel dates requested, the Network Member will be contacted by telephone in order to obtain acceptance (or rejection) by the Network Member prior to issuing a Verified Confirmation. Verified Confirmations are sent to Network Members directly from II.

12. (a) **The only circumstances under which a Network Member using the Exchange Program may lose the ability to occupy Network Resort accommodations without being provided Host Accommodations are if a Network Member: (i) cancels a Verified Confirmation seven days or more prior to the first date of occupancy of the Host Accommodations being canceled and fails to request substitute accommodations in accordance with II's Exchange Cancellation Policy; (ii) cancels a Verified Confirmation less than seven days prior to the first date of occupancy of the Host Accommodations being canceled; (iii) cancels or loses the use of a Verified Confirmation, at any time, due to the threatened or actual damage or destruction of the Host Accommodations; (iv) cancels a Verified Confirmation for substitute exchange accommodations which were previously issued to the Network Member under II's Exchange Cancellation Policy, or (v) where the use of the Network Resort accommodations by II is lost or**

**impaired due to circumstances beyond II's control.**

(b) **Under II's Exchange Cancellation Policy, a Network Member is entitled to cancel a Confirmation by notifying II of his or her desire to cancel such Confirmation within the first 24 hours after the exchange request has been confirmed.** In such circumstances, the Network Member's exchange fee will be refunded and the right to occupy the Network Resort accommodations shall revert to the Network Member.

(c) **When a Network Member notifies II of his or her desire to cancel a Verified Confirmation seven days or more prior to the first date of occupancy of the Host Accommodations being canceled, the Network Member will be entitled to request substitute exchange accommodations, as long as the Network Member requests travel occurring no later than 12 months after the date on which the Network Member canceled said Verified Confirmation for the Host Accommodations. However, the time period in which such Network Member is entitled to request substitute exchange accommodations is limited, as follows:**

(i) **When a Network Member notifies II of his or her desire to cancel the Confirmation 60 days or more prior to the first date of occupancy of his or her Host Accommodations, the Network Member may request substitute exchange accommodations at any time from the date of cancellation up to 24 hours prior to the first date of occupancy of such substitute exchange accommodations.**

(ii) **Where a Network Member notifies II of his or her desire to cancel the Verified Confirmation 59 to 14 days prior to the first date of occupancy of his or her exchange accommodations, the Network Member may request substitute exchange accommodations 59 days to 24 hours prior to the first date of occupancy of such substitute exchange accommodations.**

(iii) **When a Network Member notifies II of his or her desire to cancel the Verified Confirmation 13 to seven days prior to the first date of occupancy of his or her exchange accommodations, the Network Member may request substitute exchange accommodations from limited travel destinations 30 days to 24 hours prior to the first date of occupancy of such substitute exchange accommodations.**

(d) **Notwithstanding the foregoing, a Network Member may not request substitute exchange accommodations where he or she has canceled or has lost the use of a Verified Confirmation, as a result of the Host Accommodations being damaged or destroyed or where such damage or destruction is imminent.** The purchase of exchange cancellation insurance is strongly recommended by II, particularly where a Network Member is issued a Verified Confirmation to a Host Resort located in an area prone to damage or destruction due to adverse weather conditions, earthquakes, or other natural disasters.

- (e) II reserves the right to deny a Network Member substitute exchange accommodations under II's Exchange Cancellation Policy where such Member has received compensation for his or her canceled exchange accommodations pursuant exchange cancellation insurance or otherwise.
- (f) **In all instances that a Network Member requests substitute exchange accommodations pursuant to II's Exchange Cancellation Policy, the Network Member will be entitled to request substitute Host Accommodations comparable in value to the Network Resort accommodations relinquished.**
- (g) **The date the Network Member cancels will be deemed the new date of relinquishment in determining a priority with respect to Paragraph 16(e).**
- (h) **II will retain the exchange fee paid initially to secure the canceled Verified Confirmation and, where a request for substitute exchange accommodations is allowed under II's Exchange Cancellation Policy, the Network Member will be required to pay an additional exchange fee at the time he requests substitute exchange accommodations.**
13. **Irrespective of the calendar followed by any Network Resorts, Network Members may be confirmed into a resort with weekly time periods beginning on any day of the week.**
14. Any week not confirmed by II to a Network Member or Other II Member may be used by II for general commercial purposes.
15. The Exchange Program is based upon the "Comparable Exchange" concept. Comparable Exchange attempts to parallel, to the greatest extent possible, the supply of and demand for the weeks comprising, or that will comprise (as agreed upon between II and SVEC), the Network Deposits with the supply of and demand for the weeks being requested in exchange. Comparable Exchange also attempts to ensure that Members are confirmed, whenever possible, to resorts which are comparable in quality to the Network Resorts.
16. II, therefore, in order to achieve its goal of providing the Member with an exchange experience comparable to that which SVEC provides, assigns a priority to each request based on the following factors:
- (a) **The supply of, and demand for, within the Exchange Program, the vacation weeks deposited from time to time by SVEC or being offered in exchange (Request First).**
- (b) **The supply of, and demand for, within the Exchange Program, the vacation week and Member Resorts being requested in exchange.**
- (c) **The quality, facilities, and overall experience offered by Network Resorts as compared to the quality, facilities, and overall experience of the Member Resorts being requested in exchange. This is based on evaluation forms received from exchange guests to Network Resorts, resort inspections and evaluations, and other information received by II regarding Network Resorts.**
- (d) **When the exchange request is received by II. The sooner II receives the request, the better. The earlier of two identical requests for the same vacation week with identical relinquishment will receive priority.**
- (e) **The amount of time in advance of the first date of occupancy at which the Network Deposit is made available to II.**
- (f) **The unit type and private sleeping capacity of the Network Resort accommodations being relinquished as compared to the unit type and private sleeping capacity being requested.**
- All of the above factors, with the exceptions of when the Network Deposit is made available to II, when a request is received, and the unit type and private sleeping capacity, are constantly changing and are updated by II on an ongoing basis.
17. **In addition to the above, priority in the exchange confirmation process is provided to:**
- (a) **Network Members and Other II Members requesting an exchange to selected Member Resorts that are owned, or in certain instances marketed, and/or managed in common with the Home Resort, and**
- (b) **Network Members and Other II Members who own a Vacation Interest at a Member Resort located in the geographic regions of Australia, New Zealand, and/or South Africa, and are requesting an exchange to other Member Resorts that are located in the same geographic region as the Other II Member's Home Resort.**
18. **The Host Accommodations may be used only for personal and noncommercial purposes. Network Members are expressly prohibited from exchanging or renting the Host Accommodations, including, but not limited to offering the Host Accommodations for sale or rent by third parties through the use of a Guest Certificate or otherwise.** Failure to use the Host Accommodations will not entitle Network Members to recover any Deposit Assignment. Verified Confirmations are issued only in the name of the Network Member placing the exchange request, and Host Accommodations may be used only by the Network Member and accompanying guests, unless a Guest Certificate is obtained from II. There is a fee for each week assigned via a Guest Certificate, which must be paid, plus any applicable tax, when the certificate is requested. This Guest Certificate fee is in addition to the exchange fee required when the exchange request is placed. Failure to secure a Guest Certificate for a guest of the Member may result in termination of the membership and cancellation of any existing Confirmations with future travel dates. Guests of Members who arrive at a Host Resort without a Guest Certificate will be denied access to the accommodations until the Member has purchased a Guest Certificate from II.

19. The Network Member requesting the Guest Certificate is responsible for the acts and omissions of the individuals occupying the Host Accommodations, including any loss or damage to the Host Resort or the Host Accommodations. **Individuals under the age of 21 are not eligible to receive a Guest Certificate. Additionally, the issuance of a Guest Certificate and the use of the Host Accommodations are subject to any restrictions or limitations that may be imposed by the Host Resort. Network members are expressly prohibited from selling or exchanging a Guest Certificate for cash, barter, or other consideration. In the event that any of the above terms are breached, II reserves the right to revoke the Guest Certificate.**
20. By submitting an exchange request, Network Members represent and warrant that they have the Necessary Points (at least a seven-day interval) available for surrender, and that all Network maintenance fees and taxes, or similar charges, have been paid through the requested travel dates. **Exchange privileges may be denied and a Verified Confirmation canceled if all such payments or similar charges with the Network have not been paid.**

### Starwood Internal Exchange Procedures and Priorities

1. This Section entitled “Starwood Internal Exchange Procedures and Priorities” contains information relating to exchange procedures and priorities when requesting an exchange to a Network Resort. **The procedures set forth herein are applicable only when all resorts requested for exchange are Network Resorts.**



2. To place a valid exchange request for use of accommodations at Network Resorts only, a minimum of one Network Resort and one time period (in one-week increments) must be requested. Additional Network Resorts and time periods may be specified and you may be confirmed into any listed resort for any week specified.
3. **As set forth in Paragraph 17 under the Section entitled “Exchange Procedures and Priorities” above, Network Members requesting an exchange to their Home Resort will receive priority over other Network Members who do not own a Vacation Interest at such Network Resort; and Network Members requesting an exchange to other Network Resorts will receive priority over Other II Members requesting an exchange to Network Resorts.**
4. The special Starwood Internal Exchange Fee for requests to Network Resorts is the then-current applicable exchange processing fee discounted by US\$35, plus any applicable tax, per week exchanged. This exchange fee must be submitted at the time a request is made, and will only be refunded if the exchange request cannot be confirmed or written cancellation is received by II prior to the Verified Confirmation. Any exchange request that includes both Network Resorts and other Member Resorts, must be submitted in accordance with the other terms and conditions set forth in this guide, including the payment of the standard applicable exchange fee. In the event such request is ultimately confirmed to a Network Resort, no portion of the fee paid to II will be refunded (i.e., the difference between the applicable exchange processing fee and the special Starwood Internal Exchange Fee).
5. The following is a list of the current Network Resorts: Harborside Resort at Atlantis, Lakeside Terrace, Sheraton Broadway Plantation, Sheraton Desert Oasis, Sheraton Mountain Vista, Sheraton PGA Vacation Resort, Sheraton Steamboat Resort Villas, Sheraton Vistana Resort, Sheraton Vistana Villages, Vistana’s Beach Club, Westin Desert Willow Villas, Westin Ka’anapali Ocean Resort Villas, Westin Ka’anapali Ocean Resort Villas North, Westin Kierland Villas, Westin Lagunamar Ocean Resort, Westin Mission Hills Resort Villas, Westin Princeville Ocean Resort Villas, Westin Riverfront Mountain Villas, and Westin St. John Resort and Villas.

### Special Exchange Services

1. The Getaway Program is a special exchange service offered by II from time to time in which resort accommodations are confirmed to Network Members (and Other II Members) upon payment of a fee plus any applicable tax. The resort accommodations available through the Getaway Program include resort accommodations that have been deposited by the Network or deposited or relinquished by Other II Members, but are not otherwise utilized by II, and resort accommodations made available to II directly by resort developers or other third parties for exclusive use in the Getaway Program. The fee charged to Network Members by II is based primarily upon the unit size confirmed, the location of the accommodations, and the occupancy date. **The Network is not required to make a Network Deposit in order for Network Members to obtain Getaway accommodations. In certain circumstances, Network Members may not be confirmed**

through the Getaway Program into a Network Resort through this Program. Holiday, summer, and other highly demanded weeks usually are not available through the Getaway Program. II reserves the right to limit the number of Getaway Confirmations issued to a particular Network Member in any particular year and to limit the number of units confirmed to a Network Member for any given travel date. II's Exchange Cancellation Policy does not apply to Getaway Confirmations. Any cancellation of a Getaway Confirmation results in the loss of the unit. Getaway fees will not be refunded under any circumstances. Network Members are expressly prohibited from selling or exchanging a Getaway Confirmation for cash, barter, or other consideration. A Guest Certificate may be obtained for a Getaway Confirmation in accordance with the terms set forth in Paragraphs 18 and 19 under Exchange Procedures and Priorities. All other terms and conditions of the Exchange Program apply to this special service, except where noted to the contrary.

2. II does not guarantee the continuation of the Getaway Program. Network Members will be advised in writing if any of these services are discontinued.

## Fees

The fees set forth below are applicable for residents of the United States, Canada, and the Caribbean. Residents of other geographic areas are subject to different fees which are assessed by local servicing offices or representatives.

1. The Network maintains a corporate membership in the II Exchange Program, and each Network Member derives II membership benefits and exchange privileges through such corporate membership.
2. In subsequent years, the Network arranges for renewal of the corporate membership with II, but use of the II Exchange Program by Network Members is voluntary.
3. Where a Network Member also owns a Vacation Interest at a Member Resort through which the Network Member participates as an Individual Member of the II Exchange Program, said Network Member must maintain his or her Individual Membership in the II Exchange Program, separate and distinct from his or her participation in the corporate membership program offered by the Network.
4. **The exchange fee per week confirmed due from a Network Member who is placing an exchange request is US\$159 for travel within the Network Member's country of residence ("domestic processing fee") or US\$174 for travel outside the Network Member's country of residence ("international processing fee"). Network Members residing in the United States or Canada pay only the domestic processing fee for travel within the United States or Canada.** Any request that contains travel destinations both within the country of residence and outside the country of residence requires the international processing fee regardless of where the request is

ultimately confirmed. If the international processing fee is paid, no portion of the fee will be refunded if confirmed to an area in which the domestic processing fee would otherwise apply. Network Members who choose to utilize II's website at IntervalWorld.com to transact an exchange request are eligible for a US\$20 discount on the applicable processing fee, per week confirmed. **All exchange fees are subject to any applicable tax and must be submitted to II by the Network Member at the time a request is made. If the request is made by telephone, the exchange fee may be paid by a credit card acceptable to II or by check. (However, where the exchange fee is paid by check, Verified Confirmation will not occur until said check has been received and processed by II. Accommodations will be held for five calendar days pending receipt of a check for an exchange fee. In addition, in any instance in which a Network Member pays a fee by check, II reserves the right to collect an administrative fee where such check is returned to II. Checks are not accepted for Confirmations with occupancy commencement dates of 30 days or less.) Exchange fees will be refunded only if an exchange cannot be confirmed, if written or oral cancellation of the applicable exchange request is received by II prior to Verified Confirmation, and if the Network Member requests its refund in writing. Exchange fees will not be refunded under any other circumstances.**

5. If a Guest Certificate is requested by the Network Member, an additional fee of US\$49 per week is required to be paid to II by the Network Member at the time the certificate is requested. If II does not issue the Guest Certificate, the certificate fee will be refunded. Guest Certificate fees will not be refunded under any other circumstances.
6. II may suspend membership privileges in the event a Network Member fails to pay any amount owed to the Network, II, or any other company related to II.
7. Some jurisdictions have imposed a tax on the occupant of resort accommodations. Consequently, any bed tax, transient occupancy tax, or similar tax that is imposed shall, in those circumstances, be the responsibility of the exchanging Network Member. Network Members may be required to contact the Host Resort prior to arrival in order to prepay such taxes and certain other resort fees. Additionally, Network Members are responsible for all personal charges (e.g., telephone calls and meals) while at the Host Resort, any utility surcharge or other permissible charge imposed by a resort, as well as any damage, loss, or theft to the Host Accommodations and facilities that are caused by Network Members or their guests.
8. Fees, if any, charged by Member Resorts for certain services and amenities are determined and levied by each resort. Such fees are the responsibility of the Network Member. These fees vary from resort to resort.
9. All fees may be increased from time to time by II, in its sole discretion, upon written notice to Network Members.

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## RESORTS WITH 51 OR MORE UNITS PARTICIPATING AND AVAILABLE FOR OCCUPANCY

### Akiris

Contrada Laccata  
Marina di Nova Siri  
Nova Siri (MT) 75020, Italy

### Alanda Club Marbella

Ctra. Cádiz Km. 192  
Jardines de Las Golondrinas  
Marbella, Málaga, Spain

### Alessidamo Club

Via del Mare  
Santa Pelagina  
Metaponto Lido (MT), Italy

### Alpenclub Schliersee

Kirchbichelweg 18  
Schliersee 83727  
Germany

### Alpine Club, The

Schladmining/Rohrmoos  
Styria 8970, Austria

### Amatique Bay Resort & Marina

Bahia de Amatique  
Puerto Barrios, Guatemala

### American Resorts International Holiday Network – Maria Alm

Dorf 86 – A-5761 Maria Alm  
Maria Alm, Austria

### American Resorts International Holiday Network – St. Johann

Hans-Kappacher Str. 7-9  
St. Johann im Pongau 5600  
Austria

### Americano Beach Lodge Resort

1260 North Atlantic Avenue  
Daytona Beach, FL 32118

### Apart Holidays – Hotel Fuenfjahreszeiten

Auf dem Koepfle 1-5  
Todtmoos 79682  
Germany

### Apartur Bariloche

Av. Mitre 685  
Bariloche, Río Negro  
Argentina

### Aquarius Vacation Club at Boqueron Beach

Carr. #101 Int. 307  
KM 18, HM 8  
Cabo Rojo, Puerto Rico

### Aquarius Vacation Club at Embassy Suites

201 Dorado del Mar Boulevard  
Dorado, Puerto Rico

### Aruba Beach Club

L.G. Smith Boulevard #53  
Oranjestad  
Aruba, Dutch Caribbean

### Aruban Resort & Casino at Eagle Beach, The

J.E. Yrausquin Boulevard 250  
Oranjestad  
Aruba, Dutch Caribbean

### Atlantic Club Reserva de Marbella

Ctra. Nacional 340, Km. 193.6  
Marbella, Málaga 29600, Spain

### Atrium Resort, The

Arctic Avenue at 21st Street  
Virginia Beach, VA 23451

### Auramar Beach Club

Aparthotel Auramar  
Apartado 851, Praia Dos Aveiros  
8200 Albufeira, Algarve, Portugal

### Avenue Plaza Resort

2111 St. Charles Avenue  
New Orleans, LA 70130

### Azul Sensatori

Carretera Puerto Morelos  
KM 1+173.33 Fracc. III y IV  
Playa del Carmen 77710  
Mexico

### Bagaglio I Giardini di Porto Cervo

I Ginepri & Le Magnolie  
Liscia di Vacca, Sassari, Italy

### Bahía Manzano

Puerto Manzano – Los Lagos  
Villa La Angostura  
Neuquén, Argentina

### Banff Rocky Mountain Resort

1029 Banff Avenue  
P.O. Box 100  
Banff, Alberta T0L 0L0, Canada

### Barceló Los Cabos

P. Malecón Lote 5 s/n D. Fonatur  
San José del Cabo  
Mexico

### Beach House Golf and Racquet Club

6800 North Ocean Boulevard  
Myrtle Beach, SC 29577

### Beach House Seaside Resort

52 Marine Parade  
Coolangatta, Queensland 4225  
Australia

### Beach Quarters

5th & Atlantic Avenues  
Virginia Beach, VA 23451

### Beacons of Minocqua, The

8250 Northern Road  
Minocqua, WI 54548

### Bellasera Tuscan Villas & Piazza

1795 Country Club Drive  
Kelowna, British Columbia V1Y 9N8  
Canada

### Bighorn Meadows on the Springs at Radium Golf Resort

7563 Columbia Avenue and Stanley  
Street  
Radium Hot Springs  
British Columbia VOA 1M0, Canada

### Bilmar Beach Resort Condominium

10650 Gulf Boulevard  
Treasure Island, FL 33706

### Blackstone Mountain Lodge

170 Kananakis Way  
Canmore, Alberta, Canada

### BlueBay Beach Club

Avda. Pablo Picasso s/s, Urb. Bahía  
Feliz  
San Agustín, Gran Canaria 35100  
Canary Islands, Spain

### Blue Ridge Village, an Equivest Managed Resort

Route 1, Box 264, Highway 184  
Banner Elk, NC 28604

### Blue Seas Resort & Spa

Calle Malecon #1  
Colonia Emiliano Zapata  
Puerto Vallarta, Jalisco 48300  
Mexico

### Blue Tree Resort at Lake Buena Vista

12007 Cypress Run Road  
Orlando, FL 32836

### Bluebeard's Beach Club & Villas

100 Frenchman's Bay  
St. Thomas 00802  
U.S. Virgin Islands

### Bluegreen's Club La Pension

115 Decatur Street  
New Orleans, LA 70130

### Boambee Bay Resort

8 Barber Close  
Toormina, New South Wales 2452  
Australia

### Boyne Vacation Club at Bay Harbor Resort

3600 Village Harbor Drive  
Bay Harbor, MI 49770

### Boyne Vacation Club at Disciples Ridge

1 Boyne Mountain Road  
P.O. Box 19  
Boyne Falls, MI 49713

### Boyne Vacation Club at Mountain Grand Lodge

1 Boyne Mountain Road  
P.O. Box 19  
Boyne Falls, MI 49713

### Boyne Vacation Club at Hemlock

1 Boyne Mountain Road  
P.O. Box 19  
Boyne Falls, MI 49713

### Boyne Vacation Club at Pleasantview Loft

600 Highlands Drive  
Harbor Springs, MI 49790

### Boyne Vacation Club at Shoshone

1 Lone Mountain Trail  
P.O. Box 160001  
Big Sky, MT 59716

### Boyne Vacation Club at Stillwater

1 Lone Mountain Trail  
P.O. Box 160001  
Big Sky, MT 59716

### Brewster Green Resort

203 Lund Farm Way  
Brewster, MA 02631

### Briarwood

Pine Valley Drive  
Falmouth, MA 02540

### Brockway Springs Resort

101 Chipmunk Street  
Kings Beach, CA 96143

### Cabins at Green Mountain

3864 Green Mountain Drive  
Branson, MO 65616

### Cabo Villas Beach Resort

Callejon Del Pescador S/N  
Cabo San Lucas 00257, Mexico

### Calampiso

Sauci Grande, San Vito lo Capo  
Trapani, Sicily, Italy

**California Vacation Club –  
Desert Breezes**

77-955 Calle Las Brisas South  
Palm Desert, CA 92211

**California Vacation Club –  
Indian Palms**

48-630 Monroe Street  
Indio, CA 92201

**California Vacation Club –  
The Lodge at Kingsbury**

133 Deer Run Court  
Stateline, NV 89449

**California Vacation Club –  
Riverpointe Napa Valley**

500 Lincoln Avenue  
Napa, CA 94558

**California Vacation Club –  
Scottsdale Camelback**

6302 E. Camelback Road  
Scottsdale, AZ 85251

**California Vacation Club –  
Vista Mirage**

400 S. Hermosa  
Palm Springs, CA 92262

**Calypso Cay Vacation Villas**

4951 Calypso Cay Way  
Kissimmee, FL 34746

**Canada House Beach Club**

1704 North Ocean Boulevard  
Pompano Beach, FL 33062

**Canadian Resorts –  
Marparaiso Queen**

Km. 24 Carretera a Barra Vieja  
Acapulco, Mexico

**Cancún Clipper Club**

Mauna Loa Shopping Center  
Apartado Postal #1725  
Cancún, Quintana Roo 77500  
Mexico

**Caribbean and Dream Buildings  
at Ocean Landings Resort**

900 North Atlantic Avenue  
Cocoa Beach, FL 32931

**Caribbean Palm Village**

Noord 43-E Palm Beach Road  
Oranjestad  
Aruba  
Dutch Caribbean

**Carriage House, The**

105 East Harmon Avenue  
Las Vegas, NV 89109

**Carriage House at Pocono  
Manor**

Route 314  
Pocono Manor, PA 18349

**Carriage Place at Surrey  
Vacation Resort, The**

430 C Highway 165 South  
Branson, MO 65616

**Casa Del Mar Beach Resort**

J.E. Yrausquin Boulevard 51/53  
Oranjestad  
Aruba, Dutch Caribbean

**Casa Dorada at Médano Beach**

Avenida del Pescador s/n  
Loc. 9 y 10 Col.  
El Médano, Cabo San Lucas  
Mexico

**Casa MenDan**

Gyógyfűd ter 4  
Zalakavos  
Zala 8749  
Hungary

**Casa Ybel Beach and Racquet  
Club**

2255 West Gulf Drive  
Sanibel Island, FL 33957

**Castaways Cove**

Collier's Bay  
Collier's Bay, Grand Cayman  
Cayman Islands

**Castillo Beach Club**

Lake Reception, Caleta de Fuste  
Antigua, Fuerteventura 35600  
Canary Islands, Spain

**Catalina Beach Club**

1303 South Atlantic Avenue  
Daytona Beach, FL 32018

**Causeway on Gull**

8095 Lost Lake Road  
Nisswa, MN 56468

**Cedar Lake Country Club**

555 Nerang Murwillumbah Road  
Advancetown Via Nerang  
Queensland 4211  
Australia

**Celebrity Resorts Brigantine  
Beach – The Inn**

1400 Ocean Avenue  
Brigantine, NJ 08203

**Celebrity Resorts Lake Buena  
Vista**

8451 Palm Parkway  
Lake Buena Vista, FL 32819

**Celebrity Resorts Orlando**

2794 North Poinciana Boulevard  
Kissimmee, FL 34746

**Celebrity Resorts Orlando Oaks**

2794 North Poinciana Boulevard  
Kissimmee, FL 34746

**Celebrity Resorts Orlando Spas**

2800 North Poinciana Boulevard  
Kissimmee, FL 34746

**Celebrity Resorts Palm Coast**

201 Clubhouse Drive  
Palm Coast, FL 32137

**Celebrity Resorts Steamboat  
Springs – Hilltop**

1000 Highpoint Drive  
Steamboat Springs, CO 80477

**Celebrity Resorts Steamboat  
Springs – The Suites**

1485 Pine Grove Road  
Steamboat Springs, CO 80477

**Celebrity Resorts White Sands  
Waikiki**

431 Nohonani Street  
Honolulu, HI 96815

**Chalet High/Chalet High North**

Route 717  
Basye, VA 22810

**Chalet High South**

Fairway Drive  
Basye, VA 22810

**Chayofa Country Club**

Chayofa, Arona  
Tenerife 38627, Canary Islands  
Spain

**Cherry Tree Condo Hotel**

2345 US 31 North  
Traverse City, MI 49686

**Christie Lodge, The**

47 East Beaver Creek Boulevard  
Avon, CO 81620

**Christmas Mountain Village**

5944 Christmas Mountain Road  
Wisconsin Dells, WI 53965

**Chula Vista Resort**

Highway 13 North  
Wisconsin Dells, WI 53965

**Cibola Vista Resort and Spa**

27501 N. Lake Pleasant Road  
Peoria, AZ 85383

**Cliffs Club, The**

3811 Edwards Road  
Princeville, Kauai, HI 96722

**Clowance Estate & Country Club**

Praze-An-Beeble  
Camborne, Cornwall TR14 OPT  
United Kingdom

**Club Armonia**

Kadikalesi – Turgutreis  
Bodrum-Mugla  
Turkey

**Club Asia International –  
Damai Beach Resort**

Jalan Santubong  
Kuching, Sarawak 93756  
Malaysia

**Club Asia International –  
Damai Puri Resort and Spa**

Jalan Santubong  
Kuching, Sarawak 93762  
Malaysia

**Club Asia International –  
Riverside Majestic Hotel**

Jalan Tunku Abdul Rahman  
Kuching, Sarawak 93756  
Malaysia

**Club Cala de Palmas  
(Palmas del Mar)**

170 Candelero Drive  
Humacao, PR 00791

**Club Casa Dorada Spa & Golf  
Resort**

Km. 19.5 Carretera Transpeninsular  
San José del Cabo B.C.S. 23400  
Mexico

**Club Cascadas de Baja**

Camino Viejo a San José  
Cabo San Lucas, B.C.S.  
Mexico

**Club de Soléil**

5499 West Tropicana Avenue  
Las Vegas, NV 89103

**Club del Carmen**

Calle Noruega 2  
Puerto del Carmen, Lanzarote  
Canary Islands, Spain

**Club Destin Resort**

1085 Highway 98  
Destin, FL 32541

**Club Estela Dorada at Gruphotel  
Club Jardines Paraisol**

Calle Ciudad de Reus, 19  
Salou, Tarragona 43840, Spain

#### **Club Estela Dorada at Gruphotel Mediterranean Club Cala Pi**

Urb. Torre Cala Pi  
Llucmajor  
Mallorca, Balearic Islands 07639  
Spain

#### **Club Flipper**

Tilkicik Mevkii  
Yalikavak  
Bodrum, Mugla, Turkey

#### **Club Gran Dorado**

Port Zélande 2  
Oudorp 3253 MG  
Netherlands

#### **Club Greece at Villea Village**

Analipsi, Pefkon  
Sitia, Crete, Greece

#### **Club Hotel Tiberias**

Ahad Ha'am Street  
Tiberias 14222, Israel

#### **Club In**

Coral Beach  
Eilat, Israel

#### **Club Internacional de Cancún**

Bulevar Kukulkán  
Cancún, Quintana Roo 77500  
Mexico

#### **Club Intrawest – Blackcomb**

4580 Chateau Boulevard  
Whistler, British Columbia V6B 5C6  
Canada

#### **Club Intrawest – Palm Desert**

1 Willow Ridge  
Palm Desert, CA 92260

#### **Club La Costa at Las Farolas**

Urb. Las Farolas  
Carretera Cádiz, Km. 203  
Mijas-Costa, Málaga, Spain

#### **Club Monte Anfi**

Barranco de la Verca  
Arguineguín, Gran Canaria 35120  
Canary Islands, Spain

#### **Club Mougins**

Chemin de Val Fleuri  
Mougins 06250, France

#### **Club Ocean Villas II**

105 Edward Taylor Road  
120th Street  
Ocean City, MD 21842

#### **Club Paihia**

67 Williams Road  
Paihia, New Zealand

#### **Club Patara**

Kalkan Club Patara  
Kalkan, Turkey

#### **Club Prestige**

Tuerkmen Mahallesi  
(Aydin) Kusadasi, Turkey

#### **Club QM at Kingsbury Crossing**

133 Deer Run Court  
Stateline, NV 89449

#### **Club QM at Thunderbird Resort Club**

200 Nichols Boulevard  
Sparks, NV 89431

#### **Club Residence Capopiccolo**

Località Capopiccolo  
Isola di Capo Rizzuto  
Crotone 88076, Italy

#### **Club Royale at Aztec Country Club**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647  
Spain

#### **Club Royale at Lubina Sol**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647  
Spain

#### **Club Rüyakent**

Turgutreis Akyarlar  
Bodrum-Mugla, Turkey

#### **Club Sevilla**

4646 West Irlo Bronson Memorial  
Highway  
Kissimmee, FL 34746

#### **Club Sol del Este**

Avenida Roosevelt y Parada 12  
Punta del Este, Uruguay

#### **Club Sultán de Marbella**

Calle Arturo Rubinstein, s/n  
Marbella 29600  
Spain

#### **Club Système Vacances at Oasis Club**

Avenida Las Palmeras  
Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647  
Spain

#### **Club Système Vacances at Vera Beach Club**

Urb. Pueblo Laguna  
Ctra. Garrucha-Palomares  
Urb. Vera Coast, Apdo. 198  
Garrucha, Almería  
Spain

#### **Club Tahiti II**

Calle Isla de Lobos 12  
Costa Tegui  
Lanzarote  
Canary Islands, Spain

#### **Club Tahoe Resort**

914 Northwood Boulevard  
Incline Village, NV 89451

#### **Club Vacacional en la Torre Azul Fontan**

Bulevar Ixtapa s/n  
Zona Hotelera  
Ixtapa, Guerrero 40880, Mexico

#### **Clube Praia da Oura**

Apartado 827  
8200 Albufeira  
Algarve, Portugal

#### **Coconut Bay Resort**

919 North Birch Road #101  
Fort Lauderdale, FL 33304

#### **Coconut Palms Beach Resort**

611 South Atlantic Avenue  
New Smyrna Beach, FL 32169

#### **Cold Spring Properties**

460 North Ashland Road  
Ashland, NH 03217

#### **Condohotel Villa Del Mar**

Km. 2.5, Francisco Medino Ascencio  
Puerto Vallarta, Jalisco, Mexico

#### **Condominio Gran Hotel Pucón**

Holzappel 190  
Pucón, Chile

#### **Condominios Solamar Inn**

Boulevard Sábalo #1942  
Mazatlán, Sinaloa, Mexico

#### **Corail Royal Plage**

Tabarka, Tunisia

#### **Coral Beach Resort**

Urbanization La Concha  
c/Nestor Alamo, 1  
Playa Honda  
Arrecife, Lanzarote 35500  
Canary Islands, Spain

#### **Coral Reef Beach Resort**

5800 Gulf Boulevard  
St. Petersburg Beach, FL 33706

#### **Cordial Residence 'Il Pelagone' Toscana**

Km. 219 SS 1 Aurelia  
Loc. Il Pelagone  
Gavorrano (Grosseto) I-58023  
Italy

#### **Cordial Sanotel Badgastein**

Conrad-Strochner-Strasse 2  
Badgastein 5640  
Austria

#### **Cordial Theaterhotel Wien**

Josefstädterstrasse 22  
Vienna 1081, Austria

#### **Cordial-Hotel Achenkirch**

Am Achensee 177  
Achenkirch 6215  
Austria

#### **Cordial-Hotel Reith bei Kitzbühel**

Cordial Platz 1  
Reith bei Kitzbühel A-6370  
Austria

#### **Costa Linda**

59 J.E. Irausquin Boulevard  
P.O. Box 1345  
Oranjestad, Aruba  
Dutch Caribbean

#### **Cove at Ormond Beach, The**

145 South Atlantic Avenue  
Ormond Beach, FL 32176

#### **Cove at Yarmouth, The**

183 Main Street  
Route 28  
West Yarmouth, MA 02673

#### **Creeside Village**

Resort Road  
Bryce Mountain Resort  
Basye, VA 22810

#### **Crown Point Condominiums**

220 Crown Point Drive  
Ruidoso, NM 88355

#### **Crown Regency Vacations at Crown Regency Hotel and Towers**

0 Kilometer Jones Avenue  
Fuente Smena  
Cebu City 6000  
Philippines

#### **Crown Regency Vacation at Crown Regency Suites**

Maximo Patalinghug Jr. Avenue  
Lapu Lapu, Cebu 6015  
Philippines

#### **Crystal Beach Suites and Health Club**

6985 Collins Avenue  
Miami Beach, FL 33141

#### **Cypress Pointe Grande Villas**

8651 Treasure Cay Lane  
Lake Buena Vista, FL 32836

**Cypress Pointe Resort**

8651 Treasure Cay Lane  
Lake Buena Vista, FL 32836

**Dana Inn Resort Pousada Tabatinga**

Rodovia Caragua/Ubatuba, Km. 17  
Caraguatatuba  
São Paulo 11600, Brazil

**David Walley's Resort – A Quintus Resort**

2001 Foothill Road  
Genoa, NV 89411

**Daytona Beach Regency**

400 N. Atlantic Avenue  
Daytona Beach, FL 32118

**Desert Breezes Resort**

77-955 Calle Las Brisas, South  
Palm Desert, CA 92260

**De Vere Resort Ownership – Cameron House**

Cameron House Hotel & Country Estate  
Loch Lomond  
Dunbartonshire G83 8QZ  
United Kingdom

**Deerhurst Residences**

1235 Deerhurst Drive  
Huntsville, Ontario P1H 2EB  
Canada

**Diar Lemdina**

Medina Vacation Club  
Yasmine  
Hammamet 00191  
Tunisia

**Discovery Beach Resort**

300 Barlow Street  
Cocoa Beach, FL 32931

**Divi Village**

J.E. Yrausquin Boulevard #93  
Aruba, Dutch Caribbean

**Domaine Mont Sainte-Anne**

203 rue Val Des Neiges  
C.P. -57  
Beaupre, Québec G0A 1E0, Canada

**Dunes Hotel & Beach Resort**

Calle Campo  
Valle de Pedro Gonzalez  
Isla Margarita, Venezuela

**Dutch Village, The**

J.E. Yrausquin Boulevard #47  
Aruba, Dutch Caribbean

**Eagle Crest**

1522 Cline Falls Road  
Redmond, OR 97756

**Eagle Point**

1500 Matterhorn Circle  
Vail, CO 81657

**Eagle's Nest**

410 South Collier Boulevard  
Marco Island, FL 33937

**Edgewater Beach Resort**

95 Chase Avenue  
Dennisport, MA 02639

**Edgewater Resort**

Sargood Drive Wanaka  
Wanaka, New Zealand

**Edificio Rambla**

Las Heras 2100  
Mar del Plata 7600, Argentina

**Eilat Club Hotel**

Harava Road  
Eilat 88000, Israel

**El Cid El Moro Beach**

Av. Camarón s/n  
Mazatlán, Sinaloa 82110, Mexico

**El Cid Marina Beach**

Av. Camarón Sábalo s/n  
Zona Dorada  
Mazatlán, Sinaloa 82110, Mexico

**El San Juan Towers**

ESJ Towers Box 2200  
6165 Isla Verde Avenue  
Carolina, PR 00979-5765

**Ellington at Wachesaw Plantation East**

911 Riverwood Drive  
Murrells Inlet, SC 29576

**Embarcadero Pacífico**

Av. La Marina Sur  
Esq. con Ancla  
Puerto Vallarta, Jalisco, Mexico

**Emerald Grande at Harborwalk Village**

10 Harbor Drive  
Destin, FL 32541

**Equivest Inn On The Harbor**

359 Thames  
Newport, RI 02840

**Escapes! to Galveston**

11739 Farm Road 3005  
Galveston, TX 77554

**Escapes! to Greens at Bella Vista**

Riordan Road  
430 Town Center  
Bella Vista, AR 72714

**Escapes! to Hot Springs**

One Los Lagos Boulevard  
Hot Springs Village, AR 71909

**Escapes! to Stonebridge Village**

1600 LedgeStone Way  
Reeds Spring, MO 65737

**Esmeralda Beach Club**

Calle Ponent, 1  
Playa de Levante  
Calpe, Alicante 03710, Spain

**Estero Island Beach Club**

1840 Estero Boulevard  
Fort Myers Beach, FL 33931

**Exclusive Club at Topaz Beach Club**

Topaz Hotel  
Bugibba  
St.Paul's Bay SPN 03, Malta

**Exclusive Resorts at the Cape Suites Hotel**

18 De Villiers Street  
Zonnebloem, Capetown 8000  
South Africa

**Fairmont Vacation Villas at Hillside**

5129 River View Gate  
Fairmont Hot Springs  
British Columbia V0B 1L0, Canada

**Fairmont Vacation Villas at Mountainside**

5247 Fairmont Creek Road  
Fairmont Hot Springs  
British Columbia V0B 1L0, Canada

**Fairmont Vacation Villas at Riverside**

5129 River View Gate  
Fairmont Hot Springs  
British Columbia V0B 1L0, Canada

**Fairway Forest**

4350 Highway 64 West  
Sapphire, NC 28774

**Falcon Point**

175 Lake Street  
Avon/Beaver Creek, CO 81620

**Falls at Ogunquit, The**

639 Main Street  
Ogunquit, ME 03907

**Falls Village, The**

200 Creekside Road  
Branson, MO 65616

**Fantasea Resorts – Flagship**

60 North Maine Avenue  
Atlantic City, NJ 08401

**FantasyWorld Club Villas**

2935 Hart Avenue  
Kissimmee, FL 32741

**Flamingo Beach Resort**

6 Billy Folly Road  
Pelican Key, St. Maarten  
Netherlands Antilles

**Flamingo Club**

Marina San Eugenio  
Adeje, Tenerife  
Canary Islands, Spain

**Floriday's Orlando Resort**

7482 Vineland Avenue  
Orlando, FL 32821

**Fort Lauderdale Beach Resort**

909 Breakers Avenue  
Fort Lauderdale, FL 33304

**Four Seasons Country Club**

Quinta do Lago, Apartado 3282  
Almancil, Algarve 8135, Portugal

**Four Seasons Fairways**

Apartado 3259  
Almansil  
8136 Almansil Codex  
Algarve, Portugal

**Four Seasons Residence Club Aviara**

7039 Finch Lane  
Carlsbad, CA 92009

**Four Seasons Vilamoura**

Apartado 507  
Vilamoura Codex  
Algarve 8125, Portugal

**Foxhunt Town Homes**

4350 Hwy 64 W  
Sapphire Valley, NC 28717

**Foxrun**

180 Herman Wilson Road  
Lake Lure, NC 28746

**Franz Klammer Lodge**

567 Mountain Village Boulevard  
Telluride, CO 81435

**French Lick Springs Villas**

Highway 56  
French Lick, IN 47432

**Galleon Resort, The**

617 Front Street  
Key West, FL 33040

**Galleria at Split Rock**

1 Lake Drive  
Lake Harmony, PA 18624

**Garden Hotel, The**

#368 Huan Shi Dong Road  
Guangzhou, Guangdong 510064  
China

**Garden Lago**

Calle Amsterdam, 3  
Urb. Lago Menor, Puerto Alcudia  
Mallorca, Balearic Islands, Spain

**Gardenia Plaza Resort**

Shark Bay  
Sharm El Sheikh, Egypt

**Gaslamp Plaza Suites**

520 E. Street  
San Diego, CA 92101

**Gatlinburg Town Square**

414 Airport Road  
Gatlinburg, TN 37738

**Georgian Inn Beach Club**

759 South Atlantic Avenue  
Ormond Beach, FL 32074

**Geovillage Sport and Wellness Resort**

Circ. Nord Golfo Aranci  
Olbia 07026, Italy

**Goldstar Resort**

45 rue Marechal Joffre  
Nice, France 06000

**Golf Beach Hotel Tabarka**

Zone Touristique B.P. 360  
Tabarka 8110, Tunisia

**Golf Hotel Punta Ala**

via del Gualdo 2  
(Castiglione della Pescaia – Toscana)  
Punta Ala 58040, Italy

**Golden Tulip Club Dead Sea**

Nirvana on the Dead Sea  
Shefer Zohar, Dead Sea 84960, Israel

**Grand Dominicus**

Bayahibe, La Romana  
Dominican Republic

**Grand Holiday Club at Flamingo Club**

Avda. Espana 3  
San Eugenio, Puerto Colon  
Costa Adeje, Tenerife  
Canary Islands, Spain

**Grand Seas Resort**

2424 North Atlantic Avenue  
Daytona Beach, FL 32118

**Grand Sharm Resort**

Ras Om El-Sid Cliff  
Sharm el Sheikh, Egypt

**Grand Timber Lodge**

75 Snow Flake Drive  
Breckenridge, CO 80424

**Greensprings Vacation Resort**

3500 Ludwell Parkway  
Williamsburg, VA 23188

**Halland International Resort Club**

Ta L-Ibragg  
St. Andrews, Malta

**Hanalei Bay Resort – A Quintus Resort**

5380 Honoiki Road  
Princeville, Kauai, HI 96722

**Harborside Inn**

3 South Water Street  
Edgartown  
Martha's Vineyard, MA 02539

**Harborside Resort at Atlantis**

Coral Tower Casino Drive  
Paradise Island, Nassau  
Bahamas

**Harbortown Point Marina Resort & Club**

1651 Anchors Way  
Ventura, CA 93001

**Harbour Lights**

2690 Harbour Lights Drive  
Myrtle Beach, SC 29577

**Havasus Dunes**

620 Lake Havasu Avenue South  
Lake Havasu City, AZ 86403

**Herod's Residence Club**

North Shore  
Eilat 88000, Israel

**High Point World Resort**

2951 High Point Boulevard  
Kissimmee, FL 32741

**Highlands at Sugar, The**

1077 Highlands Drive  
Banner Elk, NC 28604

**Hilton Craigendarroch Resort**

Braemar Road  
Ballater, Aberdeenshire AB35 5XA  
United Kingdom

**Hippocampus Beach International Resort**

Final Av. El Cristo, Secc. La Caranta  
Pampatar, Isla Margarita  
Venezuela

**Hippocampus Viña del Mar Resort & Club**

Concon  
Viña del Mar, Chile

**Historic Powhatan Resort, The**

3601 Ironbound Road  
Williamsburg, VA 23188

**Holiday Beach Resort**

1006 U.S. Highway 98 East  
Destin, FL 32540

**Holiday Club Airisto**

Airistontie 700  
Stormalo, Parainen 21600  
Finland

**Holly Tree Resort Hotel**

412 Main Street  
Route 28  
West Yarmouth, MA 02673

**Hollywood Beach Tower**

301 Harrison Street  
Hollywood, FL 33019

**Hospederia Duruelo**

Carretera 3 #12-88  
Villa de Leyva, Boyaca  
Colombia

**Hotel Acapulco Malibu**

Costera Miguel Aleman No. 79  
Acapulco, Guerrero 39690  
Mexico

**Hotel and Club Aladino's**

Av. Lomas del Mar #10 Fracc.  
Club Deportivo  
Acapulco, Guerrero  
Mexico

**Hotel de la Monnaie**

405 Esplanade Avenue  
New Orleans, LA 70116

**Hotel Doubletree Resort by Hilton Puntarenas**

Carretera a Puerto Caldera s/n  
El Roble, Puntarenas  
Costa Rica

**Hotel Punta Centinela Inn**

Punta Centinela Santa Elena  
Guayas, 593 Ecuador

**Hotel Residence Fontanelle**

Villanova di Ostuni  
Località Fontanelle 72017, Italy

**Hotel Santa Clara**

Calle del Torno 39-29  
San Diego – Zona Amurallada  
Cartagena, Colombia

**Hotel Serena Beach Club**

Punici Street  
Xlendi Bay  
Island of Gozo VCT 115, Malta

**Hotel Viva Clarion Suites**

14 Calle 3-08 Zona 10  
Guatemala City, Guatemala

**Hyatt Beach House Resort**

5051 Overseas Highway (US 1)  
Key West, FL 33040

**Hyatt Coconut Plantation**

23282 Coconut Pointe Resort Drive  
Bonita Beach, FL 34134

**Hyatt Grand Aspen**

400 Dean Street  
Aspen, CO 81611

**Hyatt Hacienda del Mar**

Highway 693  
Dorado, PR 00646

**Hyatt High Sierra Lodge**

989 Incline Way  
Incline Village, NV 89451

**Hyatt Highlands Inn**

120 Highlands Drive  
Carmel, CA 93923

**Hyatt Main Street Station**

505 Main Street  
Breckenridge, CO 80424

**Hyatt Mountain Lodge**

210 Offerson Road, BCP #164  
Beaver Creek, CO 81620

**Hyatt Piñon Pointe**

1 North Highway 89A  
Sedona, AZ 86336

**Hyatt Wild Oak**

9700 W. Military Drive  
San Antonio, TX 78251

**Hyatt Windward Pointe**

3675 South Roosevelt Boulevard  
Key West, FL 33040

**Ile des Pêcheurs**

La Coudalère Nord  
Barcarès 66420, France

**ILX Premiere Vacation Club – Bell Rock, Sedona**

6246 Highway 179  
Sedona, AZ 86351

**ILX Premiere Vacation Club – Kohl's Ranch Lodge**

East Highway 260 HC2  
Box 96K  
Payson, AZ 85541

**ILX Premiere Vacation Club –  
Sedona Vacation Club at Los  
Abrigados**

160 Portal Lane  
Sedona, AZ 86351

**ILX Premier Vacation Club –  
Varsity Clubs, Tucson Chapter**

3855 East Speedway Boulevard  
Tucson, AZ 85716

**Imperial Fiesta Club Casa Maya**

Paseo Kukulcán Km. 5.5  
Cancún, Quintana Roo 77500  
Mexico

**Imperial Hawaii Vacation Club –  
Imperial Hawaii Resort**

205 Lewers Street  
Honolulu, Oahu, HI 96815

**Indian Palms Intervals**

82-954 Steward Drive  
Indio, CA 92201

**Inn at SilverCreek, The, and  
Resorts West Vacations at  
The Inn at SilverCreek**

62927 U.S. Highway 40  
Silver Creek, CO 80446

**Inn at the Springs**

8901 Highland Wood Boulevard  
Bonita Springs, FL 34135

**InnSeasons Resorts –  
Falls at Ogunquit, The**

639 Main Street  
Ogunquit, ME 03907

**InnSeasons Resorts –  
Pollard Brook**

Kancamagus Highway  
Lincoln, NH 03251

**Iron Blossam Lodge**

Utah Highway 210, Resort Entry #2  
Snowbird, UT 84092-9000

**Island Links Resort**

1 Coggins Point Road  
Hilton Head Island, SC 29928

**Island Park Village Resort**

Highway 20 & MM 394/395  
Island Park, ID 83429

**Island Residence Club at  
Golden Sands  
Raddisson SAS Golden Sands  
Resort & Spa**

Golden Bay  
L/O Mellieha Mlh 02  
Malta

**Island Seas Resort**

123 Silver Point Drive  
P.O. Box F-44735  
Freeport, Grand Bahama Island  
Bahamas

**Islander Beach Resort**

1601 South Atlantic Avenue  
New Smyrna Beach, FL 32169

**Jan Thiel Resort**

Jan Thiel Beach  
Willemstad, Curaçao  
Netherlands Antilles

**Jerusalem Gold Hotel**

Jaffa 234  
Jerusalem 94383, Israel

**Jockey Club, The**

3700 Las Vegas Boulevard South  
Las Vegas, NV 89109

**Kahana Beach Vacation Club**

4221 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Kenmore Club, The**

Kenmore, Perthshire PH15 2HH  
United Kingdom

**Kilconquhar Castle Estate &  
Country Club**

Kilconquhar  
Elie, Leven  
Fife KY9 1EZ, United Kingdom

**Killington Grand Hotel**

228 East Mountain Road  
Killington, VT 05751

**King's Creek Plantation**

191 Cottage Cove Lane  
Williamsburg, VA 23185

**Kingsbury Crossing**

133 Deer Run Court  
Stateline, NV 89449

**Kona Coast Interval Ownership  
Resort, The**

78-6842 Alii Drive  
Kailua-Kona, Hawaii, HI 96740

**Kona Coast Resort II, The**

78-6842 Alii Drive  
Kailua-Kona, Hawaii, HI 96739

**L'Eyssina**

Vars le Claux 05560  
France

**La Cabana Beach & Racquet  
Club**

J.E. Yrausquin Boulevard 250  
Oranjestad  
Aruba, Dutch Caribbean

**La Costa Beach Club**

1504 North Ocean Boulevard  
Pompano Beach, FL 33062

**La Quinta Beach Resort**

J.E. Irausquin Boulevard 228  
Eagle Beach  
Oranjestad, Aruba, Dutch Caribbean

**Lagonita Lodge II**

183 Lagonita Lane  
Big Bear Lake, CA 92315

**Lagos de Fañabe**

Playa Fañabe  
Adeje, Tenerife  
Canary Islands, Spain

**Lagos de Fañabe II**

Apdos. Los Olivos  
Playa Fañabe, Adeje, Tenerife  
Canary Islands, Spain

**Lake Marion Resort Community**

6641 Lake Marion Golf Resort Drive  
Kissimmee, FL 34759

**Lake Tahoe Vacation Resort**

901 Ski Run Boulevard  
South Lake Tahoe, CA 96150

**Lakeview Resort Club**

1 Lakeview Drive  
Morgantown, WV 26505

**Landing at Seven Coves, The**

7031 Kingston Cove Lane  
Willis, TX 77378

**Landmark Holiday Beach Resort**

17501 Front Beach Road  
Panama City, FL 32413

**Landmark Resort**

7643 Hillside Road  
Egg Harbor, WI 54209

**Langdale Estate**

Great Langdale, Nr. Ambleside  
Cumbria LA22 9JD  
United Kingdom

**Las Olas Resort**

Av. D. Urb. Los Canales de Río Chico  
Río Chico, Miranda  
Venezuela

**Laugharne Park**

Laugharne  
Dyfed SA33 4SG  
United Kingdom

**Laurel Crest Resort**

636 Wears Valley Road  
Pigeon Forge, TN 37863

**Lawai Beach Resort –  
Alii Building**

5017 Lawai Road  
Koloa, Kauai, HI 96756

**Lawai Beach Resort –  
Banyan Building**

5017 Lawai Road  
Koloa, Kauai, HI 96756

**Lawrence Welk Resort Villas**

8860 Lawrence Welk Drive  
Escondido, CA 92026

**Legacy Grand Eastgate**

5265 West Irlo Bronson Memorial  
Highway  
Kissimmee, FL 34746

**Lehigh Resort Club**

231 Joel Boulevard  
Lehigh Acres, FL 33972

**Les Chalets**

Avda. Camacho s/n Parada 19 de la  
Mansa Barrio Parque Cantegril  
Punta del Este, Uruguay

**Les Marines de Gassin**

RN 98, Route de St. Tropez  
Gassin 83580, France

**Lighthouse Cove**

1406 North Ocean Boulevard  
Pompano Beach, FL 33062

**Liki Tiki Village**

17777 Bali Boulevard  
Winter Garden, FL 34787

**Limetree Beach Resort**

1050 Ben Franklin Drive  
Sarasota, FL 34236

**Links Golf and Racquet Club**

917 Thomas Avenue  
North Myrtle Beach, SC 29582

**Little Bay Beach & Racquet  
Club**

Little Bay Road  
Philipsburg, St. Maarten  
Netherlands Antilles

**Lodge Alley Inn, The**

195 East Bay Street  
Charleston, SC 29401

**Lodge Kura Hulanda and Beach  
Club**

Playa Kalki 1  
Westpunt, Curaçao  
Netherlands Antilles

**London Bridge Resort**

1477 Queens Bay  
Lake Havasu City, AZ 86403

**Lord Stanley Suites on the Park**

1889 Alberni Street  
Vancouver  
British Columbia V6G 3G7, Canada

**Loreley**

387 Brucken Street  
Helen, GA 30545

**Los Amigos Beach Club**

Ctra. Cádiz Km. 204  
Mijas-Costa, Málaga 29647, Spain

**Los Cabos Golf Resort**

Cabo San Lucas Country Club  
Cabo San Lucas, B.C.S., Mexico

**Los Tinajeros Resort**

Calle Campos entre Marcano y  
Cedeno  
Porlamar, Isla Margarita, Venezuela

**Macdonald Dalfaber Resort**

Dalfaber Estate  
Aviemore  
Inverness, Scotland PH22 1ST  
United Kingdom

**Macdonald Doña Lola Resort**

Ctra. de Cádiz, Km. 197-8  
Mijas-Costa, Málaga 29649, Spain

**Macdonald Forest Hills Hotel and Lochside Resort**

Forest Hills Hotel  
Kinlochard  
Aberfoyle by Stirling FK8 3TL  
United Kingdom

**Macdonald Leila Playa Resort**

Ctra. de Cádiz, Km. 196  
Mijas-Costa, Málaga 29649, Spain

**Macdonald Loch Rannoch Hotel & Lochside Resort**

Loch Rannoch Estate  
Kinloch Rannoch  
Perthshire PH16 5PS  
United Kingdom

**Macdonald Plas Talgarth Health & Leisure Club**

The Plas Talgarth Estate  
Pennal, Nr. Machynlleth  
Powys, SY20 9JY  
United Kingdom

**Macdonald Villacana Resort**

Km. 165, Ctra de Cádiz  
Estepona, Málaga  
Spain

**Magic Tree Resort**

2795 North Old Lake Wilson Road  
Kissimmee, FL 34734

**Mares Marmaris**

Marmaris Altin Yunis  
Pamucak, Mevkii  
Marmaris, Mugla  
Turkey

**Margarita International Resort**

Avenida Bolivar-Urbanización Dumar  
Urb. Dumar  
Porlamar, Isla Margarita, Venezuela

**Mariner Shores Resort & Beach Club**

254-260 The Esplanade  
Miami, Queensland  
Australia

**Maritime Beach Club**

400 North Ocean Boulevard  
North Myrtle Beach, SC 29582

**Marriott Residence Inn at Muskoka Wharf**

285 Steamship Bay Road  
Gravenhurst, Ontario, P1P 1Z9  
Canada

**Marriott Vacation Club at The Empire Place**

88 Naradhiwas Rajanagarindra Road  
Sathorn, Yannawa  
Bangkok, Thailand

**Marriott's Aruba Ocean Club**

99 L.G. Smith Boulevard  
Oranjestad  
Aruba, Dutch Caribbean

**Marriott's Aruba Surf Club**

LG Smith Boulevard #99  
Palm Beach  
Aruba, Dutch Caribbean

**Marriott's Barony Beach Club**

5 Grasslawn Avenue  
Hilton Head, SC 29928

**Marriott's BeachPlace Towers**

21 South Fort Lauderdale Beach  
Boulevard  
Fort Lauderdale, FL 33316

**Marriott's Canyon Villas at Desert Ridge**

5220 E. Marriott Drive  
Phoenix, AZ 85054

**Marriott's Club Son Antem**

Ctra. Llucmajor, PM 602, Km. 3.4  
Apartado 363  
Llucmajor, Mallorca  
Balearic Islands 07620, Spain

**Marriott's Crystal Shores on Marco Island**

600 S. Collier Boulevard  
Marco Island, FL 34145

**Marriott's Custom House**

3 McKinley Square  
Boston, MA 02109

**Marriott's Cypress Harbour**

11251 Harbour Villa Road  
Orlando, FL 32821

**Marriott's Desert Springs Villas**

1091 Pinehurst Lane  
Palm Desert, CA 92260

**Marriott's Desert Springs Villas II**

1091 Pinehurst Lane  
Palm Desert, CA 92260

**Marriott's Fairway Villas**

500 East Fairway Lane  
Galloway Township, NJ 08201

**Marriott's Frenchman's Cove**

7338 Estate Bakkeroe  
St. Thomas 00801, U.S. Virgin Islands

**Marriott's Grand Chateau**

75 East Harmon Avenue  
Las Vegas, NV 89109

**Marriott's Grand Residence Tahoe**

1001 Park Avenue  
South Lake Tahoe, CA 96150

**Marriott's Grande Ocean Resort**

51 South Forest Beach Drive  
Hilton Head Island, SC 29928

**Marriott's Grande Vista**

5925 Avenida Vista  
Orlando, FL 32821

**Marriott's Harbour Lake**

7102 Grand Horizons Boulevard  
Orlando, FL 32821

**Marriott's Harbour Point at Shelter Cove**

4 Shelter Cove Lane  
Hilton Head Island, SC 29928

**Marriott's Kauai Beach Club**

3610 Rice Street, Kalapaki Beach  
Lihue, Kauai, HI 96766

**Marriott's Ko Olina**

92-101 Mauloa Place  
Kapolei, Oahu, HI 96707

**Marriott's Legend's Edge at Bay Point**

4000 Marriott Drive  
Panama City Beach, FL 32408

**Marriott's Mai Khao Beach**

234 Moo 3  
Mai Khao, Talang  
Phuket, Thailand 83110

**Marriott's Manor Club at Ford's Colony**

101 St. Andrews Drive  
Williamsburg, VA 23188

**Marriott's Manor Club Sequel**

101 St. Andrews Drive  
Williamsburg, VA 23188

**Marriott's Marbella Beach Resort**

Ctra. de Cádiz, Km. 193  
Urb. Marbella del Este  
Marbella, Málaga 29600  
Spain

**Marriott's Maui Lahaina & Napili Villas**

100 Nohea Kai Drive  
Lahaina, HI 96761

**Marriott's Maui Ocean Club**

100 Nohea Kai Drive  
Lahaina, Maui, HI 96761

**Marriott's Monarch at Sea Pines**

91 North Sea Pine Drive  
Hilton Head Island, SC 29938

**Marriott's Mountainside at Park City**

1305 Lowell Avenue  
Park City, UT 84060

**Marriott's Mountain Valley Lodge**

655 Columbine Road  
Breckenridge, CO 80424

**Marriott's Newport Coast Villas**

23000 Newport Coast Drive  
Newport Coast, CA 92657

**Marriott's Ocean Pointe**

71 Ocean Avenue  
Palm Beach Shores, FL 33404

**Marriott's OceanWatch Villas at Grande Dunes**

8450 Costa Verde Drive  
Myrtle Beach, SC 29572

**Marriott's Phuket Beach Club**

Had Mai Khao Moo 3 Baan Suan  
Maprow, Talang  
Amphor, Phuket, Thailand

**Marriott's Playa Andaluza**

Ctra. Se Cádiz KM 168  
Estepona, Málaga 29680  
Spain

**Marriott's Royal Palms Resort**

8404 Vacation Way  
Orlando, FL 32821

**Marriott's Sabal Palms Resort**

8805 World Center Drive  
Orlando, FL 32821

**Marriott's Shadow Ridge**

36000 Monterey Avenue  
Palm Desert, CA 92260

**Marriott's Shadow Ridge Enclaves**

9003 Shadow Ridge Road  
Palm Desert, CA 92211

**Marriott's St. Kitt's Beach Club**

858 Frigate Bay Road  
Frigate Bay, St. Kitts

**Marriott's StreamSide**

2264 South Frontage Road West  
Vail, CO 81657

**Marriott's Summit Watch at Park City**

780 Main Street  
Park City, UT 84060

**Marriott's SurfWatch**

10 Fifth Street  
Hilton Head, SC 29928

**Marriott's Timber Lodge**

4100 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

**Marriott's Village d'Ile de France**

Allee de l'Orme Rond  
Bailly Romainvilliers 77700, France

**Marriott's Villas at Doral**

4101 N.W. 87th Avenue  
Miami, FL 33178

**Marriott's Waiohai Beach Club**

2249 Poipu Road  
Koloa, Kauai, HI 96756

**Marriott's Willow Ridge Lodge**

2929 Green Mountain Drive  
Branson, MO 65616

**Maui Schooner Resort**

980 South Kihei Road  
Kihei, Maui, HI 96753

**MendiHuaca Caribbean Resort**

Km. 33 Vía Santa Marta – Riohacha  
Santa Marta, Magdalena  
Colombia

**Mexicana Sharm Resort**

Mexicana Sharm  
Ras Om El Sid  
Sharm el Sheikh  
Egypt

**Mill Resort & Suites Vacation, The**

J.E. Yrausquin Boulevard 330  
Oranjestad  
Aruba, Dutch Caribbean

**Miraflores Beach and Country Club**

Miraflores Club Reception  
Ctra. de Cádiz, Km. 199  
Mijas-Costa, Málaga 29649  
Spain

**Miraflores Vacation Club**

Ctra. de Cádiz, Km. 199  
Mijas-Costa, Málaga 29647  
Spain

**Mirror Tamarack Lake Resort**

E10035 Xanadu Road  
Wisconsin Dells, WI 53965

**Monarch Grand Vacations – Cancún Resort**

8335 South Las Vegas Boulevard  
Las Vegas, NV 89123

**Monarch Grand Vacation – Cedar Breaks**

223 Hunter Ridge Road  
Brian Head, UT 84719

**Mount Snow Grand Summit Hotel at The Grand Summit Resort Hotel & Conference Center**

89 Grand Summit Way  
West Dover, VT 05356

**Mountain Club at Loon, The**

Main Street  
Lincoln, NH 03251

**Mountain Laurel Resort and Spa**

Route 940  
White Haven, PA 18661

**Mountain Loft Resort**

110 Mountainloft Drive  
Gatlinburg, TN 37738

**Mountainside Villas at Massanutten**

Route 644, Intersection of Peak  
Middle Coff Drive  
McGaheysville, VA 22840

**Multigestion – Multivacances Avoriaz**

Avoriaz  
Morzine 74110  
France

**Multigestion – Reberly les Menuires**

St. Martin de Belleville 73440  
France

**Multigestion – Résidence de Rochebrune**

18, Porting de Rochebrune  
Megeve 74120  
France

**Multigestion – Résidence Emeraude**

Belle Plagne  
Aime 73210, France

**Myrtle Beach Resort, The**

5905 South Kings Highway  
Surfside Beach, SC 29587

**Mystic Dunes Resort & Golf Club**

7900 Palms Parkway  
Kissimmee, FL 34747

**Nautilus Residences**

White Sands Golf and Beach Resort  
Bavara, La Altagracia  
Dominican Republic

**Nepean Country Club**

Browns Road  
Rosebud, Victoria 3838  
Australia

**Nostos Village**

Tzaneria  
Skiathos 37002, Greece

**Oak N' Spruce Resort**

Meadow Street  
South Lee, MA 01260

**Oak Plantation**

4090 Enchanted Oaks Circle  
Kissimmee, FL 34741

**Oakmont Resort**

555 Middle Creek Road  
Pigeon Forge, TN 37863

**Oasis Club**

Avenida Las Palmeras  
Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647  
Spain

**Oasis Lanz Club**

Av. Punta Jablillo, 7  
35509 Costa Teguisse  
Lanzarote  
Canary Islands, Spain

**Ocean Beach Club**

3401 Atlantic Avenue  
Virginia Beach, VA 23451

**Ocean Club**

1908 North Ocean Boulevard  
North Myrtle Beach, SC 29582

**Ocean Club on Smuggler's Beach**

329 South Shore Drive  
South Yarmouth, MA 02664

**Ocean Hotel**

Blvd Kukulcan KM 3.5  
Zona Hotelera, CP 77500  
Quintana Roo, Cancún  
Mexico

**Ocean Landings Resort & Racquet Club**

900 North Atlantic Avenue  
Cocoa Beach, FL 32931

**Ocean Reef Resort**

Bahama Reef Boulevard  
P.O. Box 2695  
Freeport, Grand Bahama Island  
Bahamas

**Ocean Towers Beach Club**

11211 Front Beach Road  
Panama City Beach, FL 32407

**Olympic Village Inn**

1909 Chamonix Place  
Olympic Valley, CA 96146

**Options at Macdonald at Forest Hills Hotel and Resort**

Forest Hills Hotel  
Kinlochard  
Aberfoyle by Stirling FK8 3TL  
United Kingdom

**Options at Macdonald at Plas Talgarth Resort**

The Plas Talgarth Estate  
Pennal, Nr. Machynlleth  
Powys SY20 9JY  
United Kingdom

**Orange Tree Interval Ownership Resort, The**

10601 North 56th Street  
Scottsdale, AZ 85254

**Outer Banks Beach Club and Outer Banks Beach Club Villas II**

Mile Post 9, Virginia Dare Road  
Kill Devil Hills, NC 27948

**Oyster Bay Beach Resort**

Emerald Merit Road 26  
Box 239  
Philipsburg, St. Maarten  
Netherlands Antilles

**Pahia at Ka Eo Kai**

3970 Wyllie Road  
Princeville, Kauai, HI 96722

**Palace Ponte di Legno**

Via Trento 19  
Ponte di Legno (BS) 25056, Italy

**Palace Vacation Club –  
Palace of the Golden Horses**

Jalan Kuda Emas  
The Mines Resort City  
Seri Kembangan 43300, Malaysia

**Palace View by Spinnaker**

700 Blue Meadows Drive  
Branson, MO 65616

**Palm Bay Resort**

2525 South Atlantic Avenue  
Daytona Beach Shores, FL 32118

**Palm Canyon Resort and Spa  
and Monarch Grand  
Vacations at Palm Canyon  
Resort and Spa**

2800 South Palm Canyon Drive  
Palm Springs, CA 92264

**Palm Oasis**

Albert Einstein s/n, Parcela 34  
Urb. Sonnenland  
Maspalomas, Gran Canaria  
Canary Islands, Spain

**Palm Springs Tennis Club**

701 West Baristo Road  
Palm Springs, CA 92262

**Panareti's Royal Coral Bay  
Resort**

Keratidiou Street  
Pegeia Paphros 62479  
Cyprus

**Paradise Beach Villas**

J.E. Yrausquin Boulevard Z/N  
Oranjestad  
Aruba, Dutch Caribbean

**Paradise Point Resort**

250 Lakewood Drive  
Hollister, MO 65672

**Paradise Village Beach Resort  
& Spa**

Paseo de los Cocoteros #001  
Nuevo Vallarta, Nayarit, Mexico

**Paradise Village Marine  
Residence**

Paseo de los Cocoteros #001  
Nuevo Vallarta, Nayarit, Mexico

**Park Plaza**

2060 Sidewinder Drive  
Park City, UT 84060

**Park Regency, The**

1710 Prospector Avenue  
Park City, UT 84060

**Parkway International Resort**

6200 Safari Trail  
Kissimmee, FL 32741

**Parque del Sol**

Urb. Playa Fañabe  
38660 Adeje  
Playa de las Américas  
Tenerife, Canary Islands  
Spain

**Paseo del Sol**

Paseo Xaman Ha  
Manzana 12, Lote 4-5  
Playa del Carmen, Quintana Roo  
Mexico

**Pelican Marina Residences**

Billy Folly Road N#37  
St. Maarten, Netherlands Antilles

**Pelican Resort Club**

Pelican Keys  
Philipsburg, St. Maarten  
Netherlands Antilles

**Peninsula Beach Resort**

Jalan Pratama, Tanjung Benoa  
Bali, Indonesia

**Peninsula Island Resort and Spa**

340 Padre Boulevard  
South Padre Island, TX 78597

**Peppertree Atlantic Beach Villas**

715 West Fort Macon Road  
Atlantic Beach, NC 28512

**Peppertree by the Sea**

305 South Ocean Boulevard  
North Myrtle Beach, SC 29582

**Perrenial Vacation Club –  
Daytona**

2525 South Atlantic Avenue  
Daytona Beach, FL 32118

**Perrenial Vacation Club –  
Tahoe Village/Eagles Nest**

472 Needle Peak Road  
Stateline, NV 89449

**Pine Lake Resort**

Carnforth, Lancashire LA6 1JZ  
United Kingdom

**Plantation Beach Club at South  
Seas Plantation**

P.O. Box 194  
5400 South Seas Plantation Road  
Captiva Island, FL 33924

**Playa del Sol Costa Sur**

Km. 4-456 Carretera Barra Navidad  
Puerto Vallarta, Jalisco, Mexico

**Playa del Sol Grand**

Lot F. Flamingos  
Nuevo Vallarta, Nayarit  
Mexico

**Playa Linda Beach Resort**

J.E. Yrausquin Boulevard #87  
Oranjestad, Aruba, Dutch Caribbean

**Playa Maroma**

Km. 52, Carretera Federal  
Cancún – Tulum  
Quintana Roo, Mexico

**Players Club of Hilton Head  
Island**

35 Deallyon Avenue  
Hilton Head Island, SC 29928

**Plaza Resort and Spa, The**

2601 Golf Club Drive  
Palm Springs, CA 92264

**Polynesian Isles Resort**

3045 Polynesian Isles Boulevard  
Kissimmee, FL 34746

**Pono Kai, The**

1250 Kuhio Highway  
Kapaa, Kauai, HI 96746

**Port Pacific**

6-14 Clarence Street  
Port Macquarie  
New South Wales 2444, Australia

**Port Trinitie**

State Road 1200  
Duck-Corolla Road  
Duck, NC 27949

**President Hotel**

Alexander Road  
P.O. Box 1050, Seapoint 8060  
Bantry Bay, Capetown 8001  
South Africa

**Privilège Residenzhotel Hotel  
Sunstar Arosa**

Ferienclub Privilège  
Arosa, CH-7050, Switzerland

**Privilège Residenzhotel Hotel  
Sunstar Davos**

Ferienclub Privilège  
Davos-Platz, CH-7270, Switzerland

**Privilège Residenzhotel Hotel  
Sunstar Flims**

Ferienclub Privilège  
Flims-Waldhaus, CH-7018  
Switzerland

**Privilège Residenzhotel Hotel  
Sunstar Grindelwald**

Ferienclub Privilège  
Grindelwald, CH-3818, Switzerland

**Privilège Residenzhotel Hotel  
Sunstar Lenzerheide**

Ferienclub Privilège  
Lenzerheide, CH-7079, Switzerland

**Privilège Residenzhotel Hotel  
Sunstar Wengen**

Ferienclub Privilège  
Wengen, CH-3823, Switzerland

**Pyhäniemi**

Kihnio SF-39820, Finland

**Quarter House, The**

129 Chartres Street  
New Orleans, LA 70130

**Quijote Inn**

Av. Camarón Sábalo s/n  
Apartado Postal 934 & 966  
Mazatlán, Sinaloa, Mexico

**Rancho Banderas Vacation  
Villas**

Km. 8.3 Ctra. Cruz de Huanecastle  
Punta Mita, Nayarit, Mexico

**Reef Ocean Resort, The**

3450 Ocean Drive  
Vero Beach, FL 32963

**Renaissance Aruba Beach  
Resort and Casino**

J.E. Yrausquin Boulevard 9  
Oranjestad, Aruba  
Dutch Caribbean

**Résidence l'Annonciade**

RN 98  
Port Cogolin 83310, France

**Résidence le Cervin**

Dumez Immobilier  
Plagne Soleil  
La Plagne Village 73210  
France

**Résidence le Grand Bois**

La Tania  
Courchevel 73120, France

**Résidence le Ruitor**

Arc 1800  
Les Arcs  
Bourg St. Maurice 73700  
France

**Résidence le Trianon**

Avenue du Professeur Joliet  
Arcachon 33120  
France

**Résidence les Cottages du Golf**

Golf de Saint Laurent  
Ploemel, Auray 56400  
France

**Résidence les Félibriges**

93, Rue Georges Clemenceau  
Cannes 06400  
France

**Résidence les Rivages de Rochelongue**

Mail de Rochelongue  
Cap d'Agde 34300  
France

**Résidence Marsa Sicla**

C.da Torre Samuele  
Sampieri, Scicli 97018  
Italy

**Résidence Mer et Golf**

47, Boulevard de la Mer  
Anglet 64600  
France

**Résidence Mer et Golf Le Boucanier**

Rue du Belvedere  
Vieux Boucau 40480  
France

**Résidence Pamplemousse**

Les Principautes du Casino  
Chatellaillon, Charentes Maritimes  
France

**Résidence Pamplemousse II**

Avenue des Pays de Loire  
Golf de St. Jean de Monts  
St. Jean de Monts 85160  
France

**Résidence Paris XV**

20 Rue Oradour sur Glane  
Paris 75015, France

**Résidence Pierre et Vacances – Avoriaz**

Centre d'accueil d'Avoriaz  
Avoriaz 74110, France

**Résidence Pierre et Vacances – Belle Plagne**

Bellentre  
Aime 73210, France

**Résidence Pierre et Vacances – Cannes Villa Francia**

Avenue A.W. Wemyss  
Cannes 061520, France

**Résidence Pierre et Vacances – Cap Esterel**

Camp Long Par Agay  
St. Raphaël 83700, France

**Résidence Pierre et Vacances – Le Port du Bourgenay**

Talmont St. Hilaire, 85440, France

**Résidence Pierre et Vacances – Le Port du Crouesty**

Arzon 56640, France

**Résidence Pierre et Vacances – Les Coches**

Bellentre, Aime 73210, France

**Résidence Pierre et Vacances – Les Parcs de Grimaud**

Route Nationale 98  
Grimaud, France

**Résidence Pierre et Vacances – Meribel**

Résidence du Mottaret  
Le Chatelet  
Meribel, Mottaret 73550, France

**Résidence Pierre et Vacances – Moliets**

Moliets Complex  
Rue Bremonnier – Moliettes  
Messanges 40660, France

**Résidence Pierre et Vacances – Résidence Cap d'Ail**

Avenue du Général de Gaulle  
Cap d'Ail 06320, France

**Résidence Pierre et Vacances – Résidence Paris XV**

20 Rue Oradour sur Glane  
Paris 75015, France

**Résidence Pierre et Vacances – Village Cap Coudalère**

25 Place Martinique  
Port Barcarès 66420  
France

**Résidence Sokoburu**

Boulevard de la Mer  
Hendaye 64700  
France

**Residencial Pousada do Serrano**

Rua Angelo Bisol 300  
Gramado, Brazil

**Residenza Nevesole Folgarida**

Via Monti Alti  
Folgarida di Dimaro (TN) 38025  
Italy

**Residenza Torre Rinalda**

Litoranea Salentina, CP 152  
Lecce – Loc. Torre Rinalda  
Lecce 73100  
Italy

**Residenza Valle Fiorita**

Via Annunziata  
Rocchetta al Volturno (IS)  
Isernia 86070  
Italy

**Resort at Marina Village Residences, The**

6021 Silver King Boulevard  
Cape Coral, FL 33914

**Resort at Whale Pointe Condominium, The**

939 Northwest Highway 101  
Depoe Bay, OR 97341

**Resort on Cocoa Beach, The**

1600 N. Atlantic Avenue  
Cocoa Beach, FL 32931

**Ridge on Sedona Golf Resort, The**

55 Sun Ridge Circle  
Sedona, AZ 86351

**Ridge Tahoe, The**

400 Ridge Club Drive  
Stateline, NV 89449

**Ridge Top Village at Shawnee**

River Road  
Shawnee-On-Delaware, PA 18356

**Rincón de Los Andes**

Juez Del Valle 611  
San Martín de los Andes  
Neuquén 8370, Argentina

**Rincón del Este**

Parada 22 – Playa Brava  
Punta del Este, Uruguay

**Riviera Beach and Spa Resort I & II and Monarch Grand Vacations at Riviera Beach and Spa Resort I & II**

34630 Pacific Coast Highway  
Capistrano Beach, CA 92624

**Riviera Oaks and Monarch Grand Vacations at Riviera Oaks Resort**

25382 Pappas Road  
Ramona, CA 92065

**Royal Aloha Vacation Club – The Torre Blanca**

Majahua #25 Puerto Marqués  
Acapulco, Guerrero, Mexico

**Royal Aloha Vacation Club – Waikiki**

2224 Aloha Drive  
Waikiki, Oahu, HI 96815

**Royal Caribbean, The**

Lote 50, Km. 17  
Boulevard Kukulcán  
Cancún, Quintana Roo 77500  
Mexico

**Royal Dunes Resort**

8 Wimbledon Court  
Hilton Head, SC 29928

**Royal Haciendas, The**

Lote 002 Manzana 070 Municipio de Solidaridad  
Playa del Carmen, Quintana Roo  
Mexico

**Royal Islander, The**

Lote 51, Km. 17  
Bulevar Kukulcán  
Cancún, Quintana Roo, Mexico

**Royal Islander Club La Plage**

Maho Bay  
St. Maarten, Netherlands Antilles

**Royal Mayan, The**

Lote 49, Km. 17  
Bulevar Kukulcán  
Cancún, Quintana Roo, Mexico

**Royal Oasis Club at Benal Beach**

Ctra. de Cádiz, Km. 221  
Benalmadena-Costa  
Málaga 29630, Spain

**Royal Oasis Club at Pueblo Quinta**

Av. Federico García Lorca  
Benalmadena-Costa  
Málaga 29630, Spain

**Royal Palm Beach Resort**

Simpson Bay  
St. Maarten, Netherlands Antilles

**Royal Sands, The**

Lote 32, Boulevard Kukulcan  
Cancún, Quintana Roo 77500  
Mexico

**Royal Savoy Resort**

Avenida do Infante  
Funchal, Madeira 9004-542  
Portugal

**Royal Sunset Beach Club**

Calle Londres No. 6, Playa Fañabe  
Costa Adeje, Tenerife 38660  
Canary Islands, Spain

**Royal Tenerife Country Club**

Complejo San Andres, Golf del Sur  
San Miguel de Abona  
Tenerife 38620  
Canary Islands, Spain

**Royal Vacation Suites**

99 Convention Center Drive  
Las Vegas, NV 89109

**Royale Beach and Tennis Club**

400 Padre Boulevard  
South Padre Island, TX 78597

**Sahara Sunset**

Avenida Rocío Jurado  
Benalmadena-Costa  
Málaga 29630, Spain

**Samoset Resort**

220 Warrenton Street  
Rockport, ME 04856

**San Clemente Inn**

2600 Avenida del Presidente  
San Clemente, CA 92672

**San Diego Country Estates**

25385 Pappas Road  
Ramona, CA 92065

**San Luis Bay Inn**

3254 Avila Beach Drive  
Avila Beach, CA 93424

**Sands of Kahana Vacation Club**

4299 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Sandstone Creek Club**

1020 Vail View Drive  
Vail, CO 81657

**Santa Barbara Golf and Ocean Club**

Golf del Sur  
San Miguel de Abona  
Tenerife 38620  
Canary Islands, Spain

**Sapphire Beach Club and Resort**

Lowlands 147  
Cupecoy Beach, St. Maarten  
Netherlands Antilles

**Schooner Beach and Racquet Club**

7100 North Ocean Boulevard  
Myrtle Beach, SC 29577

**Schooner II Beach and Racquet Club**

2108 North Ocean Boulevard  
Myrtle Beach, SC 29577

**Scottsdale Camelback Resort**

6302 East Camelback Road  
Scottsdale, AZ 85251

**Scottsdale Links Resort**

16858 North Perimeter  
Scottsdale, AZ 85260

**Scottsdale Villa Mirage**

7887 E. Princess Boulevard  
Scottsdale, AZ 85255

**Sea Gardens Beach and Tennis Resort**

615 North Ocean Boulevard  
Pompano Beach, FL 33062

**Sea Mist Resort**

141 Great Neck Road South  
Mashpee, MA 02649

**Sea Scape Beach and Golf Villas**

4724 Route 158 By-Pass MM 2.5  
Kitty Hawk, NC 27949

**Seasons at Clowance Estate and Country Club**

Praze-an-Beeble  
Camborne, Cornwall TR12 OPT  
United Kingdom

**Seasons at Club Tahiti**

Calle Isla de Lobos 12  
35509 Costa Teguisse  
Lanzarote  
Canary Islands, Spain

**Seasons at Laugharne Park**

Laugharne Park, Laugharne  
Dyfed SA33 4SG  
United Kingdom

**Seawatch at Island Club**

85 Folly Road  
Hilton Head Island, SC 29928

**Sedona Summit**

500 Navoti Drive  
Sedona, AZ 86336

**Sedona Vacation Club at Los Abrigados**

160 Portal Lane  
Sedona, AZ 86336

**Shanghai SunIsland International Club**

Shenxiang, Qingpu County  
Shanghai 201714, China

**Shawnee Ridgetop Village**

River Road  
Shawnee-On-Delaware, PA 18356

**Shawnee River Village II**

River Road  
Shawnee-On-Delaware, PA 18356

**Shenandoah Crossing Resort**

10 Shenandoah Crossing Drive  
Gordonsville, VA 22942

**Sheraton Broadway Plantation**

3301 Robert M. Grissom Parkway  
Myrtle Beach, SC 29577

**Sheraton Desert Oasis**

17700 N. Hayden Road  
Scottsdale, AZ 85255

**Sheraton Mountain Vista**

160 West Beaver Creek Boulevard  
Avon, CO 81620

**Sheraton Vistana Resort**

8800 Vistana Centre Drive  
Orlando, FL 32821

**Sheraton Vistana Villages**

12401 International Drive  
Orlando, FL 32821

**Shore Crest Vacation Villas**

4709 South Ocean Boulevard  
North Myrtle Beach, SC 29582

**Signum Resort Miami Beach**

3010 Collins Avenue  
Miami Beach, FL 33140

**Southcape Resort and Club**

950 Falmouth Road  
Mashpee, MA 02649

**Southwinds Beach & Racquet Club**

St. Lawrence Gap  
Christ Church  
Barbados

**Spirit Ridge Vineyard Resort and Spa**

1200 Rancher Creek Road  
Osoyoos, British Columbia V0H 1V6  
Canada

**St. Augustine Beach & Tennis Resort**

10 Ocean Trace Road  
St. Augustine, FL 32080

**St. Moritz Apartments**

14-18 Brunswick Street  
Queenstown, Otago, New Zealand

**Stanzamare Coral Comfort**

El Corecito  
Bavaro, Punta Cana  
Dominican Republic

**Star Island Resort and Club**

5000 Avenue of the Stars  
Kissimmee, FL 34746

**Stoneridge Condominiums**

250 Chatwold  
Blanchard, ID 83804

**Strand Lakeside Resort**

7343 Okanagan Landing Road  
Vernon, British Columbia V1H 1G6  
Canada

**Suites at Fall Creek, The**

1 Fall Creek Drive  
Branson, MO 65616

**Suites at Polo Towers, The**

3745 Las Vegas Boulevard South  
Las Vegas, NV 89109

**Sun Bay Beach Club**

4810 Central Avenue  
Hot Springs, AR 71913

**Sun Bay Lodge**

4810 Central Avenue  
Hot Springs, AR 71913

**Sun Hills Suites**

Jounieh Highway  
P.O. Box 55398  
Beirut, Lebanon

**Sunningdale Village**

Golf del Sur  
San Miguel, Tenerife  
Canary Islands  
Spain

**Sunrise Ridge Resort**

1175 Resort Drive  
Parksville, British Columbia V9P 2E3  
Canada

**Sunset Bay Club**

c/Antonio Navarro, Torviscas  
Adeje, Tenerife 38660  
Canary Islands  
Spain

**Sunset Harbour Club**

c/Valencia No. 1  
Pueblo Torviscas  
Adeje, Tenerife 38660  
Canary Islands  
Spain

**Sunset View Club**

Urb. Golf del Sur  
San Miguel de Abona  
Tenerife 38620  
Canary Islands  
Spain

**Suntide Island Beach Club**

850 Ben Franklin Drive  
Sarasota, FL 34236

**Surfside Resort**

134 Menauhant Road  
East Falmouth, MA 02536

### **Surrey Grand Crowne Resort and Country Club, The**

430C State Highway 165 South  
Branson, MO 65616

### **Sweetwater Park City Lift Lodge**

1255 Empire Avenue  
Park City, UT 84060

### **Tahiti**

5101 West Tropicana Avenue  
Las Vegas, NV 89103

### **Tahiti Village**

7200 South Las Vegas Boulevard  
Las Vegas, NV 89119

### **Tahoe Beach and Ski Club**

3601 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

### **Tahoe Seasons Resort at Heavenly Valley**

3901 Saddle Road  
South Lake Tahoe, CA 96157

### **Tamarack Beach Resort**

3200 Carlsbad Boulevard  
Carlsbad, CA 92008

### **Tangalooma Island Resort**

Moreton Island  
Queensland 4004  
Australia

### **Tanglwood Resort**

Junction Routes 507 & 6  
Hawley, PA 18428

### **Tenerife Royal Garden**

Av. Maritima, s/n  
Playa de las Américas  
Arona, Tenerife  
Canary Islands  
Spain

### **Terrazas al Mar**

Av. Costanera entre 1 y 2  
Costa del Este  
Buenos Aires  
Argentina

### **Thunderbird Resort Club**

200 Nichols Boulevard  
Sparks, NV 89431

### **Thurnham Vacation Club at Cromer Country Club**

127 Overstrand Road  
Cromer, Norfolk NR27 0DJ  
United Kingdom

### **Tiki Village International Resort**

River End Cavill Avenue  
Surfer's Paradise, Queensland  
Australia

### **Timberline Lodges (Juniper)**

4559 Timberline Crescent  
P.O. Box 1316  
Fernie, British Columbia V0B 1M6  
Canada

### **Topaz Beach Club**

Topaz Hotel  
Bugibba  
St. Paul's Bay SPB 03  
Malta

### **Torres Mazatlán**

Apdo. Postal 695 – Av. Sábalo  
Cerritos, Esq. Lopez Portillo  
Mazatlán, Sinaloa  
Mexico

### **Tortuga Beach Club**

959 East Gulf Drive  
Sanibel Island, FL 33957

### **Townes at King's Creek Plantation, The**

191 Cottage Cove Lane  
Williamsburg, VA 23185

### **Townhouses at St. Augustine Beach and Tennis Resort, The**

3960 A1A South  
St. Augustine Beach, FL 32084

### **Trapp Family Guest Houses**

42 Trapp Hill Road  
Stowe, VT 05672

### **Tree Tops Resort of Gatlinburg**

290 Sherman Clabo Road  
Gatlinburg, TN 37738

### **Turtle Cay Resort**

6th Street and Atlantic Avenue  
Virginia Beach, VA 23451

### **Vacation Internationale – Oasis Villa Resort**

4190 East Palm Canyon Drive  
Palm Springs, CA 92263

### **Vacation Internationale – Pines at Sunriver, The**

Meadow Road  
Sunriver, OR 97707

### **Vacation Internationale – Sea Village**

75-6002 Alii Drive, Suite 10-A  
Kailua-Kona, HI 96740

### **Vacation Internationale – Torres Mazatlán**

Apdo. Postal 695  
Av. Sábalo Cerritos  
Esq. Lopez Portillo  
Mazatlán, Sinaloa  
Mexico

### **Vacation Internationale – Vallarta Torre**

Apartado Postal 4-22  
Paseo de las Garzas  
Puerto Vallarta, Jalisco  
Mexico

### **Vacation Village at Bonaventure Phase II**

16750 Blatt Boulevard  
Fort Lauderdale, FL 33326

### **Vacation Villas at FantasyWorld**

5000 Hart Avenue  
Kissimmee, FL 34746

### **Vacation Villas at Fantasyworld Two**

4999 Kyngs Heath Boulevard  
Kissimmee, FL 34746

### **Vail Run Resort**

1000 Lionsridge Loop  
Vail, CO 81657

### **Vallarta Torre**

Apartado Postal 4-22  
Paseo de las Garzas  
Puerto Vallarta, Jalisco 00060  
Mexico

### **Varsity Clubs of America – South Bend Chapter and ILX Premiere Vacation Club at Varsity Clubs of America – South Bend Chapter**

3800 North Main Street  
Mishawaka, IN 46545-3110

### **Varsity Clubs of America – Tucson Chapter and ILX Premiere Vacation Club at Varsity Clubs of America – Tucson Chapter**

3855 East Speedway Boulevard  
Tucson, AZ 85716

### **Vilar do Golf Resort Club**

Quinta do Lago  
8135 Almancil  
Loule, Algarve  
Portugal

### **Villa del Arco**

Km. 05 Camino Viejo a San José  
Cabo San Lucas 23450-23410  
Mexico

### **Villa del Palmar**

Km. 3, Francisco Medina Ascencio  
Puerto Vallarta, Jalisco  
Mexico

### **Villa del Palmar-Cabo**

Km. 0.5, Camino Viejo a San José  
Cabo San Lucas, B.C.S. 23410  
Mexico

### **Villa del Palmar Cancún Luxury Beach Resort & Spa**

Carretera Punta Sam, Km. 5.2  
Cancún, Quintana Roo 77400  
Mexico

### **Villa del Palmar Flamingos**

Paseo Costero Playa Lote E  
Flamingos Nayarta  
Nuevo Vallarta, Nayarit 63732  
Mexico

### **Villa Pacifico**

Ave. La Marina S/A  
Apartado Postal # 263-D  
Puerto Vallarta, Jalisco  
Mexico

### **Villa Roma Resort Lodges**

340 Villa Roma Road  
Callicoon, NY 12723

### **Villa Sofia Resort and Spa**

Ave Pioneros 200  
Bariloche, Río Negro R8400RD6  
Argentina

### **Village at Carefree Conference Resort, The**

36601 N. Muletrain Road  
Carefree, AZ 85377

### **Village at Loon Mountain**

Route 112, Kancamagus Highway  
Lincoln, NH 03251

### **Village at Palmetto Dunes**

10 Trent Jones Lane  
Hilton Head Island, SC 29928

### **Villaggio Cala La Luna**

c/da Badia  
Favignana 91023, Italy

### **Villaggio Cala Mancina**

Via Cala Mancina  
San Vito Lo Capo  
Trapani, Sicily 91010  
Italy

### **Villaggio Olimpico**

Area Duchi  
Sestriere, Torino 10058  
Italy

### **Villaggio Torre Macauda**

Torre Macauda, SS115, Km. 131  
Località Macauda  
Sciacca (AG), Sicily 92119  
Italy

**Villas at Fairway, The**

Route 209  
Bushkill, PA 18324-0221

**Villas at Polo Towers, The**

3745 Las Vegas Boulevard South  
Las Vegas, NV 89109

**Villas at the Boardwalk**

1601 Atlantic Avenue  
Virginia Beach, VA 23451

**Villas at Tree Tops, The**

Route 209  
Bushkill, PA 18324

**Villas de Santa Fe**

400 Griffin Street  
Santa Fe, NM 87501

**Villas on the Greens at the  
Welk Resort**

8860 Lawrence Welk Drive  
Escondido, CA 92026

**Vista Mirage**

400 South Hermosa  
Palm Springs, CA 92262

**Vistana's Beach Club**

10740 S. Ocean Drive  
Jensen Beach, FL 34957

**Voyager Resort**

Cnr. Old Burleigh Road &  
Elizabeth Avenue  
Broadbeach, Queensland  
Australia

**W.I.V.C. Coral Mar**

Pok-ta-pok Avenue  
Cancún, Quintana Roo  
Mexico

**Walton Hall**

Walton, Wellesbourne  
Warwickshire CV35 9HU  
United Kingdom

**Wapato Point**

1 Wapato Way  
P.O. Box 426  
Manson, WA 98831

**Water's Edge Resort**

1525 Boston Post Road  
Westbrook, CT 06498

**Waterman Holiday Club**

Put Vela Luke 4  
Supetar, Brac 21400  
Croatia

**Welk Resorts Cabo –  
Sirena del Mar**

Km 4.5 Transpeninsular Highway  
Cabo San Lucas, BCS 23410  
Mexico

**Welk Resorts Desert Oasis**

34567 Cathedral Canyon Drive  
Cathedral City, CA 92234

**Welk Resorts Mountain Villas**

8860 Lawrence Welk Drive  
Escondido, CA 92026

**Wellington, The**

551 Thames Street  
Newport, RI 02840

**Westgate Blue Tree**

12007 Cypress Run Road  
Orlando, FL 32836

**Westgate Branson Lakes at  
Emerald Pointe Resort**

750 Emerald Pointe Drive  
Hollister, MO 65672

**Westgate Branson Woods**

2005 Roark Valley Road  
Branson, MO 65616

**Westgate Flamingo Bay Club**

5625 West Flamingo Road  
Las Vegas, NV 89103

**Westgate Historic Williamsburg**

1324 Richmond Road  
Williamsburg, VA 23185

**Westgate Lakes Resort**

10000 Turkey Lake Road  
Orlando, FL 32819

**Westgate Miami Beach**

16701 Collins Avenue  
Miami, FL 33160

**Westgate Myrtle Beach**

415 South Ocean Boulevard  
Myrtle Beach, SC 29577

**Westgate Painted Mountain  
Country Club**

6302 E. McKellips Road  
Mesa, AZ 85215

**Westgate Palace**

6145 Carrier Drive  
Orlando, FL 32821

**Westgate Park City Resort  
and Spa**

4000 Canyons Resort Drive  
Park City, UT 84098

**Westgate RVS at Orlando**

6950 Villa de Costa Drive  
Orlando, FL 32821

**Westgate Smoky Mountain  
Resort at Gatlinburg**

915 Garden Road  
Gatlinburg, TN 37738

**Westgate Towers**

7600 West Irlo Bronson Memorial  
Highway  
Kissimmee, FL 34747

**Westgate Town Center**

2770 Old Lake Wilson Road  
Kissimmee, FL 34747

**Westgate Vacation Villas**

2770 Old Lake Wilson Road  
Kissimmee, FL 34747

**Westin Ka'anapali Ocean  
Resort North**

170 Kai Ala Drive  
Lahaina, Maui, HI 96761

**Westin Ka'anapali Ocean  
Resort Villas**

6 Kai Ala Drive  
Lahaina, Maui, HI 96761

**Westin Kierland Villas**

15620 N. Clubgate Drive  
Scottsdale, AZ 85254

**Westin Lagunamar Ocean  
Resort**

Km. 12.5 Blvd. Kukulcán  
Zona Hotelera  
Cancún, Quintana Roo 77500  
Mexico

**Westin Mission Hills Resort  
Villas**

71-333 Dinah Shore Drive  
Rancho Mirage, CA 92270

**Westin Princeville Ocean Resort**

3838 Wyllie Road  
Princeville, Kauai, HI 96722

**Westin Riverfront Mountain  
Villas**

218 Riverfront Lane  
Avon, CO 81620

**Westin St. John Resort and  
Villas**

Great Cruz Bay  
P.O. Box 8339  
St. John, U.S. Virgin Islands

**Westwood at Split Rock**

1 Lake Drive  
Lake Harmony, PA 18624

**White Sands Beach Club**

Arenal d'en Castell  
Menorca, Balearic Islands 07730  
Spain

**Wild Wing Golf Village**

525 Wild Wing Boulevard  
Conway, SC 29526

**Williamsburg Plantation**

4870 Longhill Road  
Williamsburg, VA 23188

**Willow Valley Resort**

Highway 105  
South Bairds Creek Road  
Boone, NC 28607

**Willowbrook at Lake Harmony**

One Lake Drive  
Lake Harmony, PA 18624

**Windjammer Landing Villa  
Beach Resort**

Labrelotte Bay  
P.O. Box 1504  
Castries, St. Lucia

**Windward Passage Resort**

418 Estero Boulevard  
Fort Myers Beach, FL 33931

**Winners Circle Beach and  
Tennis Resort**

550 Via de la Valle  
Solana Beach, CA 92075

**Woodford Bridge Country Club**

Milton Damerei Nr. Holsworthy  
Devon EX22 7LL  
United Kingdom

**World International Vacation  
Club – Coral Mar**

Pok-ta-pok Avenue  
Cancún, Quintana Roo, Mexico

**WorldMark Angels Camp**

123 Selkirk Ranch Road  
Angels Camp, CA 95222

**WorldMark Bass Lake**

53134 Road #432  
Bass Lake, CA 93604

**WorldMark Big Bear**

240 Starvation Flats Road  
Big Bear, CA 92315

**WorldMark Birch Bay**

4810 Beachcomber Way  
Blaine, WA 98230

**WorldMark Branson**

2794 Fall Creek Road  
Branson, MO 65616

**WorldMark Canmore-Banff**

91 Three Sisters Drive  
Canmore, Alberta, T1W 3A1, Canada

**WorldMark Clear Lake**

3927 East Highway 20  
Nice, CA 95464

**WorldMark Coral Baja**

Km. 29.5, Carretera Transpeninsular  
San José del Cabo, B.C.S. 23400  
Mexico

**WorldMark Depoe Bay**

141 Orcas Drive  
Depoe Bay, OR 97341

**WorldMark Eagle Crest**

1522 Cline Falls Highway  
Redmond, OR 97756

**WorldMark Flynn's**

14 Flynn Street  
Port Macquarie 2444  
Australia

**WorldMark Galena**

5129 Long Hollow Point  
Galena, IL 61036

**WorldMark Gleneden**

6593 Gleneden Beach Loop  
Gleneden Beach, OR 97388

**WorldMark Golden Beach**

75 the Esplanade  
Caloundra, Queensland 4100  
Australia

**WorldMark Grand Lake**

57020 E. Highway 125  
Afton, OK 74331

**WorldMark Kihei**

2295 South Kihei Road  
Kihei, Maui, HI 96753

**WorldMark Kirra Beach**

Cnr. Coyle and Winston Street  
Queensland, Australia

**WorldMark Kona**

75-5949 Alii Drive  
Kona, Hawaii, HI 96740

**WorldMark Lake of the Ozarks**

4900 Bella Point  
Osage Beach, MO 65065

**WorldMark Lake Tahoe – I and II**

202 Tramway Drive  
Stateline, NV 89449

**WorldMark Las Vegas**

8601 Las Vegas Blvd.  
Las Vegas NV 89123

**WorldMark Leavenworth**

100 Enchantment Park Way  
Leavenworth, WA 98826

**WorldMark Oceanside Harbor**

1301 Carmelo Drive  
Oceanside, CA 92054

**WorldMark Palm Springs**

1177 North Palm Canyon Drive  
Palm Springs, CA 92262

**WorldMark Pinetop**

2000 South WorldMark Drive  
Pinetop, AZ 85935

**WorldMark Rancho Vistoso**

13355 N. Hidden Springs Drive  
Oro Valley, AZ 85737

**WorldMark Reno**

250 N. Arlington  
Reno, NV 89505

**WorldMark Running Y**

5409 Running Y Road  
Klamath Falls, OR 97601

**WorldMark Seaside**

Avenue A and Columbia  
Seaside, OR 97138

**WorldMark St. George**

1157 S. Plantation Drive  
St. George, UT 84770

**WorldMark Victoria**

120 Kingston Street  
Victoria, British Columbia V8V 1V4  
Canada

**WorldMark Windsor**

1251 Shilo Road  
Windsor, CA 95492

**WorldMark Wolf Creek**

3618 N. Wolf Creek Drive  
Eden, UT 84310

**Wyndham Royal Vista**

1110 South Ocean Boulevard  
Pompano Beach, FL 33062

**Wyndham Governor's Green  
Williamsburg**

4600 Mooretown Road  
Williamsburg, VA 23185

**Yachtsman Resort, The**

1304 North Ocean Boulevard  
Myrtle Beach, SC 29577

**Ylläs 2**

Äkäslompolo 95970  
Finland

**Yucca Park**

Urb. Playa Fañabe s/n  
Adeje, Tenerife  
Canary Islands  
Spain

**Zorgvliet Private Residence  
Club at Protea Hotel King  
George**

King George Drive  
King George Park  
George 6529  
South Africa

**Zuana Beach Resort**

Barrio Bello Horizonte  
Santa Marta, Magdalena  
Colombia

## RESORTS WITH 21 – 50 UNITS PARTICIPATING AND AVAILABLE FOR OCCUPANCY

**A Place at the Beach**

4525 South Ocean Boulevard  
North Myrtle Beach, SC 28582

**Acadia Village Resort**

50 Resort Way  
Ellsworth, ME 04605

**Accor Vacation Club at Grand  
Mercure Heritage Park  
Bowral**

Heritage Park  
9 Kangaloon Road  
Bowral, Australia

**Accor Vacation Club at  
Freshwater Point Resort  
Gold Coast**

33 T.E. Peters Drive  
Broadbeach Waters  
Queensland 4218  
Australia

**Accor Vacation Club at  
Grand Mercure Melbourne**

321 Flinders Lane  
Melbourne, Victoria 3000  
Australia

**Accor Vacation Club at Grand  
Mercure Puka Park Resort**

Mount Avenue  
Coromandel Peninsula  
Pauanui Beach, New Zealand

**Accor Vacation Club at  
Novotel Nusa Dua Apartments**

Jalan Pantai Mengiat  
Nusa Dua, Bali

**Accor Vacation Club at  
Pinnacle Valley Resort**

1 Mimosa Drive  
Pinnacle Valley, Victoria 3732  
Australia

**Accor Vacation Club at  
Grand Mercure Apartments  
The Vines**

Verdelho Drive  
Swan Valley  
The Vines, West Australia 6069  
Australia

**Águilas Marina Beach Resort**

Hotel Don Juan, Avda. Puerto  
Deportivo  
Urb. Casica Verde  
Águilas, Murcia 30880, Spain

**Aldea Valle Encantado**

Carretera Panamericana, Km. 9  
Mérida, Venezuela

**Alexandra Resort**

Princess Drive  
P.O. Box 622  
Grace Bay, Turks & Caicos

**All Seasons Vacation Resort**

13070 Gulf Boulevard  
Madeira Beach, FL 33708

**Aloha Gardens**

Avenida del Golf, Urb. Aloha Golf  
Nueva Andalucía  
Marbella, Málaga 29660  
Spain

**Amara Lifetime Resort**

165 Tanjong Pagar Road  
Singapore 0208, Singapore

**Anchorage Resort & Yacht Club**

107800 Overseas Highway  
Key Largo, FL 33037

**Apart Holidays –  
Swiss Holiday Park**

Morschach 6443  
Switzerland

**Apartur Buenos Aires**

Pte. Juan D. Perón 940  
Buenos Aires, Argentina

**Apartur en El Valle de Las Leñas**

Las Leñas  
Mendoza 5613, Argentina

**Apartur Mountain Club**

Villa Catedral  
San Carlos de Bariloche, Río Negro  
Argentina

**Apollo Park at Vail**

442 South Frontage Road East  
Vail, CO 81658

**Apple Valley Resort**

428 Club House Drive  
Howard, OH 43028

**Aspens and Aspen Village, The**

1607 North Davis Avenue, Suite 149  
McCall, ID 83638

**Atlantic Club Campanario de Calahonda**

Avda. de Espana, 22  
Sitio de Calahonda  
Mijas-Costa, Málaga 29650  
Spain

**Atlantic Garden**

Avda. Gran Canaria No. 4  
Corralejo, La Oliva  
Fuerteventura  
Canary Islands 35660, Spain

**Atlantic Terrace**

3629 South Atlantic Avenue  
Daytona Shores, FL 32127

**Atlantic View**

c/Las Salinas 8, Los Mojones  
Puerto del Carmen, Lanzarote  
Canary Islands, Spain

**Atlantica Princess**

Ialyssos Beach  
Rhodes 85101, Greece

**Avalon Grand All Inclusive Vacation**

Km. 11.5 Kukulcán Boulevard  
Lote 17.A  
Cancún, Quintana Roo  
Mexico

**Avalon Grand Panama**

Via Transistmica, Milla 10  
Las Cumbres Panama  
Panama City, Panama

**Avalon Reef Club**

Islote El Yunque  
Isla Mujeres 77500, Mexico

**Bagaglino – Catturani**

Campo Carlo Magno  
Madonna di Campiglio (TN) 38084  
Italy

**Bagaglino – Des Alpes 2**

Via Campanil Basso  
Madonna di Campiglio (TN) 38084  
Italy

**Bagaglino – Hotel La Posta**

Hotel La Posta & Sport Campiglio  
Via Cimatosa 10  
Madonna di Campiglio (TN) 38084  
Italy

**Balboa Club**

Avenida Camarón Sábalo S/N  
Mazatlán, Sinaloa, 82110  
Mexico

**Bali Gardenia Resort**

Taman Mumbul, Nusa Dua  
Bali, Indonesia

**Banana Palms Marina and Resort**

Av. Reforma 1-50, Zona 9  
Edificio El Reformador  
1er. Nivel Oficina 106  
Río Dulce, Izabal, Guatemala

**Banyan Resort, The**

323 Whitehead Street  
Key West, FL 33040

**Barnsdale Country Club**

Exton, Nr. Oakham  
Rutland, Leicestershire LE15 8AB  
United Kingdom

**Barrancas del Este – Estacion Bosque**

Rincon del Indio, Ruta Interbalneari  
Punta del Este, Maldonado, Uruguay

**Bay & Beach Club**

19508 & 19509 Gulf Boulevard  
Indian Shores, FL 33785

**Bay Club, The**

302 32nd Street  
Ocean City, MD 21842

**Bay Club of Sandestin**

120 Sandestin Boulevard  
Destin, FL 32541-4533

**Beach Club at Montego Inn, The**

1307 South Ocean Boulevard  
Myrtle Beach, SC 29577

**Beach Club at St. Augustine**

2 Ocean Trace Road  
St. Augustine, FL 32080

**Beach Condominiums, The**

8459 Gulf Boulevard  
Navarre Beach, FL 32566

**Beachside Village**

50 Surf Drive  
Falmouth, MA 02540

**Bear Lake Timeshare**

757 Bear Lake Boulevard  
Garden City, UT 84028

**Bent Creek Golf Village**

3919 East Parkway  
Gatlinburg, TN 37738

**Berkshire by the Sea**

126 North Ocean Drive  
Delray Beach, FL 33483

**Berkshire on the Ocean, The**

1775 South Ocean Drive  
Delray Beach, FL 33483

**Blue Bay Village**

P.O. Box 162  
Watamu, Kenya

**Blue Water Resorts at Guanahani Village**

West Bay Street  
Nassau, Bahamas

**Bluewater Resort and Marina**

10 Bluewater Marina Drive  
Hilton Head Island, SC 29926

**Boardwalk One**

First & Boardwalk  
Ocean City, MD 21842

**Bonita Resort and Club**

26101 Hickory Boulevard  
Bonita Springs, FL 33923

**Borgo de Colleoli**

Colleoli, Tuscany  
Palaia, Italy

**Bosques de Monterreal**

Bulevar Antonio L. Rodríguez 840  
Pte. Col. San Jerónimo  
Monterrey, Coahuila  
Nuevo León 64640, Mexico

**Boyne Highlands Resort**

600 Highlands Drive  
Harbor Springs, MI 49740

**Boyne Vacation Club at Alpine Village**

600 Highlands Drive  
Harbor Springs, MI 49740

**Boyne Vacation Club at Big Horn**

1 Lone Mountain Trail  
P.O. Box 160001  
Big Sky, MT 59716

**Boyne Vacation Club at Mountain Cabins**

1 Boyne Mountain Road  
P.O. Box 19  
Boyne Falls, MI 49713

**Boyne Vacation Club at Ross Cottages**

600 Highlands Drive  
Harbor Springs, MI 49740

**Boyne Vacation Club at The Summit at Big Sky**

1 Lone Mountain Trail  
P.O. Box 160001  
Big Sky, MT 59716

**Brantridge Park**

Balcombe, Brantridge Lane  
West Sussex RH17 6JT  
United Kingdom

**Breakers Resort**

61 Chase Avenue  
Dennisport, MA 02639

**Broome Park Golf and Country Club**

The Broome Park Estate  
Barham, Nr. Canterbury  
Kent CT4 6QX  
United Kingdom

**Burn Park Country Club**

Stratton  
Bude, Cornwall EX23 8SF  
United Kingdom

**Burnside Country Club**

Kendal Road  
Bowness-on-Windermere LA23 3EP  
United Kingdom

**Cabo San Lucas Beach and Tennis Club**

Hotel Melia San Lucas  
El Medano  
Cabo San Lucas, B.C.S.  
Mexico

**Cala Blanca**

Urb. Costa Taurito  
Crta. De Mogan. KM 81.5  
Morgan, Gran Canaria 35138  
Canary Islands, Spain

**Cala Corvino Club II**

Viale Aldo Moro 4  
Monopoli  
Bari 70043, Italy

**Cala de Mar**

Calle Voltor s/n  
Cala Egos, Cala d'Or  
Mallorca, Balearic Islands 07660  
Spain

**Calabogie Peaks Resort**

Highway 508, Barret Chute Road  
Calabogie, Ontario K0J 1H0  
Canada

**California Vacation Club –  
Gaslamp Plaza Suites**

520 "E" Street  
San Diego, CA 92101

**Calini Beach Club**

1030 Seaside Drive  
Sarasota, FL 34242

**Camelot By The Sea**

1801 Gulf Way  
Pass-A-Grille Beach  
St. Pete Beach, FL 33706

**Canadian Resorts – Villas del  
Palmar**

Km. 75.5 Carretera Federal 180  
Congregación La Vigueta –  
Tecolutla, Veracruz  
Costa Esmeralda del Golfo 93620  
Mexico

**Cap Maison**

Smugglers Cove Drive  
Cap Estate, St. Lucia

**Cape Cod Holiday Estates**

97 Four Seasons Drive  
Mashpee, MA 02649

**Cape Winds Resort**

657 West Main Street  
Hyannis, MA 02601

**Capistrano Surfside Inn**

34680 Pacific Coast Highway  
Capistrano Beach, CA 92624

**Capitaine Cook**

55 Rue Louis Bougo  
Etel 56410, France

**Capri Waters Country Club**

Melbourne Street  
Mulwala, New South Wales 3647  
Australia

**Captain's Quarters at Surfside**

241 Grand Avenue  
Falmouth, MA 02540

**Caribbean Beach Club**

7600 Estero Boulevard  
Fort Myers Beach, FL 33931

**Caribe Beach Resort**

2669 West Gulf Drive  
Sanibel Island, FL 33957

**Carolina Club, The**

Southwind Drive  
Hilton Head, SC 29928

**Casa del Lago**

Ruta 258, Km. 18  
200 Lago Gutiérrez  
San Carlos de Bariloche, Río Negro  
Argentina

**Casa Metz**

Via Iman 5  
Santa Christina in Val Gardena  
BZ 39047, Italy

**Casablanca**

Av. Ezequiel Bustillo Km. 23.5  
8409 Llao Llao  
San Carlos de Bariloche, Río Negro  
Argentina

**Cathedral Ledge**

Junction Routes 16/302 and 16A  
Intervale, NH 03845

**Cerritos Resort**

Av. Sábalo Cerritos Entronque  
con Carr. Al Habal  
Mazatlán, Sinaloa, Mexico

**Channel Island Shores**

1311 Mandalay Beach Road  
Oxnard, CA 93035

**Charter Club Resort  
on Naples Bay**

1000 10th Avenue South  
Naples, FL 33940

**Chateau Dale Resort**

322/2 Moo 12, Thuppraya Road  
Pattaya City, Chonburi 20260  
Thailand

**Chateau Orleans**

240 Burgundy Street  
New Orleans, LA 70112

**Chetola Lodge and Conference  
Center**

North Main Street  
Blowing Rock, NC 28605

**China Worldbest Crown Spa  
Resort Hainan**

1Qiongshan Avenue  
Haihou, Hainan 57100, China

**Church Street Inn, The**

177 Church Street  
Charleston, SC 29401

**Cispatá Marina Hotel**

Bahía Cispatá y Playa Blanca  
San Antero, Colombia

**Clermont**

Paraguay 930  
Buenos Aires 1057  
Argentina

**Clermont Pinamar**

Del Cornalito 1271  
Pinamar, Buenos Aires  
Argentina

**Cliffs Club Resort, The**

3811 Edward Road  
Princeville, Kauai, HI 96722

**Clover Ridge**

5071 Clover Ridge Road  
Panora, IA 50216

**Club Ambassador**

Calle Granados  
Urb. Durazno, La Paz  
Puerto de la Cruz, Tenerife  
Canary Islands, Spain

**Club Asia International –  
Damai Rainforest Resort**

Pantai Damai, Santubong  
Kuching, Sarawak 93860, Malaysia

**Club Asia International –  
Royal Mulu Resort**

Sungai Melinau, Baram  
Miri, Sarawak 98000, Malaysia

**Club Azúr**

Erkel Ferenc U. 2/c  
Siofok, Somogy 8600  
Hungary

**Club at Cape Cod, The**

177 Lower County Road  
Dennisport, MA 02639

**Club Biodorf Bad Waltersdorf**

Bad Waltersdorf  
Bad Waltersdorf 8271, Austria

**Club Campestre El Carrizal**

Carr. Panamericana Km. 19  
Panama City, Panama

**Club Canaima Playa**

Paseo del Mar 30  
Palma Nova, Mallorca R-07181  
Balearic Islands, Spain

**Club Dolmen By The Sea**

Islets Promenade  
Qawra, Malta

**Club Donatello**

501 Post Street  
San Francisco, CA 94102-1277

**Club Elite Vacation at La Fenice  
Resort**

Localita Osseddu  
Olbia, Sardinia 07026, Italy

**Club El Moro**

Carretera Pichilingue  
Esq. Monterrey, P.O. Box 357  
La Paz, B.C.S. 23000, Mexico

**Club El Velero**

c/Centurion y Córdoba, 3  
Torremolinos, Málaga 29620, Spain

**Club Estela Dorada at  
Gruphotel Club Aldea del Mar**

Avda. Roentgen s/n  
Torrevieja, Alicante 03180, Spain

**Club Estela Dorada at  
Gruphotel Club Novelty**

Calle Berlin, 5  
Salou  
Tarragona, 43840, Spain

**Club Estela Dorada at  
Gruphotel Club Riviera**

Autovia Salou-Reus, 4  
Salou (Tarragona) 43840, Spain

**Club Estela Dorada at  
Gruphotel Club Tarter**

Apartamento I32  
Ransol, Canillo, Andorra

**Club Estela Dorada at  
Ogisaka Garden**

Calle Aquari, 3  
Alicante, Denia 03700, Spain

**Club Flamingo**

c/o Flamingo Beach Hotel  
Bonaire, Netherlands Antilles

**Club Imperial Park**

c/Tossal de la Cometa, s/n  
Calpe, Alicante, 03710, Spain

**Club Intrawest – Tremblant**

200 Chemin des Saisons  
Mont Tremblant, Québec J0T 1Z0  
Canada

**Club La Paz**

Urb. Jardines de la Paz  
Av. Marqués Villaneve del Prado  
Puerto de la Cruz, Tenerife  
Canary Islands, Spain

**Club Louka**

Hotel Louka  
Oukaimeden, Morocco

**Club No. 1 Nice Côte d'Azur**

56 Rue St. Philippe  
Nice 06000, France

**Club Noosa**

Noosa Drive  
Noosa Heads  
Queensland 4567, Australia

**Club Orlando**

5305 San Antonio Street  
Orlando, FL 32809

**Club Paso del Rio**

Calle Paso do Rio. 16  
Montrove (Oleiros)  
A Coruña, Galicia 15179  
Spain

**Club Playa Blanca**

Ruta Panamericana Norte  
Km. 430, IV Region  
Tongoy, Chile

**Club Premier Four Seasons –  
Soleil La Antigua**

9 Calle Poniente  
La Antigua Guatemala 03001  
Guatemala

**Club Premier Four Seasons –  
Soleil Pacífico**

Chulamar, Puerto de San José  
Escuintla, Guatemala

**Club Puerto Atlántico**

Carretera General del Sur  
Arguineguín, Gran Canaria 35120  
Canary Islands, Spain

**Club QM at The Ridge Sierra**

265 Quaking Aspen  
Stateline, NV 89449-2157

**Club Quinta del Mar**

Boulevard Benito Juarez 22-500  
Rosarito Beach, B.C.N., Mexico

**Club Regency in Regency  
Towers**

2511 South Ocean Boulevard  
Myrtle Beach, SC 29587-4246

**Club Royal –  
King Solomon's Palace Hotel**

Eilat 88000, Israel

**Club Royale at Torre Oceano**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647, Spain

**Club Sea Oats**

2539 South Atlantic Avenue  
Daytona Beach Shores, FL 32118

**Club Sol Mar del Plata**

Bolivar 1002 – Esq. Mendoza  
Mar del Plata, Buenos Aires  
Argentina

**Club Système Vacances at  
Club Callao Garden**

Callao Salvaje  
Adeje, Tenerife  
Canary Islands, Spain

**Club Wandlitzsee-Berlin**

Stolzenhagener Chaussee 22-24  
Wandlitzsee 16348, Germany

**Clube do Mónaco**

Rua Gileanes  
Cerro Da Lagoa, 8200 Albufeira  
Algarve, Portugal

**Clubhotel am Kreischberg**

Kreischberg Str. 5  
St. Georgen ob Murau, 8861  
Austria

**Coconut Beach Resort**

1500 Alberta Street  
Key West, FL 33040

**Colonial Crossings of  
Williamsburg**

200 English Garden Way  
Williamsburg, VA 23188

**Colonial Acres Resort**

114 Standish Way  
West Yarmouth, MA 02673

**Colonial Village**

Los Cardones  
Av. Litoral, Playa de las Américas  
Arona, Tenerife, Canary Islands, Spain

**Colonies at Williamsburg, The**

5380 Olde Towne Road  
Williamsburg, VA 23188

**Commodore Beach Club**

13536 Gulf Boulevard  
Madeira Beach, FL 33708

**Condominio Porto Bello Marina  
Villas**

Bahia de Xcacel Lote 9 MZ 023.  
Plano 01  
Puerto Aventuras, Quintana Roo  
Mexico

**Corail Royal Marina**

Porto Coralto  
Tabarka, Tunisia

**Coral Costa Resort, Juan Dolio**

Juan Dolio Beach  
San Pedro de Macoris 066-B  
Dominican Republic

**Cordial-Hotel Going**

Marchstr. 27  
Going, Tyrol 6353, Austria

**Costa Bonita Condominium &  
Beach Resort**

Calz. Sabalo Cerritos No. 7500  
Mazatlán, Sinaloa, Mexico

**Costa del Sol Resort**

4220 El Mar Drive  
Lauderdale-By-The-Sea, FL 33308

**Costa Maya Reef Resort**

Ambergris Caye  
P.O. Box 69  
San Pedro Town, Belize

**Costa Sal**

c/Agonal, 6, Urb. Matagorda  
Puerto del Carmen, Lanzarote  
Canary Islands, Spain

**Costa Sul Beach Resort**

Rua Gal Neto, 383 sala 905-Passo  
Camboriu, Brazil

**Country Club Villas**

1550 Fawn Vista Drive  
Surfside, SC 29575

**Country Vacation Villas  
(Amador)**

Avenida Amador y Avenida Pelicano  
Apto Postal 8001  
Panama City, 7, Panama

**Cranberry Waterfront Suites  
and Country Club**

15 Harbour Street E.  
Collingwood, Ontario  
Canada L9Y 4T9

**Crescent, The**

1420 Ocean Drive  
Miami Beach, FL 33139

**Cristal Palace Hotel**

Ciudad de la Paz 2550  
Buenos Aires, Argentina

**Crown Regency Vacation at  
Crown Regency Residence**

J.P. Cabaguio Avenue  
Agdao, Davao City 8000  
Philippines

**Dames de la Mer**

Netsel Marina  
231/232 Gunnucek Way  
Marmaris 48700, Turkey

**Daytona Resort and Club**

1200 Ruger Place  
Daytona Beach, FL 32118

**Delta Grand Okanagan Resort**

1310 Water Street  
Kelowna, British Columbia V1Y 9P3  
Canada

**Desert Vacation Villas**

250 West Vista Chino  
Palm Springs, CA 92262

**DeVere at Belton Woods**

Belton, Near Grantham  
Lincolnshire, NG32 2LN  
United Kingdom

**DeVere Resort Ownership The  
Carrick**

The Carrick at Cameron House  
Lock Lomond, Dunbartonshire  
United Kingdom

**DeVere Resort Ownership  
Slaley**

Hexham, Northumberland NE47 0BY  
United Kingdom

**Devoncourt**

Douglas Avenue  
Exmouth, Devon EX8 2EX  
United Kingdom

**Discovery Bay Yacht & Racquet  
Club**

141 Orcas Drive  
Port Townsend, WA 98368

**Dive Inn Resort**

34/H, Cliff Om el Seed  
Sharm el Sheikh, Egypt

**Divi Heritage**

Vauxhall, St. James Parish  
Barbados, West Indies

**Doha Hills**

P.O. Box 55398  
Sin-EI-Etl  
Doaht El-Hoss  
Beirut, Lebanon

**Dolphin Beach Club**

3355 South Atlantic Avenue  
Daytona Beach Shores, FL 32118

**Don Pancho Beach Resort**

58-62 Miller Street  
Kelly's Beach, Bundaberg  
Queensland 4670, Australia

**Dreams La Romana Resort &  
Spa**

Playa de Bayahibe  
La Romana, Dominican Republic

**Eastwood at Provincetown**

324 Bradford Street  
Provincetown, MA 02657

**Eden Bay Resort**

St. George's Bay  
St. Julian's STJ 07  
Malta

**Edinburgh Residence**

7 Rothebay Terrace  
Edinburgh EH3 7RY  
United Kingdom

**Eduard's Hotel Suites & Resort**

Urbanizacion Alamo  
Macuto, Venezuela

**Elani Bay**

Siviri  
Kassandra, Halkidiki, Greece

**Emirates Vacation Club at  
Emirates Grand Hotel**

Sheikh Zayed Road  
Dubai, United Arab Emirates

**Englewood Beach and Yacht  
Club**

1815 Gulf Boulevard  
Englewood, FL 34223

**Equivest Riverside Suites**

218 College Street  
San Antonio, TX 78205

**Es Pueto**

C/Es Canar s/n  
A lado Hotel Tres Torres  
Santa Eulalia, Ibiza E-07840  
Balearic Islands  
Spain

**Escapes! to the Gulf at Orange  
Beach**

22984 Perdido Beach Boulevard  
Orange Beach, AL 36561

**Escapes! to Tropical Breeze at  
Panama City Beach**

17001 West Front Beach Road  
Panama City Beach, FL 32413

**Estancia Apartur Mar del Plata**

Frente a la nueva cancha de Mar del  
Plata Golf Club  
Mar del Plata, Buenos Aires  
Argentina

**Fairmont Estates Condominiums**

101 High Country Drive  
Anaconda, MT 59711

**Fairmont Vacation Villas at  
Riverview**

5240 Riverside Drive  
Fairmont Hot Springs  
British Columbia V0B 1L0  
Canada

**Family Clubhotel and  
Apartments**

Daruzug 5/a  
Hajduszoboszlo 4200  
Hungary

**Fantasy Island Resort II**

3175 South Atlantic Avenue  
Daytona Beach, FL 32118

**Farallón**

Caviahue Base  
Norguin-NE  
Neuquén, Argentina

**Ferienwelt-Hotel Wikings-Inn**

Schwimmbadallee 6  
Wingst 21789, Germany

**First Cabin Club**

1000 McCulloch Boulevard  
Lake Havasu City, AZ 86403

**Fishermen's Village Resort Club**

1200 West Retta Esplanade, Q-58  
Punta Gorda, FL 33950-5339

**4 Seasons at Beech Mountain**

608 Beech Mountain Parkway  
Beech Mountain, NC 28604-8014

**Four Seasons Racquet and  
Country Club**

301-10 Carol Road  
Lake of the Ozarks, MO 65049

**Four Seasons Residence Club  
Scottsdale**

10650 East Crescent Moon Drive  
Scottsdale, AZ 85255

**Four Winds Beach Resort**

2605 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Freeport Resort & Club**

Rum Cay Drive  
Freeport, Grand Bahama Island  
Bahamas

**Freshwater Point Resort  
Broadbeach**

33 T.E. Peters Drive  
Broadbeach Waters  
Queensland 4218  
Australia

**Fuente Real Resort**

Carrera 7a No 21-61  
Tolima, Colombia

**Fun and Adventure Club at  
Erlebnishotel Liebnitzmühle**

Liebnitz 38  
Raabs an der Thaya 3820  
Austria

**Fun and Adventure Club at  
Erlebnishotel Nová Amerika**

Zalovov 45  
Jaromer 55101, Czech Republic

**Gålå Fjellgrend**

Gålå Høgfiellshotell Og Hytter  
Gålå 2646, Norway

**Galaxy Holiday Club**

Depiro Street  
Sliema SLM 05, Malta

**Garden Valley Golf Resort**

220 FM Road 1995  
Garden Valley, TX 75771

**Gardens at West Maui, The**

5500 Old Honoapiilani Highway  
Kapalua, Maui, 96761, Hawaii

**Gold Point Condominiums**

1000 County Road 520  
Breckenridge, CO 80424

**Golden Palms Hotel and Spa**

31/32 Golden Palms Avenue  
Off Tumkur Road  
Bangalore, Kamataka 562 123  
India

**Grand Beach Vacation Resort**

8309 Lake Bryan Beach Boulevard  
Orlando, FL 32821

**Grand Holiday Club at Atlantic  
Garden**

Avenida Gran Canaria 7  
Corralejo, La Oliva  
Fuerteventura, Canary Islands 35640  
Spain

**Grand Hotel Misurina**

Via Monte Piana 21  
Misurina (BL), Italy

**Grand Lodge at Peak 7**

Lot 1, Peak 7 Subdivision  
Breckenridge, CO 80424

**Grand Oasis Marien**

Calle Duarte #6  
Puerto Plata, Dominican Republic

**Grand Oasis Punta Cana  
Vacation Club**

Cabeza de Toro  
Punta Cana, Dominican Republic

**Grand Regency Resort at  
Thousand Hills**

175 Golf View Drive  
Branson, MO 65616

**Greenhouse – Villas, The**

Route 209  
Bushkill, PA 18324

**Gruphotel Club Aldea del Mar**

Av. Roentgen S/N  
Torrevieja, Alicante 03180  
Spain

**Gruphotel Club Riviera**

Av. Salou-Reus, 4  
Salou, Tarragona E-43840  
Spain

**Gruphotel Club Tarter**

Apartamento I32  
Ransol, Canillo, Andorra

**Gulf Tides of Longboat Key**

3008 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Hammocks, The**

60 Earl of Craven  
Bald Head Island, NC 28461

**Harbor Landing Condominiums**

4 Beach Road Extension  
Vineyard Haven, MA 02568

**Harbor Ridge**

Freeman Ridge Road  
Southwest Harbor, ME 04679

**Harbour Beach Resort**

701 South Atlantic Boulevard  
Daytona Beach, FL 32118

**Harbour Town Yacht Club**

149 Lighthouse Road  
Hilton Head Island, SC 29938

**Hawaiian Princess at Makaha  
Beach**

84-1021 Lahilahi Street  
Makaha, Oahu, HI 96792

**Hawks Nest, The**

One Kyle Way South  
Marathon, FL 33050

**Heidelberg Inn**

85 Boulder Drive – Lakeview  
June Lake, CA 93529

**Hever Golf and Country Club  
Hotel**

Hever Road  
Hever, Kent TN8 7NP  
United Kingdom

**Hideaway Sands Resort**

3804 Gulf Boulevard  
St. Petersburg, FL 33706

**Holiday Club Fured**

Tancsics M. u 18  
Balatonfured 8230  
Hungary

**Holiday Club Pyhä**

Pyhänturi 98530, Finland

**Holiday Club Ruka**

689 Pulkajarvi  
Kuusamo 93999, Finland

### **Holiday Owners Club at Devoncourt**

Douglas Avenue  
Exmouth, Devon EX8 2EX  
United Kingdom

### **Holiday Owners Club at Hever Golf & C.C. Hotel**

Hever Road  
Hever, Kent TN8 7NP  
United Kingdom

### **Holiday Owners Club at Long Beach Resort and Club**

P.O. Box 86, Famagusta Kibris  
Mersin 10, North Cyprus

### **Holiday Park Resort**

S1, 415 Commonwealth Road  
Winfield, British Columbia V4V 1P4  
Canada

### **Hollywood Beach Hotel**

101 North Ocean Drive  
Hollywood, FL 33019

### **Hono Koa Vacation Club**

3801 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

### **Horizon Touristic Resort**

Red Sea  
Hurgada, Egypt

### **Horse Country Resort Congress and Spa**

Strada a Mare 24, No. 27  
Arborea, Sardinia 09092, Italy

### **Hostería del Cerro**

Villa Cerro Catedral  
San Carlos de Bariloche  
Río Negro 8400, Argentina

### **Hostería del Lago**

Ave. Ezequiel Bustillo Km. 7.8  
Box 8.400  
San Carlos de Bariloche  
Río Negro 8400, Argentina

### **Hotel Aguamarina**

Lote No. 5  
Higuerote, Miranda, Venezuela

### **Hotel Breckenridge at Marriott's Mountain Valley Lodge**

655 Columbine Road  
Breckenridge, CO 80424

### **Hotel de Aventura Centro Convenciones Madaura**

Km. 59 Via Melgar  
Chinauta, Cundinamarca, Colombia

### **Hotel De L'Eau Vive**

315 Tchoupitoulas Street  
New Orleans, LA 70130

### **Hotel El Castellano**

Calle 57 #513X 63 and 64  
Mérida, Yucatán 97000, Mexico

### **Hotel La Pedregosa**

Final Av. Panamericana  
Urb. La Pedregosa  
Mérida, Venezuela

### **Hotel Las Naciones Suites & Tower**

Av. Corrientes 818  
Buenos Aires, Argentina

### **Hotel Mansión Tarahumara**

Domicilio Conocido Areponapuchic  
Barrancas del Cobre, Chihuahua  
Mexico

### **Hotel Puerta del Mar**

Paseo de las Gaviotas  
Esq. Agua de Correa  
Ixtapa, Zihuatanejo  
Guerrero 40880, Mexico

### **Hotel Internacional Quirinale**

Av. H. Quiros y Noailles  
Colón, Entre Ríos, Argentina

### **Hotel Serena Beach Club**

Punici Street  
Xlendi, Island of Gozo VCT 115  
Malta

### **Hotel Tamarindo Costa Real**

Playa Tamarindo  
Santa Cruz, Guanacaste, Costa Rica

### **Hôtel Vacances Tremblant**

330 Route 117  
St. Jovite, Québec, Canada J0T 2H0

### **Hotelcal – Hotel Apartamentos Calypsso I**

Malecon Balneario de Salinas  
Salinas, Ecuador

### **Huka Village Estate**

Huka Falls Road  
Taupo, New Zealand

### **Hyatt Sunset Harbor Resort**

Front Street at Truman Annex  
Key West, FL 33040

### **Illetas Club Playa – Bougainvilla**

Paseo Illetas 62  
Illetas, Mallorca  
Balearic Islands E-07015  
Spain

### **ILX Premiere Vacation Club – Carriage House, The**

105 East Harmon Avenue  
Las Vegas, NV 89109

### **ILX Premiere Vacation Club at Golden Eagle Resort**

300 Riverside Drive  
Estes Park, CO 80517

### **ILX Premiere Vacation Club – Sea of Cortez Beach Club**

Paseo Mar Bermejo 4, Los Algodones  
San Carlos, Nuevo Guaymas  
Sonora, Mexico

### **Indian Peaks**

817 Cramner Avenue  
Fraser, CO 80482

### **Inn at the Opera**

333 Fulton Street  
San Francisco, CA 94102

### **Inn at Silver Lakes, The**

14818 Clubhouse Drive  
Helendale, CA 92342

### **InnSeason Captain's Quarters**

241 Grand Avenue  
Falmouth, MA 02540

### **InnSeason Resorts – South Mountain**

Route 112 – Main Street  
Lincoln, NH 03251

### **Inverness at Walden – Phase II**

13151 A Walden Road, #243  
Montgomery, TX 77356

### **Jackson Hole Racquet Club Resort**

Star Route #363-B  
Jackson Hole, WY 83001

### **Jackson Hole Towncenter**

320 West Broadway  
Jackson Hole, WY 83001

### **Jamaican on the Gulf**

11660 Gulf Boulevard  
Treasure Island, FL 33706

### **Jambo Vacation Club at Club Residence Capopiccolo**

Localita Capopiccolo  
Crotona, Isola di Capo Rizzuto 88076  
Italy

### **Ka'anapali Beach Club**

104 Kaanapali Shores Place  
Lahaina, Maui, HI 96761

### **Kahana Villa Vacation Club**

4242 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

### **Kahlua Beach Club**

4950 Estero Boulevard  
Fort Myers Beach, FL 33931

### **Kala Point Village and Resorts West Vacation Club at Kala Point**

20 Village Drive  
Port Townsend, WA 98368

### **Kamaole Beach Club**

2381 South Kihei Road  
Kihei, Maui, HI 96753

### **KD West Resorts at The Dawn**

7000 Seawall Boulevard  
Galveston, TX 77551

### **Kenmore Club, The**

Kenmore, Perthshire PH15 2HH  
United Kingdom

### **Kimball, The**

150 North Main Street  
Salt Lake City, UT 84103

### **Kingfisher Club**

Benal Beach  
Ctra. de Cádiz, Km. 221  
Benalmadena-Costa, Málaga 29630  
Spain

### **Kingfisher Inn**

100 N. Waccamaw Drive  
Garden City Beach, SC 29223

### **Kololi Beach Club**

Ker Serign Kombo North  
P.M.B. 241  
Serrekunda, Gambia

### **Kona Reef**

75-5888 Alii Drive  
Kailua-Kona, Hawaii, HI 96740

### **Kuleana Club, The**

3959 L. Honoapiilani  
P.O. Box 45  
Lahaina, Maui, HI 96767

### **Kulta-Katti**

Suojarventie 2  
Vuokatti 88610, Finland

### **La Orquidea Heights**

c/d Jose Orbaneja s/n  
Sitio de Calahonda  
Mijas-Costa, Málaga 29650, Spain

### **La Quinta at La Manga**

La Manga Club, Los Belones  
Cartagena, Murcia 30385, Spain

### **La Renaissance**

190 Kentucky Avenue  
Atlantic City, NJ 08404

### **Lagamar Resort**

Av. Das Palmeiras, 444  
Varginha, Minas Gerais, Brazil

### **Lago Vista at Buenaventura Lakes**

180 Royal Palm Drive  
Kissimmee, FL 34743

### **Lagonita Lodge**

183 Lagonita Lane  
Big Bear Lake, CA 92315

### **Laguna Shores**

419 North Coast Highway  
Laguna Beach, CA 92651

### **Laguna Suites Golf and Spa**

Paseo Pok Ta Pok num 3  
Zona Hotelera  
Cancún, Quintana Roo, Mexico

### **Laguna Surf**

611 South Coast Highway  
Laguna Beach, CA 92651

### **Lake Arrowhead Chalets**

199 Rockledge Lane  
Kuffel Canyon and Highway 173  
Lake Arrowhead, CA 92352

### **Lake Forest Resort and Club**

1531 Golf View Drive  
Eagle River, WI 54521

### **Lake Placid Club Lodges**

30 Lake Placid Club Way  
Lake Placid, NY 12946

### **Lakeland Village, The**

Newby Bridge, Ulverston  
Cumbria LA12 8PX  
United Kingdom

### **Lakeside Terrace in the Vail Valley**

340 Benchmark Road  
Avon, CO 81620

### **Lakeside Villas**

9600 Regent Parkway  
Fort Mill, SC 29715

### **Lakeside Villas, The**

96 Lake Terrace  
Taupo, New Zealand

### **Lapinniemi**

Lapinniemenranta 12  
Tampere 33180, Finland

### **Las Torres Gemelas**

Costera Miguel Aleman #1230  
Acapulco, Mexico

### **Laurel Point Condominiums**

805 Ski Mountain Road  
Gatlinburg, TN 37738

### **Lawai Beach Resort – Coral Building**

5017 Lawai Road  
Koloa, Kauai, HI 96756

### **Le Manoir des Deux Amants**

Dep. 19, 40 Route d'Amfreville  
Connelles, Sous Les Monts 27430  
France

### **Le Mirage**

San Francisco de Asís s/n  
Villa Carlos Paz, Córdoba, Argentina

### **Le Nautille**

Port Camargue  
Le Grau du Roi 30240, France

### **Le Relais du Plessis**

2 Rue Clement Ader  
Plessis-Trevise, France

### **Le Ville del Lido**

Via Lungomare Marconi  
Lido di Venezia (VE) 30126, Italy

### **Le Ville del Magara**

Croce di Magara  
Spezzano Piccolo (CS) 87052, Italy

### **Legend Hotel – Kuala Lumpur, The**

100, Jalan Putra  
Kuala Lumpur 50350, Malaysia

### **Legend Resort – Cherating, The**

Lot 1290 Mukim Sungai  
Karang, Cherating  
Kuantan, Pahang, 20680, Malaysia

### **Les Terrasses de Saint Honorat**

Miramar – RN 98  
Theoule Sur Mer 06590, France

### **Lifetime in Hawaii**

2240 Kuhio Avenue, #2214  
Honolulu, Oahu, HI 96815

### **Lifetime Vacation Club at Miraflores**

Urb. Miraflores  
Apt. de Correo 85 La Cala de Mijas  
Mijas-Costa, Málaga 29647, Spain

### **Lighthouse Resort and Club**

210 Periwinkle Way  
Sanibel Island, FL 33957

### **Lindo Mar Adventure Club**

Km. 2.5, Ctra. Barra de Navidad  
Puerto Vallarta, Jalisco, Mexico

### **Lion's Gate Pines Lodge**

55 North Lion's Gate Drive  
Winter Park, CO 80482

### **Little Sweden**

8984 Highway 42  
Fish Creek, WI 54212

### **Lloyd's Club**

Av. de los Holandeses, s/n  
La Mata – Torrevieja  
Alicante 03180, Spain

### **Lodge at Lake Tahoe, The**

3840 Pioneer Trail  
South Lake Tahoe, CA 96150

### **Lodges at Cresthaven**

3210 Lake Shore Drive  
Lake George, NY 12845

### **Lodges at Timber Ridge Welk Resorts Branson, The**

1984 Highway 165  
Branson, MO 65616

### **Loma Bonita**

Paseo de los Yaquis y  
Avenida de los Series S/N  
Country Club San Carlos  
Sonora, Mexico

### **LomaSirmakka**

Tuulentie 5  
Nurmes 75500, Finland

### **Los Pájaros**

Calle del Tuyu 919  
Pinamar, Buenos Aires, Argentina

### **Los Tajibos Vacation Club**

Av. San Martin No. 455  
Santa Cruz 2966, Bolivia

### **Macdonald Elmers Court Resort and Country Club II**

South Baddesley Road  
Lymington, Hampshire SO41 5ZB  
United Kingdom

### **Manhattan Club Penthouse Suites, The**

200 West 56th Street  
New York City, NY 10019

### **Marbella Suites**

Carretera Transpeninsular, Km. 3  
Fracc El Tezal, Lote 20  
Cabo San Lucas, B.C.S. 23450  
Mexico

### **Marblewood Village**

8 Thistle Drive  
Steady Brook  
Newfoundland A2H 2N2, Canada

### **Marina Club**

North Beach  
Eilat 88141, Israel

### **Marina Palace**

Av. Delfim Moreira, 630  
Rio de Janeiro 22441, Brazil

### **Marina Village at Snug Harbor**

645 San Carlos Boulevard  
Fort Myers Beach, FL 33932-2430

### **Marine Terrace**

1018 North Atlantic Avenue  
Daytona Beach, FL 32118

### **Mariner's Boathouse & Beach Resort**

7630 Estero Boulevard  
Fort Myers Beach, FL 33931

### **Mariner's Point Beach Club**

425 Grand Avenue  
Falmouth, MA 02540

### **Marriott's Canyon Villas at Desert Ridge**

5225 E. Marriott Drive  
Phoenix, AZ 85054

### **Marriott's Harbour Club at Harbour Town**

144 Lighthouse Road  
Hilton Head Island, SC 29938

### **Marriott's Heritage Club**

18 Lighthouse Lane  
Hilton Head Island, SC 29938

### **Marriott's Imperial Palms Villas**

8404 Vacation Way  
Orlando, FL 32821

### **Marriott's Sunset Pointe at Shelter Cove**

4 Shelter Cove Lane  
Hilton Head Island, SC 29928

### **Matecumbe Resort**

76261 Overseas Highway  
Islamorada, FL 33036

### **Maui Beach Vacation Club**

515 South Kihei Road  
Kihei, Maui, HI 96753

### **Maui Sunset Timeshare**

1032 S Kihei Road  
Kihei, Maui, HI 96753

### **Métropole Opéra**

2 Rue de Gramont  
Paris 75002, France

### **Misiones del Cabo Vacation Club**

Km. 5.5 Ctra. Transpeninsular  
Cabo San Lucas, B.C.S., Mexico

**Mittersill Alpine Resort**

193 Mittersill Road  
Franconia, NH 03580

**Monarch Grand Vacations –  
Tahoe Seasons**

3901 Saddle Road  
South Lake Tahoe, CA 96150

**Morro Mar Vacation Club**

c/Mato, Matagordo No. 7  
Puerto del Carmen, Lanzarote 35510  
Canary Islands, Spain

**Mountain Club at Kirkwood,  
The**

Kirkwood Meadows Drive  
Kirkwood, CA 95646

**Mountain Meadows Resort**

2813 Rolling Hills Drive  
Pigeon Forge, TN 37863

**Mountainside Lodge**

4417 Sundial Place  
Whistler  
British Columbia V0N 1B4  
Canada

**Multigestion –  
Domaine de Garlande**

Quartier des Canissons  
Cavalaire 83240, France

**Multigestion –  
Les Terrasses de Théoule**

19, Boulevard de l'Estérel  
Théoule 06590, France

**Native Sun, The**

1950 South Ocean Boulevard  
Pompano Beach, FL 33062

**Nautical Mile Resort &  
Condominiums, The**

1072 Post Road  
Wells, ME 04090

**Nautical Watch Beach Resort**

3420 Gulf Boulevard  
Belleair Beach, FL 33786

**Nautilus Residences White  
Sands Golf and Beach Resort**

Bavaro, La Altagracia  
Dominican Republic

**Neptune, The**

2310 Estero Boulevard  
Fort Myers Beach, FL 33931

**Neptune Vacation Club**

Connecticut Avenue  
Block Island, RI 02807

**Newport Bay Club & Hotel**

337 Americas Cup Avenue at  
Thames Street  
Newport, RI 02840

**Nob Hill Inn**

1000 Pine Street  
San Francisco, CA 94109

**Nordvind Resort**

12700 Gulf Boulevard  
Treasure Island, FL 33706

**NorthBay at Lake Arrowhead**

27400 Sugar Pine Drive  
Lake Arrowhead, CA 92352

**Northslope at Shawnee  
Mountain**

River and Hollow Roads  
P.O. Box 93  
Shawnee-On-Delaware, PA 18356

**Northstar Lodge, a Hyatt  
Residence, The**

970 Northstar Drive  
Truckee, CA 96161

**Northstar Mountain Village**

1351 Gerry Sorenson Way  
Kimberley, British Columbia, V1A 2Y9  
Canada

**Northwoods Club of Lake  
Placid**

122 Main Street  
Lake Placid, NY 12946

**Oasis Hamaca**

Calle Duarte, Boca Chica  
Santo Domingo, Dominican Republic

**Ocean Club at Atlantic Inn, The**

8 Crandall Avenue  
Misquamicut, RI 02891

**Ocean Club at Ramla Bay**

Ramla Bay Resort  
Ramla TAL-BIR  
Marfa MLH 02, Malta

**Ocean Gate Resort**

4730 A1A South  
St. Augustine, FL 32084

**Ocean High**

503 32nd Street  
Ocean City, MD 21842

**Ocean Park Vacation Club**

Rua Simplicio dos Passos Gouveia  
29 Ocean Park Promenade  
Funchal, Madeira 9000-100, Portugal

**Ocean View at Island Club**

85 Folly Field Road  
Hilton Head, SC 29928

**Ocean Villas**

7509 North Ocean Boulevard  
Myrtle Beach, SC 29577

**Oceancliff I & II**

Ridge Road  
Newport, RI 02840

**Oceanique**

2105 Highway A1A  
Indian Harbour Beach, FL 32937

**Old Bahama Bay Resort at  
Ginn Sur Mer**

Bayshore Drive  
West End, Grand Bahama Island  
Bahamas

**Omni Cancún Hotel and Villas**

Blvd. Kukulcán L48, Hotel Zone  
Cancún, Quintana Roo 77500  
Mexico

**Open Sud Aparthotel**

Golf de la Côte d'Argent  
Moliets 40660, France

**Options by Macdonald at  
Dalfaber Resort Chalets**

Dalfaber Estate  
Aviemore  
Inverness, Scotland PH22 1ST  
Great Britain

**Options by MacDonald at  
Elmers Court Country Club  
& Resort**

South Baddesley Road  
Lymington, SO41 5ZB  
United Kingdom

**Options by Macdonald at  
Elmers Court Country Club II**

South Baddesley Road  
Lymington, Hampshire SO41 5ZB  
United Kingdom

**Options by Macdonald at Loch  
Rannoch Hotel and Resort**

Loch Rannoch Estate  
Kinloch Rannoch  
Perthshire, Scotland PH 16 5PS  
United Kingdom

**Options by Macdonald at  
Lochanhully Resort**

Carrbridge  
Inverness-shire, Scotland PH23 3NA  
United Kingdom

**Orient Touristic Development**

El Hadaba El Ganoubeya  
Hurghada 4342, Egypt

**Orlando Breezes Resort Club**

12727 U.S. Highway 27 North  
Davenport, FL 33897

**Orofino by Straight Creek**

390 Straight Creek Drive  
Dillon, CO 80435

**Outrigger Beach Club**

215 South Atlantic Avenue  
Ormond Beach, FL 32176

**Owners Resorts & Exchange  
at St. George – Villas at  
Southgate**

280 West 2025 South Circle  
St. George, UT 84770

**Pacific Palms**

2 Lakeside Crescent  
New South Wales 2428, Australia

**Palace View South**

700 Blue Meadows Drive  
Branson, MO 65616

**Palm Beach Resort and Beach  
Club**

3031 South Ocean Boulevard  
Palm Beach, FL 33480

**Palm Springs Marquis Villas**

140 S. Calle Encilia  
Palm Springs, CA 92262

**Palma Real Hotel and Villas**

Marina de Juluapan  
Manzanillo, Colima, Mexico

**Panama City Resort and Club**

16709 Front Beach Road  
Panama City, FL 32413

**Papakea**

3543 Lower Honoapiilani  
Lahaina, Maui, HI 96761

**Paradise Holiday Resort**

Rua dos Pardais 250 H  
Bombinhas, Santa Caterina, Brazil

**Paradise Island Beach Club**

Ocean Ridge Drive  
Nassau, Bahamas

**Park Plaza at Beaver Creek**

46 Avondale Lane  
Beaver Creek, CO 81620

**Pend Oreille Shores Resort**

1250 Highway 200  
Hope, ID 83836

**Peninsular Club at La Manga  
Club**

Los Belones, Cartagena  
Murcia 30385, Spain

**Peppertree – Fontana Village**

Highway NC 28  
Fontana Dam, NC 28733

**Peppertree – Maggie Valley**

265 Moody Farm Road  
Maggie Valley, NC 28751

**Peppertree at Thousand Hills**

2800 Green Mountain Drive  
Branson, MO 65616

**Peregrine Townhomes at San Luis Pass**

10202 Bluewater Highway  
Freeport, TX 77541

**Perennial Vacation Club – Bandera**

1775 River Ranch Road  
Bandera, TX 78003

**Petit Crest Villas**

90 Steve Tate Highway  
Marble Hill, GA 30148

**Pinares del Mar**

Calle Mar del Plata  
Entre Calles 42 y 43  
Mar Azul, Villa Gesell  
Buenos Aires 7165, Argentina

**Pirayú**

Av. Tres Fronteras 550  
Puerto Iguazú, Misiones, Argentina

**Plantation Beach Club at Indian River Plantation**

329 Northeast Tradewind Lane  
Stuart, FL 34996

**Plantation Village Beach Resort**

West Bay Road  
Grand Cayman, Cayman Islands

**Playa del Sol Costa Sur (North Tower)**

Km. 4-456 Carretera, Barra Navidad  
Puerto Vallarta, Jalisco, Mexico

**Plaza Resort at Palmas del Mar**

235 Harbour Drive  
Palmas del Mar  
Humacao 00791, Puerto Rico

**Pointe on the Bay, The**

23rd Street and Coastal Way  
Ocean City, MD 21842

**Polus Palace Thermal Golf Club Hotel**

Kadar u. 49  
Goed 2132, Hungary

**Ponds at Foxhollow, The**

Route 7  
Lenox, MA 02140

**Port d'Albret Le Boucanier**

Rue du Belvedere  
Vieux Boucau 40480, France

**Poste Montane at Beaver Creek**

76 Avondale Lake  
Beaver Creek, CO 81620

**Pousada do Portal de Paraty**

Av. Beira Rio, 100  
Paraty, Rio de Janeiro 23970-000  
Brazil

**Powder Ridge Village Resort**

6172 North Powder Ridge Road  
Eden, UT 84310

**Powell Place**

730 Powell Street  
San Francisco, CA 94108

**Premiere Vacation Club – Sea of Cortez Beach Club**

Paseo Mar Bermejo 4, Los Algodones  
San Carlos, Nuevo Guaymas  
Sonora, Mexico

**Prospect Reef Resort Vacation Club**

Slaney Hill  
Road Town, Tortola  
British Virgin Islands

**Pueblo Caribe International Beach Resort**

Playa El Tirano1  
El Tirano, Isla Margarita, Venezuela

**Pueblo Laguna Vera**

Apartado de correos 164  
Las Marinas  
Vera, Almería 04620, Spain

**Pueblo Vista Alegre**

Urb. Vista Alegre – Es Cubells  
San José, Ibiza 07830  
Balearic Islands, Spain

**Puerto Bunge Apart Hotel**

Av. Bunge y Marco Polo  
Pinamar, Buenos Aires  
Argentina

**Puerto Encantado**

Av. 2 y esquina Paseo 147  
Villa Gesell  
Buenos Aires, Argentina

**Quadna Mountain Resort**

100 Quadna Road  
Hill City, MN 55748

**Radisson Resort Palm Meadows**

Palm Meadows Drive, Carrara  
P.O. Box 728, Robina  
Gold Coast, Queensland 4226  
Australia

**Ramada Grand Caymanian Resort**

SafeHaven  
P.O. Box 30610  
Crystal Harbor, Grand Cayman  
Cayman Islands

**Rangeley Lake Resort**

Cottage Avenue  
Rangeley, ME 04970

**Red Wolf Lodge at Squaw Valley**

2000 Squaw Loop Road  
Olympic Valley, CA 96146

**Redington Ambassador**

16900 Gulf Boulevard  
North Redington Beach, FL 33708

**Reef at Marathon, The**

6800 Overseas Highway  
Marathon, FL 33050

**Reef Resort, The**

Queen's Highway, Collier's Bay  
East End, Grand Cayman  
Cayman Islands

**Reemyvera Resort & Marina**

Hurghada – Red Sea  
Hurghada, Egypt

**Regency Palms**

Monte Paraíso  
Urbanización Calahonda  
Mijas-Costa, Málaga, Spain

**Regency Villas at Broome Park**

The Broome Park Estate  
Barham, Canterbury, Kent CT4 6QX  
United Kingdom

**Residence Club Seaside**

100 South Promenade  
Seaside, OR 97138

**Résidence des Pins Bleus**

Avenue de Cannes  
Juan Les Pins 06600, France

**Résidence le Diamant**

Villard de Lans 38250, France

**Residence Liscia di Vacca**

Liscia di Vacca  
Porto Cervo, Sassari  
Sardinia 07020, Italy

**Residence Narjess**

Avenue Moncef Bey  
Hammamet 8050, Tunisia

**Résidence Yasmine Plaza**

Yasmine Hammamet  
Hammamet, 8050, Tunisia

**Residencial Itapema Vacation Club**

Av. Governador Celso Ramos, 700  
Itapema, Brazil

**Residencial Sajo**

Rua Claudio Manoel da Costa s/n  
São Paulo, Brazil

**Residencial Vale Dourado**

Rua dos Carvalhos, 100 – Planalto  
Gramado 95670, Brazil

**Resort Sixty-Six**

6600 Gulf Drive  
Holmes Beach, FL 34217

**Ridge Crest, The**

415 Tramway Drive  
Stateline, NV 89449

**Ridge Pointe Resort, The**

455 Tramway Drive  
Stateline, NV 89449

**Ridge Sierra, The**

265 Quaking Aspen  
Stateline, NV 89449-2157

**Ridge View, The**

311 Tramway Drive  
Stateline, NV 89449

**River Club, The**

550 West Depot Avenue  
Telluride, CO 81435

**Riviera Beach and Spa Resort I & II and Monarch Grand Vacations at Riviera Beach and Spa Resort**

34630 Pacific Coast Highway  
Capistrano Beach, CA 92624

**Riviera Shores Resort and Monarch Grand Vacations at Riviera Shores Resort**

34642 Pacific Coast Highway  
Capistrano Beach, CA 92624

**Royal Aloha Vacation Club at Lake Tahoe**

317 Quaking Aspen Lane  
Stateline, NV 89449

**Royal Club at the Palm-Jumeirah**

Palm Beach Island  
P.O. Box 1777  
Dubai, United Arab Emirates

**Royal Palm Club at the Aruba Grand**

J.E. Yrausquin Boulevard #79  
Oranjestad, Aruba, Dutch Caribbean

**Royal Palms**

Simpson Bay  
Simpson Bay, St. Maarten  
Netherlands Antilles

**Royal Regency**

69 Rue de France  
Vincennes 94300, France

**Royal Sea Aquarium Resort, The**

Bapor Kibra S/N  
P.O. Box 3102  
Willemstad, Curaçao  
Netherlands Antilles

**San Clemente Cove Resort**

104 South Alameda Lane  
San Clemente, CA 92672

**San Luis Bay**

3254 Avila Beach Boulevard  
Avila Beach, CA 93424

**Sand Pebble Resort**

12300 Gulf Boulevard  
Treasure Island, FL 33706

**Sandcastle Cove**

1141 Broad Creek Road  
New Bern, NC 28560

**Sandcastle Village II**

Lakeview Drive  
1141 Broad Creek Road  
New Bern, NC 28560

**Sands Vacation Resort**

2040 Mesquite Avenue  
Lake Havasu City, AZ 86403

**Sandy Point Beach Resort**

41 Labrador Street  
Labrador, Queensland 4215, Australia

**Sanibel Beach Club I**

626 Nerita Street  
Sanibel Island, FL 33957

**Sanibel Beach Club II**

205 Periwinkle Way  
Sanibel Island, FL 33957

**Sanibel Cottages**

2341 West Gulf Drive  
Sanibel Island, FL 33957

**Scottsdale Resort Club**

8235 East Indian Bend Road  
Scottsdale, AZ 85250

**Sea Club V Beach Resort**

6744 Sarasea Circle  
Sarasota, FL 34242

**Sea Mountain**

95-789 Ninole Loop Road  
Punalu'u, Hawaii, HI 96777

**Sea Oats Beach Club**

1720 Gulf Boulevard  
Englewood, FL 34223

**Sea Ranch II**

U.S. Route 158, Milepost 7  
Kill Devil Hills, NC 27948

**Sea Shells**

Diamond Beach Road  
Hallidays Point  
Via Taree, New South Wales 2430  
Australia

**Seagull Beach Club Resort**

4440 Ocean Beach Boulevard  
Cocoa Beach, FL 32931

**Seaside Beach Club**

501 Briny Avenue  
Pompano Beach, FL 33062

**Seasons at Alto Club**

Quinta do Alto do Poco  
Alvor  
Portimao, Algarve 8500-906  
Portugal

**Seasons at Brunston Castle**

Brunston Avenue  
Dailly, Ayrshire KA26 9RH  
United Kingdom

**Seasons at Burn Park Country Club**

Stratton  
Bude, Cornwall EX23 8SF  
United Kingdom

**Seasons at Forest Hills**

Urb. Forest Hills (Los Altos)  
Ctra. De Cádiz. Km. 159  
Estepona, Málaga 29680  
Spain

**Seasons at Whitbarrow Village**

Berrier, Penrith  
Cumbria CA11 0XB  
United Kingdom

**Seasons Resort, The**

5736 S. Texas Avenue  
Orlando, FL 32839

**Seawatch Inn at the Landing**

215 Atlantic Avenue  
Garden City Beach, SC 29576

**Seawatch On-The-Beach**

6550 Estero Boulevard  
Fort Myers Beach, FL 33931

**Sedona Springs Resort**

55 Northview Road  
Sedona, AZ 86336

**7 Mile Beach Resort**

West Bay Road  
Georgetown, Grand Cayman  
Cayman Islands

**Shadow Ridge**

50 Shadow Ridge Drive  
Park City, UT 84060

**Shawnee Depuy Village**

River Road  
Shawnee-On-Delaware, PA 18356

**Shawnee Depuy Village – Phase II**

River Road  
Shawnee-On-Delaware, PA 18356

**Shawnee Fairway Village**

River Road  
Shawnee-On-Delaware, PA 18356

**Shawnee Ridge Top Summit**

River Road  
Shawnee-On-Delaware, PA 18356

**Shawnee River Village I**

River Road  
Shawnee-On-Delaware, PA 18356

**Shearwater Resort**

Port Sorell (via Devonport)  
Tasmania 7307, Australia

**Shell Island Beach Club**

255 Periwinkle Way  
Sanibel Island, FL 33957

**Sheraton PGA Vacation Resort**

8702 Champions Way  
Port St. Lucie, FL 34986

**Shores at Lake Travis, The**

1917 American Drive  
Lago Vista, TX 78645

**Sinai Stars Resort**

Ramada Plaza Ras Sudr  
South Sinai, Ras Sudr  
Egypt

**Smoketree Lodge**

11914 Highway 105 South  
Banner Elk, NC 28604

**Snow Lake Lodge**

41579 Big Bear Boulevard  
Big Bear Lake, CA 92315

**Snowater and Resorts West Vacation Club at Snowater**

10500 Mount Baker Highway  
Glacier, WA 98244

**Snowdance Vacation Club at Ascutney Mountain**

Route 44  
Brownsville, VT 05037

**Snowdance Vacation Club at Windsor Condo, The**

Route 44  
Brownsville, VT 05037

**Solaz de Los Andes Hotel**

Brasil 308  
P.O. Box 5500  
Mendoza, Argentina

**South Seas Club**

5400 South Seas Plantation Road  
Captiva Island, FL 33924

**South Shore Lake Resort**

201 Hamilton Oaks Drive  
Hot Springs, AR 71913

**Southern California Beach Club**

121 South Pacific  
Oceanside, CA 92054

**Spicebush at Sea Pines**

124 North Sea Pines Drive  
Hilton Head Island, SC 29928

**Spinnaker at Lake Dillon**

317 West La Bonte  
Dillon, CO 80435

**St. James Place**

210 Offerson Road  
Beaver Creek, CO 81620

**St. Maarten Sea Palace**

121 Front Street  
Philipsburg, St. Maarten  
Netherlands Antilles

**Steele Hill East/Steele Hill Resort**

516 Steele Hill Road  
Sanbornton, NH 03269

**Steele Hill West**

516 Steele Hill Road  
Sanbornton, NH 03269

**Stormy Point Village Resort**

132 Cape Cod Road  
Branson, MO 65616

**Stormy Point Village – Summerwinds Resort**

3940 Green Mountain Drive  
Branson, MO 65616

**Sugarwood at Ruttger's Sugar Lake Lodge**

37584 Otis Lane  
Cohasset, MN 55721

**Suite Hotel Klass**

Bezeje, 14  
Kranska Gora 4280, Slovenia

**Sunstream Vacation Club at DiamondHead**

2000 Estero Boulevard  
Ft. Myers Beach, FL 33931

**Suites at Fisherman's Wharf, The**

2655 Hyde Street  
San Francisco, CA 94109

**Summerfield Condo Resort**

2425 Summerfield Way  
Kissimmee, FL 34741

**Summit Resort, The**

974 White Oaks Road  
Laconia, NH 03246

**Sunquest Gardens**

Douriou Ippou Street  
Potamos Yermasoyias  
Limassol, Cyprus

**Sunrise Beach Club**

1212 North Atlantic Avenue  
Daytona Beach, FL 32118

**Sunset Point at StillWaters Resort**

1816 Stillwaters Drive  
Dadeville, AL 36853

**Sunset Resorts – Canmore**

1151 Sidney Street  
Canmore AB T1W 3G1  
Canada

**Sunset Shores Resort**

1246 Sonnyside Drive  
Cadillac, MI 49601

**Suites at Hershey, PA**

176 East Hersheypark Drive  
Hershey, PA 17033

**Surf Club**

540 South Collier Boulevard  
Marco Island, FL 34145

**Surfers Royale**

Corner Markwell Avenue & Northcliffe  
Terrace  
Surfer's Paradise  
Queensland 4217, Australia

**Surfrider Beach Club**

555 East Gulf Drive  
Sanibel Island, FL 33957

**Surfside Inn and Resorts West Vacation Club at Surfside Inn**

31512 "J" Place  
Ocean Park, WA 98640

**Surrey Vacation Resort, The**

430C State Highway 165 South  
Branson, MO 65616

**Sutherland Crossing Resort**

962 Seaview Circle  
P.O. Box 883  
Crystal Beach, FL 34681

**Swallowtail at Sea Pines**

124 Lighthouse Road  
Hilton Head Island, SC 29938

**Swan Mountain Resort**

59 Soda Ridge Road  
Dillon, CO 80435

**Sweetwater at Lake Conroe**

1000 April Sound Boulevard  
Montgomery, TX 77356

**Swiss Mountain Village**

2324 Flat Top Road  
Blowing Rock, NC 28605

**Taba Paradise**

Taba  
Sharm Road, Taba, Egypt

**Tahoe Chaparral**

400 Fairview Boulevard  
Incline Village, NV 89451

**Tahoe Summit Village**

750 Wells Fargo Lane  
Stateline, NV 89449

**Tanglewood Vacation Villas**

290 Tanglewood Circle  
Pittsboro, TX 75076

**Tenerife Sun Club**

Parque Don José Urbanización  
Costa del Silencio, Tenerife  
Canary Islands, Spain

**Tennis Ranch Pinamar Resort**

Fragata La Victoria  
Pinamar, Buenos Aires, Argentina

**Thurnham Vacation Club at Thurnham Hall**

Thurnham Nr. Lancaster LA2 0DT  
United Kingdom

**Torrenza Boutique Resorts**

Av. Sábalo Cerritos s/n  
Mazatlán, Sinaloa, Mexico

**Traders Inn Beach Club**

1355 Ocean Shore Boulevard  
Ormond Beach, FL 32176

**Tranquility Bay Antigua**

Jolly Harbour  
P.O. Box JH94  
Bolans, Antigua

**Treetop Condominiums at Four Seasons, U.S.A.**

594 State Highway HH  
Lake Ozark, MO 65049

**Treetop Village at Four Seasons, U.S.A.**

594 State Highway HH  
Lake Ozark, MO 65049

**Tropical Sands Resort**

7785 Estero Boulevard  
Fort Myers Beach, FL 33931

**Turangi Leisure Lodge**

Ngawaka Place  
Turangi, New Zealand

**Twin Rivers Condominiums**

300 Sterling Way Road  
Fraser, CO 80442

**Vacation Club Villas**

One Holiday Inn Drive  
Asheville, NC 28806

**Vacationland Estates**

Golf Club Road  
Island Falls, ME 04747

**Vacation Internationale – Embarcadero Resort and Resorts West Vacation Club at Embarcadero**

1000 S. East Bay Boulevard  
Newport, OR 97365

**Vacation Internationale – Papakea**

3543 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Vacation Internationale – Point Brown Resort**

1413 Ocean Shores Boulevard S.W.  
Ocean Shores, WA 98569

**Vacation Internationale – Pono Kai**

4-1250 Kuhio Highway  
Kapaa, Kauai, HI 96746

**Vacation Internationale – Royal Kuhio**

2240 Kuhio Avenue  
Honolulu, Oahu, HI 96815

**Vacation Internationale – Sea Mountain**

95-789 Ninole Loop Road  
Punalu'u, Hawaii, HI 96777

**Vacation Internationale – Valley Isle**

4327 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Vacation Internationale – Village at Steamboat, The**

2400 Pine Grove Circle  
Steamboat Springs, CO 80477

**Vacation Village at Bonaventure**

401 Racquet Club Road  
Weston, FL 33326

**Valley Isle**

4327 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Vanderbilt Beach and Harbour Club**

9301 Gulf Shore Drive  
Naples, FL 33963

**Ventura**

2301 South Ocean Boulevard  
Boca Raton, FL 33432

**Veranda Beach Club**

2509 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Verandah Resort & Spa, The**

St. Phillips North  
P.O. Box 63  
St. John's, Antigua

**Via Roma Beach Resort**

2408 Gulf Drive  
Bradenton Beach, FL 34217

**Victoria Court I & II**

Los Cristianos  
Tenerife  
Canary Islands, Spain

**VIK Hotel Arena Blanca**

Carretera Arena Gorda, White Sands  
Bávaro, Punta Cana  
Dominican Republic

**VIK Hotel Cayena Beach**

Carretera Arena Gorda  
Bávaro, Punta Cana  
Dominican Republic

**Villa del Sol**

Costanera 4000  
Costa Azul, San Bernardo  
Buenos Aires, Argentina

**Villa La Paloma**

Lazaro Cardenas Esq. Bordo  
Cabo San Lucas, B.C.S., Mexico

**Village at Izatys, The**

40005 85th Avenue  
Onamia, MN 56359

**Village at St. James's Club, The**

St. James's Club  
Marmora Bay, Antigua

**Village Maritalia**

Località Valle Clavia  
Peschici (FG) 71010, Italy

**Village Resort, The**

Cnr. Lake Terrace and Tui Street  
Taupo, New Zealand

**Villaggio Aurora**

Contrada Bruscate Grande – Sibari  
Cassano allo Ionio 87070, Italy

**Villaggio Piccolo Mondo**

Via Litoranea per S. Cesarea  
Castro Marina 73030, Italy

**Villas at Flying L**

566 Flying L Drive  
P.O. Box 1959  
Bandera, TX 78003

**Villas at Lantern Bay**

100 Lantern Bay Road  
Branson, MO 65616

**Villas at Poco Diablo**

1752 Highway 179  
P.O. Box 2252  
Sedona, AZ 86336

**Villas de Santa Fe**

400 Griffin Street  
Santa Fe, NM 87501

**Villas El Rancho Exclusive  
Vacation Club**

Av. Sábalo Cerritos #3000  
Mazatlán, Sinaloa 82100, Mexico

**Villas Loma Linda**

Calle Las Hortensias 37  
Puerto Vallarta, Jalisco, Mexico

**Villas Mar-Bel**

Fracc. Lomas de Taxco  
Taxco de Alarcon  
Taxco, Guerrero, Mexico

**Villas Playa Sámara**

Playa Sámara  
Costa Pacífica Norte  
Nicoya, Guanacaste  
Costa Rica

**Villas of Cave Creek**

38001 North Schoolhouse Road  
Cave Creek, AZ 85331

**Villas of Sedona**

120 Kallof Place  
Sedona, AZ 86336

**Voyager Beach Club**

11860 Gulf Boulevard  
Treasure Island, FL 33706

**Waikiki Banyan, The**

201 Ohua Avenue, Suite 403  
Tower 1  
Waikiki, Oahu, HI 96815

**Waterman Holiday Club**

Put Vela Luke 4  
Supetar, Brac 21400, Croatia

**Waterwood Townhouses**

1141 Broad Creek Road  
New Bern, NC 28560

**Wave Crest Resort**

1400 Ocean Avenue  
Del Mar, CA 92014

**West Sands Phuket Beach Club**

65 Moo 4  
Mai Khao, Thalang  
Phuket 83110, Thailand

**Westgate South Beach**

3611 Collins Avenue  
Miami Beach, FL 33140

**Westgate Tunica Resort  
Mississippi**

1724 Casino Center Drive  
Robinsonville, MS 38664

**Whaler, The**

2481 Kaanapali Parkway  
Lahaina, Maui, HI 96761

**Whaler Inn Beach Club**

323 Salter Path  
Pine Knoll Shores  
Atlantic Beach, NC 28512

**Wharf, The**

408 Long Island Drive  
Hot Springs, AR 71913

**Whitbarrow Country Club**

Whitbarrow Hall  
Berrier  
Penrith, Cumbria CA11 0XB  
United Kingdom

**Whispering Pines Villas**

30 Country Club Boulevard  
Whispering Pines, NC 28327

**White Sands Country Club**

Urb. Pinamar  
Addaya  
Menorca E-07730  
Balearic Islands, Spain

**White Sands of Longboat**

5114 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Windjammer at Nags Head, The**

5619 Virginia Dare Trail  
Nags Head, NC 27959

**Windjammer Resort and Beach  
Club**

4244 El Mar Drive  
Lauderdale-By-The-Sea, FL 33308

**Windsurf Resort at Cabarete  
Beach**

Km. 16, Cabarete  
Puerto Plata, Dominican Republic

**Woodbourne Estates Resort**

Lunar Boulevard  
Freeport, Grand Bahama Island  
Bahamas

**Woods and Legends at Copper  
Creek, The**

209 Ten Mile Circle  
Copper Mountain, CO 80443

**World International Vacation  
Club – La Paloma**

Playas de Rosarito  
South Rosarito Beach  
B.C.N., Mexico

**World International Vacation  
Club – Mar Azul**

Gonzalo de Sandoval  
Acapulco, Guerrero, Mexico

**World Tennis Center & Resort**

4800 Airport-Pulling Road  
Naples, FL 34105

**WorldMark Arrow Point**

4502 South Arrow Point Drive  
Harrison, ID 83833

**WorldMark Bear Lake**

365 Raspberry Patch Road  
Garden City, UT 84028

**WorldMark Bison Ranch**

2269 Highway 260  
Overgaard, AZ 85933

**WorldMark Cairns**

49/72 Kowinka Street  
Cairns, Queensland 4868, Australia

**WorldMark Cascade Lodge**

4315 Northlands Boulevard  
Whistler, British Columbia V0N 1B0  
Canada

**WorldMark Denarau Island**

10721 Nadi Airport  
Nadi, Fiji

**WorldMark Discovery Bay**

141 Orcas Drive  
Port Townsend, WA 98368

**WorldMark Kapaa Shore**

4-0900 Kuhio Highway  
Kapaa, Kauai, HI 96746

**WorldMark La Paloma**

Km. 28.2 Carretera Libre a Ensenada  
Rosarito, B.C.N. 22710  
Mexico

**WorldMark Lake Tahoe III**

202 Tramway Drive  
Stateline, NV 89449

**WorldMark Las Vegas on  
Spencer Street**

4225 Spencer Street  
Las Vegas, NV 89121

**WorldMark Marina Dunes**

3295 Dunes Drive  
Marina, CA 93933

**WorldMark Mariner Village**

1331 Ocean Shores Boulevard S.W.  
Ocean Shores, WA 98569

**WorldMark Orlando**

12000 International Drive  
Orlando, FL 32821

**WorldMark Steamboat Springs**

2400 Pine Grove Circle  
Steamboat Springs, CO 80477

**WorldMark Sundance**

2221 Gondola Way  
Whistler, British Columbia V0N 1B2  
Canada

**WorldMark Surfside Inn**

31512 “J” Place  
Ocean Park, WA 98640

**WorldMark The Canadian**

1080 Hornby Street  
Vancouver, British Columbia V6Z 2R9  
Canada

**Wychnor Park Country Club**

Wychnor Park  
Nr. Barton-under-Neadwood  
Staffordshire DE13 8BU  
United Kingdom

**Wyndham Bay Voyage Inn**

150 Conanicus Avenue  
Jamestown, RI 02840

**Ylläs 1**

Äkäslompolo 95970  
Finland

**Zorgvliet Private Residence  
Club at Riviera on Vaal**

Mario Milani Drive  
Vereeniging 1939  
South Africa

## RESORTS WITH 11 – 20 UNITS PARTICIPATING AND AVAILABLE FOR OCCUPANCY

### Absolute Private Residence Club at Q Signature Spa and Resort

24/78 Moo 5. Bo Phut  
Koh Samui, Suratthani, 84320  
Thailand

### Accor Vacation Club Basildene Manor

Wallcliffe Road  
Margaret River 6285, Australia

### Accor Vacation Club Busselton

553 Bussell Highway  
Geographe Bay  
Busselton, Western Australia 6280

### Accor Vacation Club Forest Resort

Medcand Highway  
Creswick, Victoria, Australia

### Accor Vacation Club Grand Mercure Oakridge Resort

Cnr. Cardona Valley and  
Studholme Road  
Lake Wanaka, Wanaka, New Zealand

### Accor Vacation Club Grand Mercure The Links

St. Andrews Boulevard  
Lady Bay, Normanville  
South Australia  
Australia

### Accor Vacation Club Novotel Pacific Bay Resort

Cnr Pacific Highway and Bay Drive  
Coffs Harbour  
New South Wales 2450  
Australia

### Accor Vacation Club Novotel Twin Waters

Ocean Drive – Twin Waters  
Sunshine Coast, Queensland, 4564  
Australia

### Accor Vacation Club Pinnacle Apartments

104 Pyrmont Street  
Sydney, Australia

### Accor Vacation Club Vintage Apartments

Vintage Drive  
Rothbury, Hunter Valley  
New South Wales, Australia

### AlpeAdria Club at Novi Vinodolski

TRG Krava Tomislava 4  
Novi Vinodolski 51250, Croatia

### Alpenresidenz Bad Gastein

Karl-Heinrich-Waggener-Str.2  
Bad Gastein, 5640  
Austria

### Amapola Vacation Club

Jaco de Garabito  
Puntarenas, Costa Rica

### Amarras

Menton No. 934  
Santa Clara del Mar  
Mar Chiquita 7609, Argentina

### Aquamarina Suites

Barrier Reef Drive  
San Pedro Town  
Belize

### Arcobaleno

Ramon Guerra Esquina Parada 18  
Punta del Este, Maldonado  
Uruguay

### Aspen Ridge

100 Aspen Ridge  
Telluride, CO 81435

### Atalaya Towers

912 North Waccamaw Drive  
Garden City, SC 29576

### Atlantic Club Hotel Tierra Mar Golf

Matalascañas  
Huelva 21760, Spain

### Avalon Excalibur

Avenida Costera Miguel Aleman #163  
Fraccionamiento Magallanes, C.P.  
Acapulco, Guerrero 39670  
Mexico

### Azure Sky Resort

1661 Calle Palo Fierro  
Palm Springs, CA 92264

### Bagolino – Villa Laguna

Via Sandro Gallo 6  
Lido di Venezia 30126, Italy

### Barceló Punta Cana

Bavaro  
Higüey, Dominican Republic

### Barra Palace

Av. Sernambetiba, 2916  
Rio de Janeiro 22620-172, Brazil

### Barracas del Este – Estacion Mar

Parada 26 ½  
Maldonado, Punta del Este  
Uruguay

### Barringtons Royal Golf & Fitness Club

Vale do Lobo  
Almancil 8135, Portugal

### Beach Club I

326 Estero Boulevard  
Fort Myers Beach, FL 33931

### Beach Club at Ana Maria

2201 Gulf Drive North  
Bradenton Beach, FL 34217

### Beachcomber Resort Club

999 Lakeview Avenue  
South Lake Tahoe, CA 96150

### Beaches Sandy Bay

Norman Manley Boulevard  
Negril, Jamaica

### Belize Legacy Beach Resort

7.2 Miles North  
P.O. Box 42  
Ambergris Caye, San Pedro, Belize

### Bishop Selwyn, The

26 Selwyn Road  
Paihia, New Zealand

### Blue Water Acres

1052 Rat Bay Road  
Huntsville, Ontario P1H 2J6  
Canada

### Boyne Vacation at Deer Lake Villas

1 Boyne Mountain Road  
P.O. Box 19  
Boyne Falls, MI 49713

### Brahma Blue Holistic Vacation Club

12 Coconut Drive  
San Pedro, Ambergris Caye  
Belize

### Brant Point Courtyard

Swain Street  
Nantucket, MA 02554

### Cabana Club and Resorts West Vacation Club at Cabana Club

7530 Birch Bay Drive  
Blaine, WA 98230

### Calypso Plaza on Coolangatta

Corner Griffith Street & McDonald Street  
Coolangatta, Queensland 4225  
Australia

### Canadian Resorts – La Querencia Resort

Closter #5-C Km. 145  
Ctra. Federal 200, Tepic  
Puerto Vallarta, Jalisco, Mexico

### Capri by the Sea

4767 Ocean Boulevard  
San Diego, CA 92109

### Captain Morgan's Vacation Beach Club

Ambergris Caye  
P.O. Box 38  
San Pedro, Belize

### Carlton Alvor Hotel

Praia Dos Três Irmãos  
Portimão, Algarve 8500, Portugal

### Carlton Court

120 Maida Vale  
London W9 1QA  
United Kingdom

### CasaBlanca Vacation Club

950 West Mesquite Boulevard  
Mesquite, NV 89027

### Casitas del Monte

2700 South Palm Canyon Drive  
Palm Springs, CA 92264

### Cedar Village

220 Charter Hills  
Beech Mountain, NC 28604

### Celebrity Resorts Brigantine Beach – The Villas

1500 Ocean Avenue  
Brigantine, NJ 08203

### Christie Village

100 Horn Beam Road  
Beech Mountain  
Banner Elk, NC 28604

### Cinta Sayang Golf & Country Resort

Persiaran Cinta Sayang  
Sungai Petani  
Kedah, Malaysia 08000

### Club Asia International – Bukit Saban Resort

Km. 290, Kuching/Sarikei Road off  
Jalam Ulu Paku  
Betong, Kuching, Sarawak 93400  
Malaysia

### Club Baccara

Paseo Kukulcán-Zona Hotelera  
Km. 11.5  
Cancún, Quintana Roo 77500, Mexico

**Club Cala Vadella**

Cala Andraitx s/n, Apartado 17  
San José, Ibiza  
Balearic Islands 07830, Spain

**Club Calypso**

Calle Alemania 1  
Puerto del Carmen  
Tias, Lanzarote 35510  
Canary Islands, Spain

**Club Es Talayal**

Avenida es Forti 20  
Cala d'Or, Mallorca E-07660  
Balearic Islands, Spain

**Club Estela Dorado at  
Gruphotel Club Marina Arpon**

Cala del Pino  
La Manga del Mar Menor  
Murcia 30370, Spain

**Club Estela Dorado at Salou  
Aquamarina**

Emili Vendrell 17  
La Pineda, Vilasera, Tarragona 43480  
Spain

**Club Playa Vista at Club Sierra  
Blanca**

c/o Aztec Country Club  
c/Libra Urb. Riviera Del Sol  
Mijas-Costa, Málaga 29647, Spain

**Club QM at Northlake Lodges  
& Villas**

987 Tahoe Boulevard  
Incline Village, NV 89451

**Club Royale at Pueblo Don  
Miguel**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647, Spain

**Club Royal Regency**

69 Rue de France  
Vincennes 94300, France

**Club Système Vacances at Club  
Maritimo at La Ronda III**

Playa de los Boliches  
Fuengirola, Málaga 29640, Spain

**Club Tiara**

State Bay  
Cayman Brac, Cayman Islands

**Club Tropicana**

Urbanización Tropicana  
Nerja, Málaga 29780, Spain

**Club Valle Termal Resort**

Calle 27 Esquina 42  
Federacion, Entre Rios 3206  
Argentina

**Clube Hotel Do Algarve**

Quinta do Romão  
Quarteira, Algarve 8125 Portugal

**Coconut Mallory Marina and  
Resort**

1445 South Roosevelt Boulevard  
Key West, FL 33040

**Colibri Beach Club – Porlamar**

Av. Santiago Marino  
Porlamar, Isla Margarita, Venezuela

**Condominio “Week Inn”**

Estrada da Usina do Fojo, S/No.  
Campos do Jordao (SP), Brazil

**Coral Costa Caribe**

Juan Dolio Beach 066-B  
Dominican Republic

**Costa Blanca del Pacifico**

Golfo de Papagayo  
Guanacaste, Costa Rica

**Cottages at Cape Kiwanda**

3000 Cape Kiwanda Drive  
Pacific City, OR 97135

**Cottages at Port Stanton, The**

1500 Port Stanton Parkway, RR 1  
Severn Bridge, Ontario P0E 1N0  
Canada

**Cottages at South Seas  
Plantation**

Sanibel Captiva Road  
Captiva Island, FL 33924

**Country Heights Villas**

Resort Services, Jalan Cinta Air  
Kajang, Selangor, Malaysia

**Croyde Bay Holiday Club**

Moor Lane  
Croyde, Nr. Braunton EX33 1NZ  
United Kingdom

**Cuxland Ferienparks  
Nordseebad Wremen**

Lili-Marleen 1  
Wremen 27632, Germany

**Deerhurst Resort**

1235 DeerHurst Drive  
Huntsville, Ontario P1H 2E8  
Canada

**Divi Tiara Beach Resort**

WPO 238 State Bay  
Cayman Brac, Cayman Islands

**Dorisol Ancorar Suite and  
Beach Resort**

PE 09 KM06  
Portode Galinhas-Ipojuca  
Pernambuco 55590, Brazil

**Dover Watch at Mount Snow**

Route 100  
West Dover, VT 05356

**Dunes Village Resort**

5200 N. Ocean Boulevard  
Myrtle Beach, SC 29577

**Eagles at Sugarbush**

Route 100, P.O. Box 180  
Waitsfield, VT 05673

**Edificio Palm Beach**

Calle Miami S/N  
La Carihuela  
Torremolinos, Málaga 29620, Spain

**EMI Sun Village Resort**

Cofresi Beach  
Puerto Plata  
Dominican Republic

**Equest Ocean Gate**

4780 A1A South  
St. Augustine, FL 32080

**Equest Sands**

300 South Ocean Boulevard  
North Myrtle Beach, SC 29582

**Erie Islands Resort & Marina**

4495 West Darr-Hopfinger Road  
Port Clinton, OH 43452

**Es Pueto at Aldea Bonsai**

Urb. Siesta, Calle Ficus, 14  
Santa Eulalia, Ibiza  
Balearic Islands 07840, Spain

**Escapes! to Tanglewood  
Vacation Villas**

290 Tanglewood Circle  
Pottsboro, TX 75076

**Estates of King's Creek, The**

191 Cottage Cove Lane  
Williamsburg, VA 23185

**Exclusive Club at Hotel  
Kennedy Nova**

116 The Strand  
Gzira, Malta

**Fairfield Pagosa Resort**

42 Pinon Causeway  
Pagosa Springs, CO 81157

**Fairmont Hot Springs Resort**

1500 Fairmont Road  
Anaconda, MT 59711

**Fairway Lodge**

54 Golf Road  
Mount Maunganui, Tauranga  
New Zealand

**Fairway Villas**

14401 Commodore Drive  
Corpus Christi, TX 78418

**Fairways and Bluewater Resort  
Golf & Country Club**

New Coast, Boracay  
Malay, Aklan, Philippines

**Fairways of the Mountain**

180 Herman Wilson Road  
Lake Lure, NC 28746

**Flagship Club at Sapphire  
Beach Resort and Marina**

6720 Estate Smith Bay  
St. Thomas 00801  
U.S. Virgin Islands

**Flamingo Marina Resort Hotel  
& Club**

Punta Plata S/N  
Santa Cruz, Guanacaste, Costa Rica

**Flanesford Priory**

Goodrich, Ross-on-Wye  
Herefordshire HR9 6HX  
United Kingdom

**Fountain Vacation Ownership at  
Fountain Resort**

Xichong Bay  
Kuichong, Longaang District  
Shenzhen, Guangdong 518119, China

**Four Views Oasis**

Canicao de Baixo  
Canicao, Madeira 9125-024, Portugal

**Foxfire Resort and Golf**

9 Foxfire Boulevard  
Pinehurst, NC 28374

**Gama Club**

Sesmarias, Praia do Carvoeiro  
Lagoa, Algarve 8400, Portugal

**Golden Shores Holiday Club**

206-210 Marine Parade  
Labrador 4215, Queensland  
Australia

**Gran Oasis Marien, Puerta Plata**

Calle Duarte #6  
Puerto Plata, Dominican Republic

**Grand Canadian Resort  
Vacation Club**

830 8th Street  
Canmore, Alberta T1W 2B7, Canada

**Grandvista's Vacation Suites at  
Tunica**

1724 Casino Center Drive  
Robinsonville, MS 38664

**Green Village**

Quartier du Golf  
La Grande Motte 34280, France

**Greens at Copper Creek, The**

209 Ten Mile Circle  
Copper Mountain, CO 80443

**Gruphotel Club Marina Arpón**

Cala del Pino  
La Manga del Mar Menor  
Murcia 30370, Spain

**Gulf Pointe Intervals**

9439 Gulfshore Drive  
Naples, FL 33963

**Gulf Stream Beach Resort**

1501 Gulf Drive North  
Bradenton Beach, FL 34217

**Habitat 2000**

601 Leadville South  
Ketchum, ID 83340

**Hacienda El Edén Resort**

Via Hacienda el Paraíso  
Km. 6 Santa Elena  
El Cerrito, Colombia

**Hamilton Harbor Resort**

203 Sterns Point Road  
Hot Springs, AR 71913

**Highland Estates Resort**

555 Highland Drive  
Mesquite, NV 89027

**Holiday Club Calahonda**

El Mirador, Apartamento 114  
Sitio de Calahonda  
Mijas-Costa, Málaga 29647, Spain

**Holiday Owners Club at Devoncourt**

Douglas Avenue  
Exmouth, Devon EX8 2EX  
United Kingdom

**Hostería Bellavista Vacation Club**

Ruta 10, Km. 87.5  
Balneario Bellavista, Uruguay

**Hostería Las Acacias**

Los Robles 251, Apt. 8407  
Villa La Angostura, Neuquen  
Argentina

**Hot Piz**

Zaunhof 121  
bei St. Leonhard 6481, Austria

**Hotel Ahlen Moghane**

Route de Meknes – Rabat  
Rabat, Moghane, Morocco

**Hotel Apartamento Clube Oceano**

Rua Colombano Bordalo Pinheiro  
Forte S. Joao  
Albufeira, Algarve, Portugal

**Hotel Belensate**

Urb. La Hacienda, Av. PPAL  
Mérida, Venezuela

**Hotel Bristol**

Marina Grande  
Capri 80073, Italy

**Hotel Calinda Cabo Baja Quality Inn**

4.5 Transpeninsular Highway to  
La Paz  
Cabo San Lucas, B.C.S. 23400  
Mexico

**Hotel Cristal Palace**

Hlavni 61  
Marianske Lazne 35301  
Czech Republic

**Hotel Eigerblick**

Grindelwald, Switzerland

**Hotel Residencia Atenea Suites**

Calle Los Almendros  
Urb. Costa Azul  
Porlamar, Isla Margarita, Venezuela

**Hotel Spanberger**

Steiermark  
Gröbmung 8962, Austria

**Hurricane House**

2939 West Gulf Drive  
Sanibel Island, FL 33957

**Ikaalinen Spa Holiday Village**

Ullanrinne  
Ikaalinen 39500, Finland

**InnSeason Resorts – Harborwalk**

46 Robbins Road  
Falmouth, MA 02540

**InnSeasons – Mountainview Resort**

263 Main Street  
Jackman, ME 04945

**Inns of Waterville Valley**

Snows Brook Road  
Waterville Valley, NH 03215

**Irotama XXI**

Km. 14 Vía Cienaga  
Santa Marta, Magdalena, Colombia

**Isla Dorado**

Sierra No. 30, Club Santiago  
Manzanillo, Colima 28860, Mexico

**Island Gulf Resort**

13912 Gulf Boulevard  
Madeira Beach, FL 33708

**Jean Lafitte House**

613 Esplanade Avenue  
New Orleans, LA 70116

**Jolly Harbour Beach Resort**

Box 121, Jolly Harbour  
Antigua

**Jupiter Beach Resort**

5 North A1A  
Jupiter, FL 33477

**Kalajoki**

Keskuskariintie 1  
Kalajoki 85100, Finland

**Keswick Bridge**

Brundholme Road  
Keswick, Cumbria CA12 4NL  
United Kingdom

**Kingswear Park**

Kingswear  
Dartmouth, Devon TQ6 0DA  
United Kingdom

**La Boca Casa**

365 North Ocean Boulevard  
Boca Raton, FL 33432

**La Casa Cottage Resort**

808 Westside Road  
Kelowna, British Columbia  
Canada V1Z 3R8

**La Ermita**

Partida del Durrillo  
Mijas Pueblo (Village)  
Málaga 29650, Spain

**La Piana**

Localita Piana di Vocogno  
Craveggia (NO)  
Italy

**Laguna Golf & Country Club**

Club House  
Amarilla Golf & Country Club  
San Miguel de Abona  
Tenerife 38620  
Canary Islands, Spain

**Laguna Holiday Villas**

La Quinta, Amarilla Golf & Country  
Club  
San Miguel de Abona  
Tenerife 38620  
Canary Islands, Spain

**Lakelands, The**

Lower Gale  
Ambleside, Cumbria LA22 0BD  
United Kingdom

**Lakewood Resort**

Route 219, P.O. Box 660  
McHenry, MD 21541

**Le Relais de Noisy**

19, Boulevard du Maréchal Foch  
Noisy le Grand 93160, France

**Little Gull on Longboat Key**

5330 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Lodge Resort, The**

Junction of State Highways 4 & 47  
National Park, New Zealand

**Logos Land Resort**

R.R. #1  
Cobden, Ontario K0J 1K0, Canada

**Long Bay Beach Resort and Villas**

Long Bay  
West End, Tortola, British West Indies

**Longboat Bay Club**

3200 Gulf of Mexico Drive  
Longboat Key, FL 34228

**Los Indios**

#1 Towne Center, Highway 175  
Cherokee Village, AR 72525

**Los Sabalos Royal Club**

Rodolfo T. Loaiza No. 100  
Mazatlán, Sinaloa, Mexico

**Maison Pierre Lafitte**

108 University Place  
New Orleans, LA 70112

**Malolo Lailai Lagoon Resort**

Malololailai Island, Fiji

**Marathon Key Beach Club**

4560 Overseas Highway  
Marathon, FL 33050

**Marinagolf**

Urb. Hacienda Torrequebrada  
c/Ronda Golf Estel, 62  
Benalmadena-Costa  
Málaga 29630, Spain

**Marti Vacation Club at Marmaris**

İçmeler, Marmaris  
Muğla 48700, Turkey

**Mary's Boon Beach Plantation**

117 Simpson Bay Road  
Simpson Bay, St. Maarten  
Netherlands Antilles

**Masters at Paradise Canyon Resort, The**

287 Palmer Avenue  
Mesquite, NV 89024

**Maui Banyan Vacation Club**

2575 South Kihei Road  
Kihei, Maui, HI 96753

**Meadow Ridge**

7573 Highway 42  
Egg Harbor, WI 54209

**Monarch Grand Vacations –  
Desert Isle**

2555 East Palm Canyon Drive  
Palm Springs, CA 92264

**Moosehead Cottage Resort**

Route 15, Main Street  
Greenville, ME 04441

**Multigestion –  
Les Coteaux de la Nartelle**

RN 98, La Nartelle  
Ste. Maxime 83120, France

**Multigestion –  
Les Marines de Grimaud**

Beauvallon  
Ste. Maxime 83120, France

**Naema Heights**

Land Plot # 219  
Rabwat Naema – Naema Bay  
Sharm el Sheikh, Egypt

**Navigator Beach Club**

405 Old Wharf Road  
Dennisport, MA 02639

**Newport Beachside Resort**

16701 Collins Avenue  
Miami, FL 33160

**Northeast Vacations at the Spa**

Route 94  
Vernon, NJ 07462

**Northlake Lodges & Villas**

987 Tahoe Boulevard  
Incline Village, NV 89451

**Oasis Canoa**

Bayahibe  
La Romana, Dominican Republic

**Ocean Beach Club**

351 Ocean Drive East  
Key Colony Beach, FL 33051

**One Napili Way**

5355 Lower Honoapiilani Road  
Lahaina, Maui, HI 96761

**Orsa Maggiore**

Via Pietragrande, 2  
Madonna Di Campiglio (TN) 38084  
Italy

**Pacific Grove Plaza**

620 Lighthouse Avenue  
Pacific Grove, CA 93950

**Pailahue**

Km. 4, 6 Avenida Ezequiel Bustillo  
E.P.N. 3 Melipal  
San Carlos de Bariloche, Río Negro  
Argentina

**Palazzo Catalani**

Via Montecavallo 26  
Soriano Nel Cimino (Viterbo)  
Italy

**Palm Beach Holiday Club**

Edificio Palm Beach  
Calle Miami s/n, La Carihuella  
Torremolinos, Málaga 29260, Spain

**Palm Springs Villas**

420 Villa Court, Unit 113  
Palm Springs, CA 92262

**Paraíso Country Club**

Praia do Carvoeiro  
Lagoa, Algarve 8400  
Portugal

**Park Station II**

950 Park Avenue  
Park City, UT 84060

**Pearl of the Dead Sea, The**

Kibbutz Almog  
D.N. Kikar Hayarden 90665, Israel

**Pebble Beach Village**

Urb. Amarilla Golf and Country Club  
San Miguel de Abona  
Tenerife 38620  
Canary Islands, Spain

**Penina Golf Apartments**

Administração de Propriedades Lda.  
Portimão, Algarve 8500  
Portugal

**Perennial Vacation Club –  
Fun Tropicale**

Village Caraibe  
Playa Dorada, Puerto Plata  
Dominican Republic

**Perennial Vacation Club –  
Imperial Lakes**

5950 Imperial Lakes Boulevard  
Mulberry, FL 33860

**Pestana Alvor Hotel**

Praia Dos Tres Irmaos  
Portimão, Algarve 8500, Portugal

**Phoenix Timeshare Resort**

212 Lake Terrace  
Taupo, New Zealand

**Pinares del Cerro Club  
Vacacional**

Roque S. Peña y Paraná  
Carlos Paz, Córdoba, Argentina

**Pine Acres Lodge**

1150 Jewell Avenue  
Pacific Grove, CA 93950

**Pire-Hue**

Villa Cerro Catedral  
San Carlos de Bariloche  
Río Negro, Argentina

**Plantation House**

South Seas Plantation Road  
Captiva Island, FL 33924

**Playa del Sol Los Cabos**

KM 29-28 Carretera Transpeninsular  
San José del Cabo  
Baja California Sur 23400, Mexico

**Plaza San Martin Suites**

Suipacha 1092  
Buenos Aires 1008, Argentina

**Point at Poipu, The**

1613 Pe'e Road  
Koloa, Kauai, HI 96756

**Points North Resort**

2211 U.S. 31 North  
Traverse City, MI 49686

**Polus Palace Thermal Golf Club  
Hotel**

Kadar u. 49  
Goed, Hungary 2132

**Pono Kai Pacific Fantasy  
Timesharing**

1250 Kuhio Highway  
Kapaa, Kauai, HI 96746

**Port Largo Villas Resort**

417 Bahia Drive, Mile Marker 100  
Key Largo, FL 33037

**Posada del Sol**

Avellano y Playa Cariló, Pinamar  
Buenos Aires 7167, Argentina

**Potrero de los Funes**

Las Chacras Km. 14, 5-Ruta 18  
San Luis, Argentina

**Praia das Caravelas**

Estrada Cabo Frio/Buzios 12.300  
Armação Dos Buzios  
Buzios Cabo Frio, RJ 28900, Brazil

**Predator Ridge Resort – Falcon  
Point Cottages**

272 Chicopee Road  
Vernon, British Columbia  
British Columbia V1H 1T2, Canada

**Premiere Vacation Club –  
Roundhouse Resort**

5829 Buck Springs Road  
Pinetop, AZ 85935

**Puerto Horizonte Apart Hotel**

Av. del Mar y Tobías  
Pinamar, Buenos Aires  
Argentina

**Puerto Mogán la Venezia de  
Canarias**

Local 328, Urb. Puerto Mogán  
Gran Canaria 35138  
Canary Islands, Spain

**Quality Hill Resort Villas**

Branding Iron Loop Road PTLC  
Pinetop, AZ 85935

**Regency at Paradise Court**

Paradise Court, Nr. 5 Calle Irlanda  
Playa de las Americas  
San Eugenio Alto  
Adeje, Tenerife 38660  
Canary Islands, Spain

**Résidence Antigone Montpellier**

Le Relais Bleus  
890 Avenue Jean Mermoz  
Montpellier 3400, France

**Residence Baiazzurra**

Località Vulcanello  
Baia di Ponente  
Vulcano, Isole Eolie  
Lipari 98050, Italy

**Résidence de la Tour**

43 Avenue Pierre La Rousse  
Malakoff 92240, France

**Resort at Great Gorge, The**

Route 94  
Vernon, NJ 07462

**Resort Club at Minerals Resort  
& Spa, The**

Route 94  
Vernon, NJ 07462

**Rhapsody on Lake Delton,  
a Condominium**

650 E. Hiawatha Drive  
Wisconsin Dells, WI 53965

**Rhinefield House**

Rhinefield Road, Brockenhurst  
Hampshire SO42 7QB  
United Kingdom

**Ridge Resort, The**

Goldfields Heights  
Queenstown, New Zealand

**Royal Aloha Vacation Club –  
Butterfield Park Condominium**  
886 West Galveston  
Chandler, AZ 85224

**Royal Aloha Vacation Club –  
Keauhou Kona Surf and  
Racquet Club**  
78-6800 Alii Drive  
Kailua-Kona, Hawaii, HI 96740

**Royal Aloha Vacation Club –  
Nueva Andalucía**  
Calle 138 No. 45-B  
Nueva Andalucía Garden Club  
Nueva Andalucía, Marbella  
Málaga, Spain

**Royal Aloha Vacation Club –  
Village By The Sea**  
938 South Kihei Road  
Kihei, Maui, HI 96753

**Royal Golf Park**  
Golf del Sur, Parcela 12  
Arona, Tenerife 38620  
Canary Islands, Spain

**Royal Siam Vacation Village at  
Burapha**  
281/1 Moo 4  
Tumbon Baan Bueng  
Sraracha 20110, Thailand

**Rukan Lomakylä 1**  
273 A Kemijärvi  
Rukatunturi 93825, Finland

**Saariselkä**  
Künsteistö Oy Siulaselkä  
Saariselkä 99830, Finland

**Saint Tropez Condominium**  
81 Street and Ocean Coastal Highway  
Ocean City, MD 21842

**Salou Aquamarina**  
Emili Vendrell 17  
43480 La Pineda-Vilaseca  
Tarragona, Spain

**San Francisco Suites and  
Shell Vacation Club at  
San Francisco Suites**  
710 Powell Street  
San Francisco, CA 94108

**San Marcos Apartamentos**  
Avenida de San Marc, 9  
Playas de Albir  
Alicante 03580, Spain

**Sanctuary Resort & Spa, The**  
Playa Azul, 4 Km Sur de Marbella  
Guanacaste, Costa Rica

**Sandpebble Beach Club**  
215 Atlantic Avenue  
Garden City, SC 29576

**Sandy Shores III**  
1425 Waccamaw Drive  
Garden City, SC 29576

**Sauce Alto Resort and Country  
Club**  
Km. 25.5 Carretera Cienegu  
Lima, Cieneguilla, Peru

**Sea Mystique**  
215 Atlantic Avenue  
Garden City, SC 29576

**Seasons at Knocktopher Abbey**  
Knocktopher  
County Kilkenny, Ireland

**Seasons Resort, The**  
5736 S. Texas Avenue  
Orlando, FL 32839

**Signum Las Palmas**  
600 East Canfield Street  
Avon Park, FL 33825

**Sosúa By The Sea Boutique  
Beach Resort**  
Calle Bruno Phillips  
Sosúa, Puerto Plata  
Dominican Republic

**South Shore Club**  
1625 South Ocean Boulevard  
Delray Beach, FL 33483

**Starr Pass Golf Suites**  
3645 West Starr Pass Boulevard  
Tucson, AZ 85745

**Steamboat Landing**  
161 Brooks Street, S.E.  
Fort Walton Beach, FL 32548

**Steele Hill Resort**  
516 Steele Hill Road  
Sanbornton, NH 03269

**Sun Dunes Villas**  
40-235 Washington Street  
Palm Desert, CA 92260

**Sun Pond Holiday Club**  
Korpilammentie  
Espoo 02970, Finland

**Sun Village Resort and Spa –  
Cofresi**  
Cofresi Beach, Puerto Plata  
Dominican Republic

**Sunburst Condominiums**  
3325 Meadow Lane  
Steamboat Springs, CO 80477

**Sunrise Bay Resort and Club**  
10 Tampa Place  
Marco Island, FL 34145

**Surfsider**  
1443 South Ocean Boulevard  
Pompano Beach, FL 33062

**Swiss Garden International  
Vacation Club at Golf Resort  
& Spa Damai Laut**  
Persiaran Swiss-Garden  
Jalan Damai Laut, Off Jalan  
Teluk Senangin  
Lumut, Perak Darul Ridzuan 32200  
Malaysia

**Taksu Holiday Club at Taksu  
Resort**  
Br. Dinas Surabelta  
Lalang Selemadeg, Tabanan Bali  
Bali, Indonesia

**Thunder Mountain  
Condominium**  
2030 Walton Creek Road  
Steamboat Springs, CO 80477

**Thurnham Vacation Club at  
Club Britannia**  
28-29 Marine Parade  
Eastbourne, East Sussex BN22 7AY  
United Kingdom

**Tilcara Sierras**  
Vivaldi 100 – Villa del Lago  
Carlos Paz, Córdoba 5152, Argentina

**Timber Ridge**  
91400 Ryan Gulch Road  
Silverthorne, CO 80498

**Topsider I Resort**  
U.S. Route 1, Mile Marker 75.5  
Islamorada, FL 33036

**Treasure Shores Beach Club**  
10360 Gulf Boulevard  
Treasure Island, FL 33706

**Triton Suites and Beach**  
c/o Principal De Playa Norte  
Chichiriviche, Venezuela

**Ute Hotel**  
Via Gorizia 41  
Jesolo Lido, Venice, Italy

**Vacation Internationale –  
Clock Tower at Whistler, The**  
4341 Village Lane  
P.O. Box 172, Whistler  
British Columbia V0N 1B0  
Canada

**Vacation Internationale –  
Elkhorn Resort at Sun Valley**  
100 Elkhorn Road  
Sun Valley, ID 83354

**Vacation Internationale –  
Fairway Villa**  
2345 Ala Wai Boulevard  
Honolulu, Oahu, HI 96815

**Vacation Internationale –  
Kapaa Shore**  
4-0900 Kuhio Highway  
Kapaa, Kauai, HI 96746

**Vacation Internationale –  
Kingsbury of Tahoe**  
335 Tramway  
Stateline, NV 89449

**Vadella Pueblo**  
c/Vistamar, 53; P.O. Box 17  
Cala Vadella, San José  
Ibiza 07830, Balearic Islands, Spain

**Valley Inn Resort, The**  
Tecumseh Road  
Waterville Valley, NH 03215

**Villa L'Auberge**  
1570 Camino Del Mar  
Del Mar, CA 92014

**Villa Rubinacci**  
Via Corrales 25  
Sorrento, Naples 80065, Italy

**Village by the Gulf**  
1148 West Beach Boulevard  
Gulf Shores, AL 36542

**Villas Bavaro Club**  
Bavaro Beach, Bavaro  
Higüey, Dominican Republic

**Villas of Gold Canyon, the**  
6100 South Kinan Ranch Road  
Gold Canyon, AZ 85218

**Villas on the Glen & Lodges  
on the Glen**  
971 Tahoe Boulevard  
Incline Village, NV 89451

**Westerwälder Hof**  
Am Steinhohn 6  
Windhagen-Kohlershohn 53578  
Germany

**Westgate River Ranch**  
3600 River Ranch Boulevard  
River Ranch, FL 33867

**Whitecliffs Beach Resort**  
2511 Nepean Highway  
Rye, Victoria 3941, Australia

**Windy Shores II**

3217 South Ocean Boulevard  
North Myrtle Beach, SC 29582

**Wolf Creek Village II**

3618 North Wolf Creek Drive  
Eden, UT 84310

**World International Vacation Club – Conchas Chinas**

Rinconada de las Ostras s/n  
Puerto Vallarta, Jalisco, Mexico

**WorldMark at Cairns**

49/72 Kowinka Street  
Cairns, Queensland, 4868, Australia

**WorldMark Cape Schanck**

41 Trent Jones Drive  
Cape Schanck, Australia

**WorldMark Coffs Harbour**

All Seasons Pacific Bay Resort  
Pacific Highway & Bay Street  
Coffs Harbour New South Wales  
Australia

**WorldMark Lake Chelan**

235 W. Manson Highway  
Chelan, WA 98816

**WorldMark McCall**

815 Sorrel Court  
McCall, ID 83638

**WorldMark Pismo Beach**

140 Ocean View Avenue  
Pismo Beach, CA 93449

**WorldMark Pokolbin Hills**

Corner McDonalds & Broke Road  
Pokolbin, New South Wales  
Australia

**WorldMark Port Macquarie**

2 Murray Street  
Port Macquarie  
New South Wales, Australia

**WorldMark Port Stephens**

5 Horizons Drive  
Salamander Bay  
New South Wales 231, Australia

**WorldMark Schooner Landing**

201 N.W. 66th Drive  
Newport, OR 97365

**WorldMark Valley Isle**

4327 Lower Honoapiilani  
Lahaina, Maui, HI 96761

**Xurupita Holiday Resort**

Rua B 27-28 Vila Xurupita  
Porto Segura, Bahia, Brazil

**Zorgvliet Private Residence Club at Ka'Ingo Private Reserve & Spa**

Bulgerivier  
P.O. Box 580  
Vaalwater 0530, South Africa

## RESORTS WITH 6 – 10 UNITS PARTICIPATING AND AVAILABLE FOR OCCUPANCY

**Accor Vacation Club at Novotel Palm Cove Resort**

Coral Coast Drive  
Cairns, Queensland 4879, Australia

**Alf Leila Wa Leila**

South of Agawish  
South Hurghada  
Hurghada, Egypt

**Alia Club, The**

Limani Hersonisou  
Crete, Greece

**Alii Kai II**

3830 Edwards Road  
Princeville, Kauai, HI 96714

**Apartamentos Amarilis**

Avenida V-3  
Praia de Rocha  
Portimao, Algarve, 8500, Portugal

**Atlantic Beach Casino Resort**

319 Atlantic Avenue  
Westerly, RI 02891

**Balboa Club**

Avenida Camaron Sabalo s/n  
Mazatlán, Sinaloa 82110, Mexico

**Belize Vacation Club**

Coconut Drive, Ambergris Caye  
P.O. Box 62  
San Pedro, Belize

**Bóvedas de Santa Clara**

Carretera 8 No. 39-114  
San Diego, Cartagena DC, Colombia

**Brandermill Resort & Marina Timeshare**

13550 Harbour Pointe Parkway  
Midlothian, VA 23112

**Branson Thousand Hills**

2800 Green Mountain Drive  
Branson, MO 65616

**Bungalows Los Robles**

c/Tomas Morales  
9 Urb. Sonnenland  
San Bartolomé de Tirajana  
Maspalomas, Gran Canaria 35100  
Canary Islands, Spain

**Calabogie Highlands Vacation Villas**

1234 Barryvale Road  
Calabogie, Ontario K0J 1H0  
Canada

**Chapel Stile at Langdale Estate**

Langdale Estate  
Great Langdale, Nr. Ambleside,  
Cumbria LA22 9JD, United Kingdom

**Christmas Mountain Resort**

Christmas Mountain Road  
Glen, NH 03838

**Ciel et Logis Invest 1**

92 Place de Chamonix Sud  
Chamonix 74400, France

**Club Casablanca**

Parroquia Tonchigue  
Resinto Same  
Esmeraldas, Ecuador

**Club del Bosque**

42 entre Av. Mar del Plata y Mar Azul  
Villa Gesell, Buenos Aires, Argentina

**Club Delta at Club Mykonos II**

Ornos  
Mykonos 84600, Greece

**Club Estela Dorada at Gruphotel Club Novelty**

Calle Berlin, 5  
Salou, Tarragona 43840, Spain

**Club Mondial International at Residence Van Gogh**

Parmentierlaan 209-211  
Knokke 83000, Belgium

**Club Mykonos II**

Ornos  
Mykonos 84600, Greece

**Club Pacific Queenstown**

14 Yewlett Crescent, Frankton  
Queenstown, New Zealand

**Club Pacific Westharbour**

327 Hobsonville Road  
Hobsonville, Auckland, New Zealand

**Club Playa Vista at Copacabana**

c/o Aztec Country Club  
c/Libra Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647, Spain

**Club Royale at Copacabana**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647, Spain

**Club Royale at Sierra Blanca**

c/o Aztec Country Club  
Calle Libra, Urb. Riviera del Sol  
Mijas-Costa, Málaga 29647  
Spain

**Club Sol y Vista at Hotel Puerto Azul**

Av. de la Cornisa  
Puerto Rico, Gran Canaria 35139  
Canary Islands, Spain

**Club Suites on Malta**

Eden Bay Resort  
St. George's Bay, St. Julian's STJ 07  
Malta

**Condorama International**

#1 Beau Soleil  
Beaupré, Québec GOA 1E0, Canada

**Coral Sands Beach**

3611 Collins Avenue  
Miami Beach, FL 33140

**Corfu Resort**

Apraos, Kalamaki  
Corfu, Greece

**Dawn Beach Club**

144 Oyster Pond Road  
Philipsburg, St. Maarten  
Netherlands Antilles

**Eaglewood at Ruttger's Sugar Lake Lodge**

1000 Otis Lane  
Cohasset, MN 55721

**El Bergantín Menorca Club**

Urb. Playas de Fornells  
Fornells, Menorca 07748  
Balearic Islands, Spain

**Elterwater Hall at Langdale Estate**

Langdale Estate  
Great Langdale  
Nr. Ambleside, Cumbria LA22 9JD  
United Kingdom

**Exclusivacations at Miami Beach**

6525 Collins Avenue  
Miami Beach, FL 33141

**F.D.R. Vacation Club**

Runaway Bay  
St. Ann, Jamaica

**Fountain Vacation Ownership at Fountain Suites**

2017 East Shennan Road  
Shenzhen, Guangdong 518002  
China

**Fox Run Resort**

1923 Walker Trail  
Pigeon Forge, TN 37876

**Glacier Ridge Condos at Devil's Head**

S6330 Bluff Road  
Merrimac, WI 53561

**Grand Cascades Lodge**

3 Wild Turkey Way  
Hamburg, NJ 07419

**Great Links Resorts at Desert Canyon**

800 Desert Canyon Boulevard  
Orondo, WA 98843

**Great Links Resorts at Dungeness**

1963 Woodcock Road  
Sequim, WA 98382

**Harbor at Depoe Bay, The**

34 Sunset Street  
Depoe Bay, OR 97341

**Harbor Vacations Club**

1880 Harbor Island G. Dock  
San Diego, CA 92101

**Harbourside II**

1141 Broad Creek Road  
New Bern, NC 28560

**Harbourview Villas at South Seas Resort**

950 Plantation Road  
Captiva, FL 33924

**Heffley Boutique Inn**

3185 Creekside Way  
Sun Peaks, British Columbia V0E 1Z1  
Canada

**HHoliday Vacation Club**

Boulevard Morazan  
1era Calle 11 Avenue  
San Pedro Sula, Honduras

**Hipocampus Resort**

Brown 240, Villa Carlos Paz  
Córdoba 5152, Argentina

**Hostería San José**

Manuel Burbano S/N. 171759  
Quito, Ecuador

**Hotel and Club de Playa el Parador**

Punta Quepos, Aguirre, Puntarenas  
Quepos, Costa Rica

**Hotel Calinda Cabo Baja Quality Inn**

4.5 Transpeninsular Hwy. to La Paz  
Cabo San Lucas, B.C.S. 23400  
Mexico

**Hotel Cola de Caballo**

Ctra. a Cola de Caballo Km. 6  
Santiago, Nuevo León, Mexico

**Hotel Jalim**

Av Cel Cirilo S/N Centro  
Caldas Novas, Brazil

**Hotel São Sebastião da Praia**

Avenida Campeche, 1373  
Florianópolis, Brazil

**Hotel Terraza del Pacífico**

Playa Hermosa Jaco CR, 168 Jaco  
Puntarenas, Costa Rica

**Huerta Grande Village Resort**

Av. Buenos Aires S.  
Huerta Grande, Córdoba  
Argentina

**Iguassu Resort**

Av. das Cataratas, 6845  
Foz do Iguazu, Parana 85850-000  
Brazil

**Inn at Los Abrigados, The, and ILX Premiere Vacation Club at The Inn at Los Abrigados**

170 Portal Lane  
Sedona, AZ 86336

**Inn at St. Ives, The**

9940 St. Ives Drive  
Stanwood, MI 49346

**Itacare Village**

Rodovia Ilheus Itacare, Km. 64  
Bahia 45530-000, Brazil

**Kaanapali Keys at Papakea Beach Resort**

3543 Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Kaimanawa Lodge**

Taupahi Road  
Turangi, New Zealand

**Ke Nani Kai**

Kepuhi Place  
Kalua Koi, Molokai, HI 96770

**Ketch Court**

6 Lighthouse Road  
Hilton Head Island, SC 29938

**Kona Islander Vacation Club**

75-5778 Kuakini Highway  
Kailua-Kona, Hawaii, HI 96740

**Kultakivi**

Putikko 58550, Finland

**Kyriad Torcy**

3, Avenue Jean Moulin  
Torcy 77200, France

**Gruphotel Club Gemelos 15**

Av. Montecarlo s/n, Rincón de Loix  
Benidorm, Alicante 03500, Spain

**La Sammana**

1400 West Brigantine Boulevard  
Brigantine Beach, NJ 08203

**La Victoria Casa de Campo**

Ruta 42, Km. 9, Tomas Jofre  
Mercedes, Buenos Aires, Argentina

**Lady Luck Resort Casino**

206 N. 3rd Street  
Las Vegas, NV 89101

**Laguna Vacation Club at Angsana Resort & Spa**

Site A4 Lagoi  
Bintan Island  
Bintan, Indonesia

**Lake Marion Resort and Marina**

510 Ragtime Trail  
Route 2, Box 945  
Santee, SC 29142

**Lantern Bay Resort**

100 Lantern Bay Road  
Branson, MO 65616

**Las Brusquitas**

Ruta Provincial 77  
Paraje Las Brusquitas  
Miramar 7607, Argentina

**Lepokatti**

Vuokatinrinne  
Vuokatti 88610, Finland

**Lifetime Vacation Club at Miraflores II**

Carretera de Cádiz Km. 199  
Mijas-Costa, Málaga 29647, Spain

**Lion Resorts – Club Alias Aliathon Holiday Village**

Poseidonos Avenue  
Kato Paphos, 8063, Cyprus

**Lodges at Fox Hollow Lake, The**

50 StoneBridge Parkway  
StoneBridge Village  
Branson West, MO 65737

**Luna Runtún Resort and Spa**

Caserio Runtún Km. 6  
Baños, Tungurahua, Ecuador

**Maisons Hollywood at Residence Pamplemousse II**

Avenue des Pays de Loire  
St. Jean de Monts 85160, France

**Mandalay Shores Resort**

5226 Neptune Square  
Oxnard, CA 93035

**Mansión del Río**

Bahia Paraíso  
Aldea San Felipe de Lara  
Río Dulce  
Livingston, Izabal, Guatemala

**Manteo Beach Club**

3766 Lakeshore Road  
Kelowna, British Columbia V1W 3L4  
Canada

**Marti Vacation Club at Tekirova**

Tekirova  
Kemer, Antalya 07980, Turkey

**Menam Riverside Hotel**

2074 Charoenkrung Road  
Bangkorlaem, Bangkok 10120  
Thailand

**Mer cure Grand San Moritz**

10-18 Brunswick Street  
Queenstown 9197  
New Zealand

**Mount Malarayat Golf & Country Club**

Barrangay Dagatan  
Lipa City, Batangas Province  
Philippines

**Mountainview Resort**

263 Main Street  
Jackman, ME 04945

**Night Heron Loft**

8 Lighthouse Road  
Hilton Head Island, SC 29928

**Ocean Club at Jamaica Inn, The**

Main Street  
P.O. Box 1  
Ocho Rios, Jamaica

**Ocean Watch Beach Club**

Cayuga Street Ocean Bay Park  
Ocean Watch Beach, NY 11770

**Ocho Cascadas**

Villas Ocho Cascadas  
Apartado 495  
Puerto Vallarta, Jalisco, Mexico

**Old Killarney Village**

Aghadoe  
Killarney, County Kerry, Ireland

**Options by MacDonald at Dalfaber Resort Chalets**

Dalfaber Estate  
Aviemore, Inverness  
Scotland PH22 1ST, United Kingdom

**Options by MacDonald at Forest Hills Hotel and Resort II**

Forest Hills Hotel  
Kinlochard  
Aberfoyle by Stirling, FK8 3TL  
United Kingdom

**Oreti Village**

Mission Bay Drive  
Pukawa Bay, Lake Taupo Road  
Pukawa, New Zealand

**Palace View Resort**

700 Blue Meadows Drive  
Branson, MO 65616

**Paradise Point Resort**

250 Lakewood Drive  
Hollister, MO 65672

**Paraíso del Sol**

Cabarete Road  
Cabarete, Puerto Plata  
Dominican Republic

**Peaceful Bay Resort and Club**

137 Peaceful Lane  
Lakeside, MT 59922-0556

**Pebble Beach Village**

Urb. Amarilla Golf  
San Miguel de Abona, Tenerife  
Canary Islands, Spain

**Pinares de Punta del Este Vacation Club**

Camino de la Laguna, Parada 34  
Punta del Este, Uruguay

**Pirates Cove Resort**

3501 South Atlantic Avenue  
Daytona Beach Shores, FL 32127

**Pivko Village**

Kibbutz Kabri  
D.N. Oshrat 25120, Israel

**Plantation Club Villas**

18 Lighthouse Road  
Hilton Head Island, SC 29928

**Racquet Club Villas**

108 Lighthouse Road  
Hilton Head Island, SC 29938

**Résidence Acropolis**

58 Boulevard Risso  
Nice 06300, France

**Residence Berghof**

Am Predigtstuhl 4  
St. Englmar 94379, Germany

**Residence Club at Hotel McCall**

1101 North 3rd Street  
McCall, ID 83638

**Residence Club South Shore**

180 Elks Point Road  
Zephyr Cove, NV 89448

**Résidence le Christiania**

Alpe D'Huez 38750, France

**Residence Van Gogh**

Parmentierlaan 209-211  
Knokke 83000, Belgium

**Résidôtel Le Stanley**

Rue de la Riviera  
Noumea 98845, New Caledonia

**Resorts West at Surfside Inn**

31512 "J" Place  
Ocean Park, WA 98640

**Rockridge Townhomes**

1000 Atlantic Lode Drive  
Breckenridge, CO 80424

**Royal Aloha Vacation Club at Lantern Bay Condominium**

200 Lantern Bay Road  
Branson, MO 65616

**Sea Horse Inn**

Km. 25 Via a San Luis  
San Andres Isla, Colombia

**Sea Scape Quarters**

441 South Sea Scape Drive  
Kitty Hawk, NC 27949

**Seasons at Whistler, The**

4368 Main Street, Suite 106  
Whistler, British Columbia V0N 1B4  
Canada

**Seaview Condominiums**

115 North Miller Street  
Rockaway Beach, OR 97136

**Seawinds II Resort**

128 Olde Wharf Road  
Dennisport, MA 02639

**Sedes Vacation Club at Parque Albatros**

Golf del Sur  
San Miguel de Abona  
Tenerife, Canary Islands, Spain

**Shawnee Inn**

River Road  
Shawnee-On-Delaware, PA 18356

**Shengteng Vacation Club**

Howard Johnson Resort Sanya Bay  
Haipo Development Zone, Sanyawan Road  
Sanya, Hainan 572000, China

**Siam Thani**

391/51 Moolo Tapaya Road  
Pattaya City 20260, Thailand

**Somni Aranes**

Residencia Los Abetos  
c/Monteorbison, No. 17  
Edificio A, Local 2  
Vielha, Lleida 25530, Spain

**St. Christopher Club**

P.O. Box 570  
Frigate Bay  
St. Kitts/Nevis

**Stella del Sud**

Via Nazionale 4  
Caprioli di Pisciotta (SA) 84040, Italy

**Swiss Garden International Vacation Club at Kuantan**

2656-2657 Mikim Sungai Karang  
Balok Beach, Pahang, Darul Makmur  
Beserah, Kuantan 26100  
Malaysia

**Tattershall Park Country Club**

Sleaford Road  
Tattershall, Lincolnshire LN4 4LR  
United Kingdom

**Tivoli Vacation Club**

Rua Simplicio dos Passos Gouveia, 29  
Ocean Park Promenade  
Funchal, Madeira, 9000-100  
Portugal

**Treehouse Village at Lake Forest**

3801 Eagle Waters Road  
Eagle River, WI 54521

**Trillium Resort and Spa Limited**

848 Clearwater Lake Road  
Port Sydney, Ontario P0B 1L0  
Canada

**Vacation Internationale – Hololani**

4401 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

**Vacation Internationale – Kihei Kai Nani**

2495 South Kihei Road  
Kihei, Maui, HI 96753

**Vacation Internationale – Oceanside Marina Inn**

2008 Harbor Drive North  
P.O. Box 3543  
Oceanside, CA 92054

**View Talay Villas Holiday Resort**

404/5 Moo 12 Thapraya Road  
Jomtien Beach, Chonburi 20260  
Thailand

**Vila Baia**

Rua Alfredo do Nascimento Baptista  
Lote 35, R/C  
Luz, Portugal 8600-152

**Village La Corte**

Rua Dos Lirios, 3 Village I  
Porto Seguro, Bahia 45810-000  
Brazil

**Villas of Gold Mountain**

348 Bear Run Road  
Clio, CA 96101

**Villas Mediterráneas**

Hortencias Sur s/n L. 49  
Puerto Vallarta, Jalisco 48390, Mexico

**Wildwood Shores**

1 Pine Boulevard  
Huntsville, TX 77340

**Windemere**

523 South Ocean Boulevard  
North Myrtle Beach, SC 29598

**Wintergreen at Midway**

800 Lime Canyon Road  
Midway, UT 84049

**WorldMark at Golden Beach**

75 The Esplanade  
Caloundra, Queensland 4100  
Australia

**Zorgvliet Private Residence Club at Alluvia Specialist Winery**

Glen Arum Road  
P.O. Box 6365, Stellenbosch  
South Africa

**Zorgvliet Private Residence Club T Dinkweng Safari Camp**

New Ellisras Road  
P.O. Box 580  
Vaalwater 0530, South Africa

**Zorgvliet Private Residence Club at Zorgvliet Vineyard Lodge and Spa**

Bonhoeke Valley  
Helshoogate Pass  
Stellenbosch 7599, South Africa

## RESORTS WITH 1 – 5 UNITS PARTICIPATING AND AVAILABLE FOR OCCUPANCY

### Absolute Private Residence Club at Jinqiao

No. 55 Guangqumen Beili  
Beijing (Chong Wen District), China

### Accor Vacation Club at Mercure Grand San Moritz

10-18 Brunswick Street  
Queenstown 9197, New Zealand

### Accor Vacation Club at Novotel Lake Crackenback

Alpine way via Jindabyne  
Snowy Mountains, New South Wales  
Australia

### Ähtäri Loma-Club

Moksunsalontie  
Ahtari 63700, Finland

### Andorra II

Playa de las Américas  
Tenerife, Canary Islands, Spain

### Batam View Beach Resort

Jalan Hang Lekir  
Nongsa, Batam Island, Indonesia

### Beach Republic Royal Nirvana Private Residences

176/34 M. 4 Tambon Maret  
Koh Samui, Suratthani 84310  
Thailand

### Beaver Village Condominiums

50 Village Drive  
Winter Park, CO 80482

### Beech Manor

101 Charter Hills Road  
Banner Elk, NC 28604

### Birdland Home and Holidays

Golf út. 2  
Bükfürdő, Hungary

### Blackbird Lodge Timeshare Program

305 8th Street  
Leavenworth, WA 98826

### Bogmallo Beach Resort

Bogmallo Beach  
Goa, India

### Branson Thousand Hills

2800 Green Mountain Drive  
Branson, MO 65616

### Canyon Woods Grande International Vacation

Canyon Woods Residential Resort  
Laural 4221, Philippines

### Classic Cruisers at Bray Marina

Bray Marina  
Monkey Island Lane  
Bray, Berkshire SL6 2EB, Great Britain

### Club Flamingo

Calle Princesa Ico, N° 15  
Apartamento Timanfaya  
Puerto del Carmen, Lanzarote  
Canary Islands, Spain

### Club Marina Tenerife Sur

Avenida Tavio  
Costa del Silencio, Tenerife 38360  
Canary Islands, Spain

### Club Vacacional Coomeva at Club de Los Andes

Km. 35 Via Cali  
Popayan 31581, Colombia

### Colinas del Faro

Urb. El Faro, Colinas del Faro  
Mijas-Costa, Málaga, Spain

### Deckshare Club at Anderton Marina Canalboats

Anderton, Nr. Manchester  
United Kingdom

### Donato House Hotel, The

1080 Mosley Street  
Wasaga Beach, Ontario L0L 2P0  
Canada

### Durango Riverside Resort & R.V. Park

13391 County Road 250  
Durango, CO 81301

### El Ocotal

Playa Ocotal, Carrillo  
Playa del Coco, Guanacaste  
Costa Rica

### Executive Timbers Resort and Golf Club

190 Devil's Pool Road  
Ridgedale, MO 65739

### Fern Hill Club

San San Mile Gully Road  
Port Antonio, Jamaica

### Fisherman's Village at Jot's Resort

93460 Wedderburn Loop  
Gold Beach, OR 97444

### 47 Park Street by Marriott Grand Residence Club

47 Park Street  
Mayfair, London W1K 7EB  
United Kingdom

### Four Seasons Pacifica

2600 Avenida del Presidente  
San Clemente, CA 92672

### Frontenac Shores

R.R. #2  
Cloyne, Ontario K0H 1K0, Canada

### Grand Lodges

89000 Government Camp Loop Road  
Government Camp, OR 97028

### Great Bay Beach Hotel & Casino

Great Bay  
St. Maarten, Netherlands Antilles

### Great Links at Moses Point

6432 Melby Way NE  
Moses Lake, WA 98837

### Great Links at Resorts at Homestead Farms

115 E. Homestead Boulevard  
Lynden, WA 98264

### Holiday Club Åre

Tegefjall, Åre 83013  
Sweden

### Holiday Club – Pattaya Hill Resort

329 Pratumnug Road  
Pattaya City, Chonburi 20260  
Thailand

### Hotel Eigerblick

Grindelwald  
Switzerland

### Jambo Vacation Club at I Giardini di Atena

SP Lecce – Vernole Km. 4  
Merine di Lizzanello (Lecce) 73020  
Italy

### Kermikkä

Kermikkätie  
Saariselkä 99830, Finland

### Killarney Country Club

L.S. Faha, Killarney  
County Kerry, Ireland

### La Orquidea Heights

C/D Jose Orbaneja s/n  
Sitio de Calahonda  
Mijas-Costa, Málaga 29650, Spain

### Laguna Holiday Club at Sheraton Grande Island Villas

10 Moo 4, Srisoonthorn Road  
Tambol Cherng Talay, Talang  
Phuket 83110, Thailand

### Laguna Holiday Club at Sheraton Private Pool Villas

10 Moo 4, Srisoonthorn Road  
Tambol Cherng Talay, Talang  
Phuket 83110, Thailand

### Lakes of the North

8548 Pineview  
Mancelona, MI 49659

### Lawai Beach Resort – Lika Lani Building

5017 Lawai Road  
Koloa, Kauai, HI 96756

### Le Soleil Vacation Ownership Club

567 Hornby Street  
Vancouver, British Columbia V6C 2E8  
Canada

### Lion Resorts – Club Akamas

Akamanthea Holiday Village  
Polis, Pafos 66301, Cyprus

### Llethr House Vacation Club

Llethr House  
Pendine  
Carmarthenshire SA33 4PE  
United Kingdom

### Mar y Sol

Trasera Victoria Court  
Los Cristianos, Tenerife E-38650  
Canary Islands, Spain

### Mercure Grand Hotel Internacional Foz

Rua Almirante Barroso, 2006  
Parana, Brazil

### Na Pali Kauai Club Alii Kai II

3830 Edwards Road  
Princeville, Kauai, HI 96714

### Nihi Kai Villas

1870 Hoone Road  
Koloa, Kauai HI 96756

### Norwood Resorts Fractional Ownership

501 Hume Street  
Collingwood, Ontario L9Y 4H8  
Canada

### Ocean Isle Beach Club

18-3 Causeway Drive, S.W.  
Ocean Isle Beach, NC 28469

### Oceana Private Club

13 Ingleside Road  
Stellenbosch, Camps Bay 7599  
South Africa

### Options by Macdonald at Elmers Court Country Club & Resort

South Baddesley Road  
Lymington, Hampshire SO41 5ZB  
United Kingdom

### Options by Macdonald at Forest Hills Hotel and Resort II

Forest Hills Hotel  
Kinlochard  
Aberfoyle by Stirling FK8 3TL  
United Kingdom

### Pafiana Heights

Pafiana Road  
Yeroskipou-Konia  
Paphos 8102, Greece

### Paki Maui Beach Villas

3615 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

### Papakea Beach Resort

Hawaii Properties Ltd.  
3543 Honoapiilani Highway  
Lahaina, Maui, HI 96761

### Pattaya Hill Resort

329 Kao-Praratamnak Hill  
Pattaya City, Banglamung District  
Chonburi 20260, Thailand

### Penhaven Cottages

Rectory Lane  
Parkham, Nr. Bideford  
Devon EX39 5PL, Great Britain

### Phoenix, The

2315 Après Ski Way  
Steamboat Springs, CO 80487

### Pine Ridge Inn Vacation Club

1200 S.W. Century Drive  
Bend, OR 97702

### Pinnacle, The

2507 South Ocean Boulevard  
North Myrtle Beach, SC 29582

### Pines at Island Park, The

3907 Phillips Loop Road  
Island Park, ID 83429

### Plantation Bay Villas

South Seas Plantation  
Captiva Island, FL 33924

### Point-to-Point Destinations – Glacier's Reach

323-4388 Northlands Boulevard  
Whistler, British Columbia V0N 1B4  
Canada

### Points North Inn

101 Michigan Avenue  
Charlevoix, MI 49720

### Port Villas

226 South Seas Drive  
Hilton Head Island, SC 29938

### Pyramid Resort Vacation Club

Km. 57 Carretera Libre La Misión  
La Misión, B.C.N., Mexico

### Rachaburi Country Club

93 Moo 10 Tumbon Pakchong  
Jombung District  
Rachaburi 70150, Thailand

### Renvyle Strand

c/o Renvyle House Connemara  
County Galway, Ireland

### Résidence le Silveralp

73440 Val Thorens  
France

### Résidence Les Bergers

Rocher Soleil Zac des Bergers  
38 Alpe D'Huez  
L'Alpe d'Huez 38750, France

### Résidence les Hameaux du Mont d'Arbois

411 Route du Mont d'Arbois  
Zac du Colet, P.O. Box 74120  
Megeve 74120, France

### Residences at Green Valley Spa Townhomes

1999 West Canyon View Drive  
St. George, UT 84770

### Residencial Diana

Camino de Cortes  
Ctra. de Cádiz, Km. 168  
Estepona, Málaga 29688, Spain

### Residenza Castelveto

Località Liscia Di Vacca  
Porto Cervo, (SS)  
Sardinia 07020, Italy

### Resorts West Vacation Club at Cabana Club Condominium

7530 Birch Bay Drive  
Blaine, WA 98230

### Resorts West Vacation Club at Embarcadero Resort

1000 S.E. Bay Boulevard  
Newport, OR 97365

### Resorts West Vacation Club at Kala Point Village

20 Village Drive  
Port Townsend, WA 98368

### Riosol Club

Parcela 40, Playa Blanca  
Lanzarote, Canary Islands, Spain

### Rodd Mill River Resort

Highway #136, O'Leary  
Prince Edward Island C0B 1V0  
Canada

### Royal Club

6, Avenue Pierre Loti  
La Baule 44500, France

### Sandy Square

11901 119th Street  
Ocean City, MD 21842

### Sea Mountain

95-789 Ninole Loop Road  
Punalu'u, Hawaii, HI 96777

### Sea Village

75-6002 Alii Drive, Suite 10-A  
Kailua-Kona, Hawaii, HI 96740

### See the Sea

4465 Ocean Boulevard  
San Diego, CA 92109

### The Sentinels at Kirkwood Private

1050 Kirkwood Meadows Drive  
Kirkwood, CA 95646

### Snowater

10500 Mount Baker Highway  
Glacier, WA 98244

### Somni Aragonés

Ed. Monteski  
Prov. Huesca  
Formigal-Sallent de Gallego 22640  
Spain

### Spinnaker Penthouse 901

3513 South Ocean Boulevard  
Suite 901  
North Myrtle Beach, SC 29598

### Summerfield Condo Resort

2425 Summerfield Way  
Kissimmee, FL 34741

### Sun Colony

200 Sun Colony Boulevard  
Longs, SC 29568

### Sunborn Vacation Club

Matkailijantie 2  
Naatali, Finland

### Sunchase Beachfront Condominiums

1010 Padre Boulevard  
South Padre Island, TX 78597

### Tahoe Vacation Condominiums

261 Quaking Aspen  
Stateline, NV 89449

### Tamarack Lodge

2035 US 31 North  
Traverse City, MI 49686

### Tattershall Park Country Club

Seaford Road  
Tattershall, Lincolnshire, LN4 4LR  
United Kingdom

### Thurnham Vacation Club at Anderton Marina

Anderton Marina  
Anderton, Nr. Manchester  
United Kingdom

### Tranquility Bay

2600 Overseas Highway  
Mile Marker 48.5  
Marathon, FL 33050

### Tropical Suites at Hacienda Resort

Hacienda Resort  
Cofresi  
Puerto Plata, Dominican Republic

### Tropical Trades at Paki Maui

3615 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

### Twin Oaks Villas

70 Plantation Drive  
Hilton Head Island, SC 29938

### Vacation Club at Le Meridien Kathmandu

Gokarna Forest Golf Resort & Spa  
Rajnikunja, Gokarna, Kathmandu, Nepal

### Vacation Internationale – Kittyhawk Resort

The Pines at Summer Meadow Road  
Sunriver, OR 97707

### Vacation Internationale – Tahoe Beach & Ski Club

3601 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

### Valley Isle

4327 Lower Honoapiilani Highway  
Lahaina, Maui, HI 96761

### Villagio Italia

Av. Dr. Claudio Jose Gueiros Leite  
10.161, Maria Farinha, PE  
Recife, Brazil

### Villas de Menorca

Club Santiago  
Manzanillo, Colima 28860, Mexico

### Whaler, The

2481 Kaanapali Parkway  
Lahaina, Maui, HI 96761

### World International Vacation Club – Villacana

Km. 165 Carretera de Cádiz  
Estepona, Málaga, Spain

## PROGRAMS WITH 1,000 OR MORE MEMBERS

- Absolute Private Residence Club at
  - Jinqiao
  - Q Signature Spa and Resort
- Acadia Village Resort
- Accor Vacation Club
  - Coral Coast Palm Cove
  - Freshwater Point Resort
  - Grand Mercure Basildene Manor
  - Grand Mercure Bowral
  - Grand Mercure Bussleton
  - Grand Mercure Forest Resort
  - Grand Mercure Hotel Loft House
  - Grand Mercure Melbourne
  - Grand Mercure Oakridge Resort
  - Grand Mercure Pinnacle
  - Grand Mercure Pinnacle Valley Resort
  - Grand Mercure Puka Park Resort
  - Grand Mercure The Links
  - Grand Mercure The Vines
  - Grand Mercure The Vintage
  - Hotel St. Moritz Queenstown
  - Legends Hotel Surfers Paradise
  - Mermaid Beach Apartments
  - Novotel Lake Crackenback Resort
  - Novotel Nusa Dua Apartments
  - Novotel Pacific Bay Resort
  - Turtle Beach Resort Mermaid Beach
  - Twin Waters Sunshine Coast
- Alanda Club Marbella
- American Resorts International Holiday Network
  - Alpenland Sporthotel
  - Maria Alm
  - St. Johann Im Pongau
- Americano Beach Resort, The
- AmeriSuites Vacation Club at Calypso Cay
- Aquarius Vacation Club at Boquerón Beach
- Aquarius Vacation Club at Embassy Suites
- Atlantic Club Reserva de Marbella
- Avalon Excalibur
- Avalon Grand All Inclusive Vacation
- Avalon Reef Club
- Avenue Plaza Resort
- Beach House Seaside Resort
- Beach Quarters
- Blue Seas Resort & Spa
- Blue Tree Resort at Lake Buena Vista
- BlueBay Beach Club
- Bluebeard's Beach Club & Villas
- Bluegreen Vacation Club
  - Beach Club I
  - Dolphin Beach Club
  - Estero Island Beach Club
  - Falls Village, The
  - Four Winds Beach Resort
  - Harbour Lights
  - Laurel Crest Resort
  - Lodge Alley Inn, The
  - Mariner's Boathouse & Beach Resort
  - MountainLoft Resort
  - Sanibel Beach Club I
  - Sanibel Beach Club II
  - Shenandoah Crossing Resort
  - Shore Crest Vacation Villas
  - South Shore Club
  - Surfrider Beach Club
- Windward Passage Resort
- Cabins at Green Mountain
- Cabo Villas Beach Resort
- California Vacation Club
  - Desert Breezes
  - Indian Palms Vacation Club
  - Lodge at Kingsbury Crossing
  - RiverPointe Napa Valley
  - Scottsdale Camelback Resort
- Caribbean and Dream Buildings at Ocean Landing
- Caribbean Palm Village
- Carriage House at Pocono Manor
- Castillo Beach Club
- Christie Lodge, The
- Cibola Vista Resort & Spa
- Clarion Suites Crystal Beach and Health Club
- Clarion Suites Oaks at Resort World
- Clarion Suites Resort World of Orlando
- Clarion Suites Resort World Villas of Lake Buena Vista
- Clarion Suites Spas at Resort World
- Club Cala de Palmas
- Club Casa Dorada Spa & Golf Resort
- Club Cascadas de Baja
- Club de Soléil
- Club Destin Resort
- Club Estela Dorada
  - Gruphotel Club Marina Arpon
  - Gruphotel Aldea del Mar
  - Gruphotel Club Jardines Paraisol
  - Gruphotel Club Mediterraneo Cala Pi
  - Gruphotel Club Riviera
  - Salou Aquamarina
  - Gruphotel Club El Tartar
  - Gruphotel Club Novelty
  - Gruphotel Club Ogisaka Garden
- Clubhotel am Kreischberg
- Club In
- Club Internacional de Cancún
- Club Navigo
  - Charter Club Resort on Naples Bay
  - Cove at Ormond Beach, The
  - Crescent, The
  - Grand Seas Resort
  - Liki Tiki Village
- Club Prestige
- Club QM
  - Club QM at Kingsbury Crossing
  - Club QM at Ridge Sierra, The
  - Club QM at Thunderbird Resort Club
  - Club QM at Northlake Lodges and Villas
- Club Vacacional Coomeva
  - Club de Los Andes
  - MendiHuaca Caribbean Resort
- Coconut Mallory Marina and Resort
- Coconut Palms Beach Resort
- Colonial Crossings of Williamsburg
- Condohotel Villa del Mar
- Corail Royal Marina
- Corail Royal Plage
- Corail Costa Caribe
- Cove at Yarmouth, The
- Creekside Village
- David Walley's Resort – A Quintus Resort
- Diamond Resorts International – THE Club
- Alpine Club, The
- Alpine Club Schliersee Resort
- Bent Creek Golf Village
- Burnside Park Owners Club
- Cala de Mar
- Club Blanca
- Club de Carmen
- Cromer Country Club
- Cypress Pointe Grande Villas
- Cypress Pointe Resort
- Daytona Beach Regency
- Desert Paradise Resort
- Flamingo Beach Resort
- Gala Fjellgrend
- Garden Lago
- Grand Beach Resort II
- Greensprings Vacation Resort
- Historic Powhatan Resort, The
- Island Links Resort
- Jardines del Sol
- Kaanapali Beach Vacation Resort
- Kenmore Club, The
- Lake Tahoe Vacation Resort
- Le Club Mougins
- Le Manoir des Deaux Amants Resort
- Le Resience Normandie
- London Bridge Resort II
- Los Amigos Beach Club
- Palazzo Catalini Resort
- Palm Springs Marquis Villas
- Pine Lake Resort
- Point at Popu, The
- Polynesian Isles
- Ridge on Sedona Golf Resort, The
- Ridge Pointe, The
- Royal Dunes
- Royal Oasis Benal Beach, The
- Royal Oasis Club at Pueblo Quinta
- Royal Palm Beach Resort
- Royal Regency
- Royal Sunset Beach Club
- Royal Tenerife Country Club
- Sahara Sunset Resort
- San Luis Bay
- Santa Barbara Golf & Ocean Club
- Scottsdale Links Resort
- Scottsdale Villa Mirage
- Sedona Springs Resort
- Sedona Summit
- Suites at Fall Creek, The
- Suites on Malta
- Sunset Bay Club
- Sunset Harbor Club
- Sunset View Club
- Thurnham Hall
- Vilar do Golf Resort Club
- Villas at Poco Diablo Resort
- Villas of Sedona
- Villas de Santa Fe Resort
- Westgate South Beach
- White Sands Beach Club
- White Sands Country Club
- Woodford Bridge Country Club
- Wychnor Park Country Club
- Divi Village
- Eagle Point
- Edgewater Beach Resort
- El Cid Vacation Club
- El San Juan Towers
- Ellington at Wachesaw Plantation East
- Equest Vacation and Travel Club
  - Atlantic Beach Villas
  - Blue Ridge Village
  - Branson Thousand Hills
  - Equest Sands
  - Laurel Point Condominiums
  - Mirror Lake/Tamarack
  - Ocean Club
  - Outer Banks Beach Club I
  - Outer Banks Beach Club II
  - Peppertree By the Sea
  - Sandpebble Beach Club
  - Sea Mystique
  - Wild Wing Golf Village
- Es Puerto
- Escapes! to the Gulf at Orange Beach
- Escapes Travel Choices Club
  - Escapes! to Galveston
  - Escapes! to Greens at Bella Vista, The
  - Escapes! to Gulf at Orange Beach, The
  - Escapes! to Hot Springs
  - Escapes! to Stonebridge Village
  - Escapes! to Tropical Breeze at Panama City Beach
- Fairfield Fairshare Plus Club
  - Star Island Resort
  - Wyndham Royal Vista
  - Wyndham Governor's Green
- Fairmont Vacation Villas at Hillside
- Fairmont Vacation Villas at Mountainside
- Fairmont Vacation Villas at Riverside
- Falcon Point
- Festiva's Adventure Club
  - Atlantic Beach Villas
  - Blue Ridge Village
  - Cabins at Green Mountain
  - Church Street Inn
  - Ellington at Wachesaw
  - Equest Sands
  - Mirror Lake/Tamarack
  - Ocean Club
  - Peppertree at Thousand Hills
  - Peppertree by the Sea
  - Rangeley Lake Resort
  - Sandpebble Beach Club
  - Sea Mystique
  - Stormy Point Village Resort
  - The Yachtsman Resort
  - Wild Wing Golf Village
- Flagship Resort, The
- Flamingo Club
- Fort Lauderdale Beach Resort
- Four Seasons Residence Club Aviara
- Galleria at Split Rock
- Gardenia Plaza Resort II
- Gardens at West Maui, The
- Gatlinburg Town Square
- Grand Lodge on Peak 7
- Grand Regency Resort at Thousand Hills
- Grand Seas Resort
- Grand Sharm Resort
- Grand Timber Lodge
- Hacienda Encantada Resort and Spa
- Hanalei Bay Resort Club
- Harbor Ridge
- Harborside at Atlantis

- Hippocampus Beach International Resort
- Holiday Park Resort
- Holly Tree Resort Hotel
- Hyatt Vacation Club
- Highlands Inn
  - Hyatt Beach House Resort
  - Hyatt Coconut Plantation
  - Hyatt Grand Aspen
  - Hyatt Hacienda del Mar
  - Hyatt High Sierra Lodge
  - Hyatt Main Street Station
  - Hyatt Mountain Lodge
  - Hyatt Piñon Pointe
  - Hyatt Siesta Key Beach
  - Hyatt Sunset Harbor Resort
  - Hyatt Wild Oak
  - Hyatt Windward Pointe
  - Northstar Lodge, a Hyatt Residence
  - Residences at Park Hyatt Beaver Creek
- ILX Premiere Vacation Club
- Bell Rock, Sedona
  - Carriage House, The
  - Golden Eagle at Craggs Lodge
  - Inn at Los Abridados, The
  - Kohl's Ranch Lodge
  - Roundhouse Resort
  - Sea of Cortez Beach Club
  - Sedona Vacation Club at Los Abridados Resort and Spa
  - Scottsdale Camelback
  - Varsity Clubs of America – South Bend Chapter
  - Varsity Clubs of America – Tucson Chapter
- InnSeason Resorts – Falls at Ogunquit, The
- InnSeason Resorts – Pollard Brook
- InnSeason Resorts Vacation Club
- InnSeason Resorts Captain's Quarters
  - InnSeason Resorts Cove at Yarmouth, The
  - InnSeason Resorts Falls at Ogunquit, The
  - InnSeason Resorts HarborWalk
  - InnSeason Resorts Mountainview
  - InnSeason Resorts Pollard Brook
  - InnSeason Resorts Sea Mist Resort
  - InnSeason Resorts South Mountain
  - InnSeason Resorts Surfside
- Island Residence Club at Golden Sands
- Island Seas Resort
- Island Village – The Heights
- Jockey Club, The
- Kahana Beach Vacation Club
- Kahana Villa Vacation Club
- King's Creek Plantation
- Kona Coast Resort Interval Ownership, The
- Kona Coast Resort II
- La Cabana Beach & Racquet Club
- Lagos de Fañabe II
- Lawrence Welk Resort Villas
- Lawrence Welk's Desert Oasis
- Legend Worldwide Holidays
- Legend Resort Cherating, The
  - Legend Hotel and Apartment Kuala Lumpur, The
- Liki Tiki Village
- London Bridge Resort
- Los Cabos Golf Resort
- Magic Tree Resort
- Margarita International Resort
- Marriott's Aruba Ocean Club
- Marriott's Aruba Surf Club
- Marriott's Asia Pacific Club
- Marriott Vacation Club at Mai Khao Beach
  - Marriott Vacation Club at The Empire Place
- Marriott's Barony Beach Club
- Marriott's Canyon Villas at Desert Ridge
- Marriott's Club Son Antem
- Marriott's Custom House
- Marriott's Cypress Harbour
- Marriott's Desert Springs Villas
- Marriott's Desert Springs Villas II
- Marriott's Fairway Villas
- Marriott's Florida Club
- Marriott's Beach Place Towers
  - Marriott's Grande Vista
  - Marriott's Legends Edge at Bay Point
  - Marriott's Ocean Pointe
  - Marriott's Villas at Doral
- Marriott's Frenchman's Cove
- Marriott's Grande Lakes
- Marriott's Grande Ocean
- Marriott's Grande Vista
- Marriott's Harbour Lake
- Marriott's Harbour Point at Shelter Cove
- Marriott's Kauai Beach Club
- Marriott's Ko Olina
- Marriott's Manor Club at Ford's Colony
- Marriott's Manor Club Sequel
- Marriott's Marbella Beach Resort
- Marriott's Maui Lahaina & Napili Villas
- Marriott's Maui Ocean Club
- Marriott's Monarch at Sea Pines
- Marriott's Mountain Valley Lodge at Breckenridge
- Marriott's MountainSide at Park City
- Marriott's Newport Coast Villas
- Marriott's Oceana Palms
- Marriott's OceanWatch Villas
- Marriott's Phuket Beach Resort
- Marriott's Royal Palms Resort
- Marriott's Sabal Palms Resort
- Marriott's Shadow Ridge
- Marriott's Shadow Ridge Enclave
- Marriott's StreamSide
- Marriott's Summit Watch
- Marriott's SurfWatch
- Marriott's Timber Lodge
- Marriott's Village d'Ile de France
- Marriott's Village de France II
- Marriott's Waiohai Beach Club
- Marriott's Willow Ridge Lodge
- Maui Beach Vacation Club
- Maui Schooner
- Misiones del Cabo Vacation Club
- Monarch Grand Vacation Club
- Monarch Grand Vacations at Cabo Azul
  - Monarch Grand Vacations at Cancún Caribe
  - Monarch Grand Vacations at Cedar Breaks Lodge and Spa
  - Monarch Grand Vacations at Palm Canyon Resort and Spa
- Monarch Grand Vacations at Riviera Beach and Spa Resort
  - Monarch Grand Vacations at Riviera Beach and Spa Resort Phase II
  - Monarch Grand Vacations at Riviera Oaks Resort
  - Monarch Grand Vacations at Riviera Shores Resort
  - Monarch Grand Vacations at Tahoe Seasons
- Mountain Laurel Resort and Spa
- MountainLoft Resort
- Mystic Dunes Resort and Golf Club
- Oak N' Spruce Resort
- Oak Plantation
- Oasis Coral
- Oasis Lanz Club
- Ocean Beach Club
- Ocean Landings Resort and Racquet Club
- Omni Cancún Hotel & Villas
- Orange Tree Interval Ownership Resort, The
- Oyster Bay Beach Resort
- Palace Vacation Club
- Country Heights Villas
  - Palace of the Golden Horses
- Palace View South
- Palm Canyon Resort and Spa
- Palm Oasis
- Panareti's Royal Coral Bay Resort
- Paradise Beach Villas
- Paradise Village Beach Resort & Spa
- Parkway International Resort
- Pelican Resort Club
- Peninsula Beach Resort
- Planet Hollywood by Westgate
- Playa del Sol Costa Sur (North Tower)
- Playa del Sol Grand
- Quarter House, The
- Ramada Grand Caymanian Resort
- Rancho Banderas Vacation Villas
- Rangeley Lake Resort
- Red Wolf Lodge at Squaw Valley
- Renaissance Aruba Beach Resort & Hotel
- Ridge Tahoe – A Quintus Resort, The
- Ridge Top Village at Shawnee
- Riviera Beach and Spa Resort II
- Riviera Oaks Resort
- Royal Caribbean, The
- Royal Club at the Palm – Jumeira
- Royal Haciendas, The
- Royal Islander, The
- Royal Mayan, The
- Royal Sands, The
- Royal Savoy Resort
- Royal Vacation Suites
- Sands of Kahana Vacation Club
- Sea Mist Resort
- Seasons
- Alto Club
  - Brunston Castle
  - Burn Park Country Club
  - Clowance Estate and Country Club
  - Club Tahiti
  - Forest Hills
  - Knocktopher Abbey
  - Laugharne Park
  - Whitbarrow Village
- Shanghai SunIsland International Club
- Shawnee Ridgetop Village
- Shawnee River Village II
- Sheraton Broadway Plantation
- Sheraton Desert Oasis
- Sheraton's Vistana Resort
- Snowdance Vacation Club at Ascutney Mountain Resort
- Star Island Resort and Club
- Starwood Vacation Network
- Harborside Resort at Atlantis
  - Lakeside Terrace
  - Sheraton Broadway Plantation
  - Sheraton Desert Oasis
  - Sheraton Mountain Vista
  - Sheraton PGA Vacation Resort
  - Sheraton Steamboat Resort Villas
  - Sheraton Vistana Orlando
  - Sheraton Vistana Villages
  - Westin Desert Willow Villas
  - Westin Ka'anapali Ocean Resort
  - Westin Ka'anapali Ocean Resort North
  - Westin Kierland Villas
  - Westin Lagunamar Ocean Resort
  - Westin Los Cabos Ocean Villas
  - Westin Mission Hills Resort Villas
  - Westin Princeville Ocean Resort
  - Westin Riverfront Mountain Villas
  - Westin St. John Resort and Villas, The
- Steele Hill West
- Stormy Point Village – Summerwinds Resort
- Suites at Polo Towers, The
- Sun Hills Suites
- Surfside Resort
- Surrey Grand Crowne Resort, The
- Tahiti
- Tahiti Village
- Tanglewood Vacation Villas
- Tenerife Royal Garden
- Thunderbird Resort Club
- Townes at King's Creek Plantation, The
- Trapp Family Guest Houses
- Turtle Cay
- Vacation Internationale
- Clock Tower at Whistler, The
  - Elkhorn Resort at Sun Valley
  - Embarcadero Resort
  - Fairway Villa
  - Hololani
  - Kapaa Shore
  - Kihei Kai Nani
  - Kingsbury of Tahoe
  - Kittyhawk Resort
  - Oasis Villa Resort
  - Oceanside Marina Inn
  - Papakea
  - Pines at Sunriver, The
  - Point Brown Resort
  - Pono Kai
  - Royal Kuhio
  - Sea Mountain
  - Sea Village
  - Tahoe Beach and Ski Club
  - Torres Mazatlán
  - Vallarta Torre
  - Valley Isle Resort
  - Village at Steamboat, The
  - Villas de Santa Fe
- Vacation Village at Bonaventure
- Vacation Villas at FantasyWorld
- Vacation Villas at FantasyWorld Two
- Varsity Clubs of America
- South Bend Chapter
  - Tucson Chapter

Villa del Palmar  
Villa del Palmar-Cabo  
Villa Roma Resort Lodges  
Village at Izatys, The  
Villas at Polo Towers, The  
Villas at Tree Tops, The  
Villas at the Boardwalk  
Villas on the Green at The Welk  
Resort

Waterman Holiday Club  
Westgate Blue Tree  
Westgate Branson Lakes at Emerald  
Pointe  
Westgate Branson Woods  
Westgate Flamingo Bay Club  
Westgate Historic Williamsburg  
Westgate Lakes Resort  
Westgate Miami Beach  
Westgate Myrtle Beach  
Westgate Palace  
Westgate Park City Resort and Spa  
Westgate Smoky Mountain Resort at  
Gatlinburg  
Westgate Towers  
Westgate Town Center  
Westgate Vacation Villas  
Westwood at Split Rock  
Williamsburg Plantation

Willowbrook at Lake Harmony  
World International Vacation Club  
– Casa de la Playa  
– Conchas Chinas  
– Coral Mar  
– La Paloma  
– Mar Azul  
– Villacana

WorldMark South Pacific Club  
– Ballerat  
– Cairns  
– Cape Schank  
– Coffs Harbour  
– Coolangatta  
– Denarau Island  
– Flynn Beach  
– Golden Beach  
– Kirra Beach  
– Pokolbin  
– Port Macquarie  
– Port Stephens

WorldMark, the Club  
– Angels Camp  
– Arrow Point  
– Bass Lake  
– Bear Lake  
– Big Bear  
– Birch Bay

– Bison Ranch  
– Branson  
– Cairns  
– Canadian, the  
– Cascade Lodge  
– Clear Lake  
– Coolangatta  
– Coffs Harbour  
– Coral Baja  
– Denarau Island  
– Depoe Bay  
– Discovery Bay  
– Dolphin Cove  
– Eagle Crest  
– Galena  
– Gleneden  
– Golden Beach  
– Grand Lake  
– Kapaa Shore  
– Kihei  
– Kirra Beach  
– Kona  
– La Paloma  
– Lake Chelan Shores  
– Lake of the Ozarks  
– Lake Tahoe  
– Las Vegas  
– Leavenworth

– Marina Dunes  
– Mariner Village  
– McCall  
– Port MacQuarie  
– Oceanside Harbor  
– Orlando  
– Palm Springs  
– Pinetop  
– Pismo Beach  
– Port Stephens  
– Rancho Vistoso  
– Reno  
– Running Y  
– Schooner Landing  
– Seaside  
– South Shore  
– Spencer Street  
– St. George  
– Steamboat Springs  
– Sundance  
– Surfside Inn  
– Valley Isle  
– Victoria  
– Windsor  
– Wolf Creek  
Zuana Beach Resort

## PROGRAMS WITH 500 – 999 MEMBERS

Absolute Private Residence Club  
Aruban Resort & Casino at Eagle  
Beach, The  
Atlantic Club Hotel Tierramar  
Atlantic View  
Atrium Resort, The  
Avalon Reef Club  
Banff Rocky Mountain Resort  
Bay & Beach Club  
Bay Club Condominiums, The  
Beach Palace  
Beachside Village  
Bluegreen's Club La Pension  
Breakers Resort  
Cabo San Lucas Beach and Tennis  
Club  
Calabogie Peaks Resort  
Canadian Resorts  
– La Querencia Resort  
– Marparaiso Queen  
– Villas del Palmar  
Captain Morgan's Vacation Beach  
Club  
Captain's Quarters at Surfside  
Carolina Club, The  
Casa Dorada at Medano Beach  
CasaBlanca Vacation Club  
Chalet High/Chalet High North  
Church Street Inn, The  
Cliffs Club, The  
Club Cascadas de Baja  
Club Chalet of Gatlinburg  
Club Hotel Tiberias  
Club Intrawest  
– Blackcomb  
– Kauai  
– Palm Desert  
– The Aspens  
– Tremblant  
Club La Paz  
Club Louka  
Club Monte Anfi  
Club Premiere Four Seasons

– Soleil La Antigua  
– Soleil Pacifico  
Club Royal  
– King Solomon's Palace Hotel  
Club Système Vacances  
– Club Callao Garden  
– Club Calypso  
– Club La Mar  
– Club Marítimo at La Ronda III  
– Oasis Club  
– Parque Albatros  
– Pueblo Canario  
– Quality Suites Airport Bangkok  
– Vera Beach Club  
Clube Praia da Oura  
Coconut Palms Beach Resort –  
Fishtail  
Colonial Acres Resort  
Colonial Village  
Condominio Solamar Inn  
Corail Royal Marina  
Costa Sal  
Cranberry Waterfront Suites &  
Country Club  
Daytona Beach Regency  
De Vere Resort Ownership at Belton  
Woods  
De Vere Resort Ownership at  
Cameron Woods  
De Vere Resort Ownership at Slaley  
Hall  
Delta Grand Okanagan Resort  
Doha Hills  
Dunes Hotel & Beach Resort  
Eilat Club Hotel  
Equivest Riverside Suites  
Es Pueto at Aldea Bonsai  
Esmeralda Beach Club  
First Cabin Club  
Four Seasons at Fairways  
Four Seasons Residence Club  
Scottsdale  
Gålå Fjellgrend

Gold Point Condominiums  
Golden Sands Island Residence Club  
Halland International Resort Club  
Harbortown Point Marina Resort &  
Club  
Holiday Owners Club  
– Devoncourt  
– Hever Golf and Country Club  
Hotel  
– Long Beach Club  
Hono Koa Vacation Club  
Hotel and Club Aladino's  
Hotel Doubletree Resort by Hilton  
Puntarenas  
Hotel El Castellano  
Hotel Santa Clara  
Imperial Fiesta Club Casa Maya  
Imperial Hawaii Resort Club  
Imperial Hawaii Resort Club II  
Inn at the Opera  
Kaanapali Beach Vacation Resort  
La Quinta Beach Resort  
La Renaissance  
Lagos de Fañabe  
Lakeside Terrace in the Vail Valley  
Lakeview Resort Club  
Las Olas Resort  
Laurel Crest Resort  
Lifetime Vacation Club at Miraflores  
Manhattan Club Penthouse Suites,  
The  
Grand Oasis Marien  
Marriott's Crystal Shores on Marco  
Island  
Marriott's Harbour Club at Harbour  
Town  
Marriott's Imperial Palms Villas  
Marriott's Lakeshore Reserve  
Marriott's Sunset Pointe at Shelter  
Cove  
Masters at Paradise Canyon Resort,  
The  
Maui Banyan Vacation Club

Mendihuaca Caribbean Resort  
Mexicana Sharm  
Misiones del Cabo Vacation Club  
Mountainside Lodge  
Nautical Mile Resort &  
Condominiums, The  
Oasis Canoa  
Options by Macdonald  
– Dalfaber Resort  
– Dalfaber Resort Chalets  
– Doña Lola Resort  
– Elmers Court Country Club II  
– Elmers Court Country Club and  
Resort  
– Forest Hills Hotel and Resort  
– Forest Hills Hotel and Resort II  
– Loch Rannock Hotel and Resort  
– Lochanully Resort  
– Leila Playa Resort  
– Plas Talgarth Resort  
– Villacanna Resort  
Paradise Island Beach Club  
Parque del Sol  
Playa Linda Beach Resort  
Ponds at Foxhollow, The  
Pono Kai, The  
Regency at Paradise Court  
Residence Paris XV  
Rincón de Los Andes  
Rincón del Este  
Ridge Crest – A Quintus Resort, The  
Riviera Beach and Spa Resort  
Royal Aloha Vacation Club  
– Butterfield Park Condominiums  
– Keauhou Kona Surf & Racquet  
Club  
– Lake Tahoe  
– Eagles Nest Resort at Indian  
Point  
– Nueva Andalucia  
– Torre Blanca, The  
– Village By The Sea  
– Waikiki

Royal Islander Club La Plage, The  
 Royale Beach & Tennis Club  
 Sea Aquarium Resort, The  
 7 Mile Beach Resort  
 Sheraton Vistana Resort  
 Signum Las Palmas  
 Southwinds Beach & Racquet Club  
 St. Augustine Beach & Tennis Resort  
 Starr Pass Golf Suites

Steele Hill East  
 Summit Resort, The  
 Swallowtail at Sea Pines  
 Tahoe Seasons Resort at Heavenly  
 Valley  
 Thurnham Vacation Club  
 – Anderton Marina  
 – Club Britannia  
 – Cromer Country Club

– Thurnam Hall  
 Topaz Beach Club  
 Treetops Village at Four Seasons,  
 U.S.A.  
 Turangi Leisure Lodge  
 Vacation Village at Bonaventure  
 Phase II  
 Vacationland Estates  
 Villaggio Olimpico

Villas at Fairway, The  
 Villas of Cave Creek  
 Villas of Gold Canyon, The  
 Viva Wyndham Playa Dorada  
 Voyager Beach Club  
 Westgate South Beach  
 Windsurf Resort I  
 Woodbourne Estates Resort  
 Yucca Park

## PROGRAMS WITH 250 – 499 MEMBERS

Akiris  
 Alessidamo Club  
 All Seasons Vacation Resort  
 Amara Lifetime Resort  
 Apollo Park at Vail  
 Bagaglino Resort Group  
 – Bagaglino – Catturani  
 – Bagaglino – Des Alpes 2  
 – Bagaglino – Hotel La Posta  
 – Bagaglino – I Giardini di Porto  
 Cervo  
 – Bagaglino – Le Ville del Lido  
 – Bagaglino – Villa Laguna  
 Banyan Resort, The  
 Bay Club, The  
 Beacons of Minocqua, The  
 Bighorn Meadows  
 Bishop Selwyn, The  
 Blue Bay Village  
 Blue Paradise Resort & Marina  
 Breezes Punta Can VIP Club & Beach  
 Resort  
 Calampiso  
 Calypso Plaza on Coolangatta  
 Cape Winds Resort  
 Casa Del Mar Beach Resort  
 Causeway on the Gull  
 Chateau Dale Vacation Club  
 Chateau Orleans  
 Chayofa Country Club  
 Club Asia International  
 – Bukit Saban Resort  
 – Damai Rainforest  
 – Royal Mulu Resort  
 Club Cordial  
 – Cordial-Hotel Achenkirch  
 – Cordial-Hotel Going  
 – Cordial-Hotel Reith bei Kitzbühel  
 – Cordial Residence “Il Pelagone”  
 Toscana  
 – Cordial Sanotel Badgastein  
 – Cordial Theaterhotel Wien  
 Club Del Carmen  
 Club Dolmen By The Sea  
 Club 52  
 Club Flipper  
 Club Louka  
 Club Orlando  
 Club Puerto Atlantico  
 Club Residence Capopiccolo  
 Club Sea Oats  
 Club Sevilla  
 Club Tropicana  
 Coconut Beach Resort  
 Cold Spring Resort  
 Colonies at Williamsburg, The  
 Coral Beach Resort  
 Coral Reef Beach Resort  
 Costa Linda  
 Cove at Ormond Beach, The  
 Crown Spa Resort Hainan, China  
 Worldbest

Deer Run Resort  
 Desert Breezes Resort  
 Devoncourt  
 Dive Inn Resort  
 Dutch Village, The  
 Eagle's Nest  
 Eagles at Sugarbush  
 Eastwood at Provincetown  
 El Cid El Moro Beach  
 El Cid Marina Beach  
 Erie Islands Resort & Marina  
 Fairmont Estates Condominiums  
 Fairmont Vacation Villas at Riverview  
 Falls Village Resort, The  
 Ferienclub Privilege  
 Fisherman's Village Resort Club  
 Four Seasons Country Club  
 Foxrun  
 Freeport Resort & Club  
 French Lick Springs Villas  
 Gran Dominicus  
 Grand Canadian Resort Vacation Club  
 Gruphotel Club Marina Arpón  
 Gruphotel Club Riviera  
 Harbour Lights  
 Harbourview Villas at South Seas  
 Resort  
 Havasu Dunes  
 Hawaiian Princess at Makaha Beach  
 High Point World Resort  
 Hippocampus Viña del Mar Resort &  
 Club  
 Holiday Owners Club  
 Highlands at Sugar, The  
 Hollywood Beach Tower  
 Hosteria del Lago  
 Hotel Club Fured  
 Hotel de l'Eau Vive  
 Hotel Mansion Tarahumara  
 Hotel Puerta del Mar  
 Hippocampus Viña del Mar Resort &  
 Club  
 InnSeasons Resorts South Mountain  
 Iron Blossam Lodge  
 Island Village  
 Jolly Harbour Beach Club  
 Jupiter Beach Resort  
 Killarney Country Club  
 Kingfisher Club  
 Kingsbury Crossing  
 Kololi Beach Club  
 Kona Islander Vacation Club  
 Lady Luck Resort Casino  
 Lago Vista at Buenaventura Lakes  
 Lagonita Lodge – Phase II  
 Laguna Golf and Country Club  
 Laguna Holiday Villas  
 Lakeland Village, The  
 Lakeside Terrace in the Vail Valley  
 Lanzarote Beach Club  
 Laugharne Park  
 Links Golf and Racquet Club

Lion's Gate Pines Lodge  
 Little Bay Beach & Racquet Club  
 Little Bay Beach & Racquet Club –  
 Phase 2  
 Lloyd's Club  
 Los Tinajeros Resort  
 Macdonald Doña Lola  
 Macdonald Villacana Resort  
 Marine Terrace  
 Marriott's Grand Residence, Tahoe  
 Marriott's Heritage Club at Harbour  
 Town  
 Miraflores Vacation Club  
 Moosehead Cottage Resort  
 Morro Mar Vacation Club  
 Mountainside Villas at Massanutten  
 Naema Heights  
 NorthBay at Lake Arrowhead  
 Northeast Vacations. Inc.  
 Northwoods Club of Lake Placid  
 Oasis Club  
 Ocean Club at Atlantic Inn, The  
 Ocean High  
 Oceanique Resort  
 Palace View by Spinnaker  
 Paradise Point Resort  
 Park Plaza Resort  
 Park Regency, The  
 Playa del Sol Costa Sur (South Tower)  
 Peninsula Island Resort and Spa  
 Peninsular Club at La Manga Club  
 Perennial Vacation Club  
 – Bandera  
 – Daytona  
 – Fun Tropicale  
 – Imperial Lakes  
 – Tahoe Village  
 Pirayu  
 Plantation Village Beach Resort  
 Plaza Resort and Spa, The  
 Poipu Point Vacation Resort  
 Polynesian Isles Resort  
 Redington Ambassador  
 Résidence Yasmine Plaza  
 Resort Club at Minerals Resort &  
 Spa, The  
 Resorts West Vacation Club  
 – The Ridge Crest  
 – The Ridge Point Resort  
 – The Ridge Tahoe  
 – The Ridge View  
 Ridge Point Resort, The  
 Ridge Sierra, The  
 Ridge View, The  
 Royal Palm Beach Club  
 Royal Palm Club  
 Reef Resort, The  
 San Clemente Cove Resort  
 Sapphire Beach Resort and Marina  
 Sauce Alto Resort and Country Club  
 Sea Scape Beach & Golf Villas

Seasons Resort, The  
 Sedona Vacation Club at Los  
 Abrigados  
 Shawnee Depuy Village Phase II  
 Shawnee Fairway Village  
 Shawnee River Village One  
 Shell Vacations Club  
 – Inn at the Opera  
 – Kona Coast Resort Interval  
 Ownership  
 – Kona Coast Resort Phase II  
 – Orange Tree Interval Ownership  
 Resort  
 – Suites at Fisherman's Wharf  
 – Starr Pass Golf Suites  
 Sheraton Mountain Vista  
 Shore Crest Vacation Villas  
 Southcape Resort & Club  
 Spinnaker at Lake Dillon  
 Steele Hill Resort  
 Stoneridge Condominiums  
 Stormy Point Village Resort  
 Suites at Fisherman's Wharf, The  
 Sun Pond Holiday Club  
 Sunningdale Village  
 Sunset Point at StillWaters Resort  
 Sunset Resorts-Canmore  
 Surfsider  
 Swallowtail at Sea Pines  
 Swiss Mountain Village  
 Tangalooma Island Resort  
 Torre Verde – Três Castelos  
 Treetop Condominiums at Four  
 Seasons, U.S.A.  
 Twin Rivers Condominiums  
 View Talay Villas Holiday Resort  
 VIK Hotel Cayena Beach  
 Villa del Palmar Flamingos  
 Village at Palmetto Dunes, The  
 Village at the St. James's Club, The  
 Village Resort, The  
 Villas Loma Linda  
 Villas Nacazol  
 Waikiki Banyan, The  
 Water's Edge Resort  
 Welk Resorts Platinum Program  
 – Lawrence Welk Resort Villas  
 – Villas on the Greens  
 – Welk Resorts Cabo –  
 Sirena del Mar  
 – Welk Resorts Desert Oasis  
 – Welk Resorts Mountain Villas  
 – Welk Resorts Timber Ridge  
 Lodge  
 Westgate Painted Mountain Golf  
 Resort  
 Westgate River Ranch  
 Windjammer Landing Villa Beach  
 Resort and Spa  
 Yachtsman Resort, The

## PROGRAMS WITH 101 – 249 MEMBERS

Aldea Valle Encantado	– Club Mykonos II	Gold Canyon Golf Resort Vacation Villas	Marriott's Asia Pacific Membership Club
Alexandra Resort	– Govino Bay	Golden Palms Hotel and Spa	Marriott's St. Kitts Beach Club
Aloha Gardens	– Kouros Village	Grand Oasis Punta Cana Vacation Club	Meadow Ridge
Alpenresidenz Bad Gastein	– Porto Carras		Miraflores Beach & Country Club
Amatique Bay Resort & Marina	– Villea Village		Morro Mar Vacation Club
Apartur Bariloche	Club El Velero	Hacienda El Eden Resort	Mountain Club at Kirkwood, The
Apart Holidays	Club Es Talayal	Hammocks, The	Mountainview Resort
Apartur Buenos Aires	Club Flamingo	Harbor Landing Condominiums	Multigestion
Aruba Beach Club	Club MenDan	Harbor Vacations Club	– Domaine de Garlande
Aspens and Aspen Village, The	Club No. 1 Nice Côte d'Azur	Harborside Inn	– Les Coteaux de la Nartelle
Atlantic Beach Casino Resort	Club Ocean Villas II	Harbour Beach Resort	– Les Marines de Grimaud
Azul Sensatori	Club Pacific Queenstown	Harbour Town Yacht Club	– Les Terrasses de Théoule
Bahia Manzano	Club Pacific Westharbour	Hawks Nest	– Multivacances Avoriaz
Balboa Club	Club Paihia	Hever Hotel and Country Club	– Reberty Les Menuires
Barceló Los Cabos	Club Quinta del Mar	Highland Estates Resort	– Résidence de Rochebrune
Barnsdale Country Club	Club Royale at Lubina Sol	Holiday Beach Resort	– Résidence Emeraude
Barrington's Royal Golf and Fitness Club	Commodore Beach Club	Horizon Touristic Resort	
Bay Club of Sandestin	Compart VIP Gesell	Hosteria del Cerro	Naema Heights
Beach Club at Montego Inn, The	Condominio Gran Hotel Pucon	Hotel Aguamarina	Neptune Vacation Club
Beach House Golf & Racquet Club	Condominio Porto Bello Marina & Villas	Hotel Cola de Caballo	Newport Beachside Resort
Beachcomber Resort Club, The	Costa Maya Reef Resort	Hotel Eigerblick	Newport Bay Club and Hotel
Blackbird Lodge Timeshare Program	Cottages at Port Stanton, The	Hotel Le Marrakech	Nordvind Resort
Bogmallo Beach Resort	Crown Point Condominiums	Hyatt Grand Aspen	Northstar Mountain Village Resort
Boyne Vacation Club	Crown Regency Vacation	I Giardini di Porto Cervo	Oakmont Resort Limited
– Alpenglouw	– Crown Regency Hotel	Illetas Club Playa	Ocean Club on Smuggler's Beach, The
– Arthur Hills Townhouses	– Crown Regency Residence	Illetas Club Playa – Bougainville	Ocean Palms Beach Club
– Big Horn	– Crown Regency Suites	Imperial Fiesta Club Casa Maya	Ocean Reef Resort
– Big Sky Resort		Inns at Waterville Valley, The	Ocean Towers Beach Club
– Cottages at Crooked Tree	Croyde Bay Holiday Club	Island Park Village Resort	Oceancliff I & II
– Deer Lake Villas	Cypress Pointe Resort	Islander Beach Resort	One Napili Way
– Disciples Ridge	Dames de la Mer	Itacare Parque & Eco Resort	Orient Touristic Development
– Grand Summit	Dana Beach	Jamaican on the Gulf	Orlando Breeze Resort Club
– Highlands Resort	Daytona Resort & Club	Jambo Vacation Club	Palace Ponte Di Legno
– Hemlock	Destinations Asia Pacific	– Club Capopiccio	Palm Beach Holiday Club
– Inn on Bay Harbor	– Radisson Bali	– I Giardini di Atena	Palm Springs Tennis Club
– Jordan Grand	– Radisson Resort Palm Meadows		Paradise Holiday Resort
– Lakeside Cottages	Diar Lemdina	Keswick Bridge	Paradise Mombaso
– Log Cabins	Discovery Beach Resort	Kilconquhar Castle Estate and Country Club	Paraíso del Sol
– Mountain Grand Lodge	Divi Heritage		Parque da Floresta Golf and Leisure Resort
– Powder Ridge	Dover Watch at Mount Snow	Gruphotel Club Aldea del Mar	Pelican Marina Residences
– Ross Cottages	Dubai Lagoon Vacation Club	Gruphotel Club Gemelos 15	Pestana Alvor Hotel
– Shoshone	Eagles at Sugarbush	Gruphotel Club Tarter	Pivko Village
– Stillwater	Eden Bay Resort	La Orquídea	Plantation Beach Club
– Sugarloaf	Edificio Palm Beach	La Quinta at La Manga	Playa Maroma
– Sunday River Resort	Elani Bay	Lagonita Lodge	Plaza Resort at Palmas del Mar
– Village Center	Elimar Ocean View	Lake Forest Resort and Club	Pointe on the Bay, The
Bosques de Monterreal	Embarcadero Pacifico	Lakewood Resort	Port Largo Villas Resort
Bovedas de Santa Clara	Embassy Vacation Resort	Lapinniemi	Poste Montane Lodge
Brewster Green	Englewood Beach and Yacht Club	Le Mirage	Pousada do Portal de Paraty
Cala Corvino Club II	Equivest Inn On The Harbor	Le Relais de Noisy	Prospect Reef Resort Vacation Club
Capistrano Surfside Inn	Equivest Ocean Gate	Le Relais du Plessis	Pueblo Caribe International Beach Resort
Carriage House, The	Estancia Apartur Mar del Plata	Le Ville del Magara	Puerto Encantado
Carriage Place at Surrey Vacation Resort	Estero Island Beach Club	Lighthouse Cove	Puerto Mogan La Venezia de Canarias
Casa del Lago	EMI Sun Village Beach Resort	Limetree Beach Resort	Quadna Mountain Resort
Casa Metz	Executive Timbers Resort and Golf Club	Lindo Mar Adventure Club	Quality Hill Resort Villas
Casa Ybel Beach and Racquet Club	Fairmont Heritage Place Franz Klammer Lodge	Lion Resorts – Club Alias	Quijote Inn
Casablanca	Fairmont Hot Springs Resort	Little Sweden	Regency Palms
Catalina Beach Club	Fairways and Bluewater Resort Golf & Country Club	Lodge Resort, The	Regency Villas at Broome Park
Cathedral Ledge Condominium Resort	Fairway Forest	Logos Land Resort	Residence Berghof
Cerritos Resort	Farallón	Loma Bonita	Residence Club Seaside
Christmas Mountain Resort	Flamingo Marina Resort Hotel & Club	Longboat Bay Club	Résidence Liscia di Vacca
Cispata Marina Hotel	Floriday's Orlando Resort	Loreley	Residencial Itapema Vacation Club
Clowance, Clowance House	4 Seasons at Beech Mountain	Los Sabalos Royal Club	Résidences Pierre et Vacances
Club Armonia	Four Views Oasis	Macdonald Dalfaber Resort	– Avoriaz
Club at Cape Cod, The	Fuente Real Resort	Macdonald Loch Rannoch Hotel and Resort	– Belle Plagne
Club Azúr	Fun & Adventure Club	Macdonald Plas Talgarth Resort	– Cannes Villafraancia
Club Cala Vadella	– Erlebnishotel Liebnitzmuhle	Manteo Beach Club	– Cap d'Ail
Club Canaima Playa	– Erlebnishotel Nová Amerika	Marathon Key Beach Club	– Cap Esterel
Club De Mar	Gardenia Resort	Marina Village at Snug Harbour	– Le Port du Bourgenay
Club Delta		Marinagolf	– Le Port du Crouesty
		Mariner's Boathouse & Beach Resort	
		Mariner's Point Beach Club	
		Maritime Beach Club	

<ul style="list-style-type: none"> <li>– Les Coches</li> <li>– Les Parcs de Grimaud</li> <li>– Méribel</li> <li>– Moliet</li> <li>– Village Cap Coudalère</li> </ul>	<ul style="list-style-type: none"> <li>Schooner Beach and Racquet Club</li> <li>Schooner II Beach and Racquet Club</li> <li>Scottsdale Camelback Resort</li> <li>Seagull Beach Club</li> <li>Seawinds II Condominium</li> <li>Sedes Vacation Club</li> <li>Shawnee Depuy Village</li> <li>Sheraton Broadway Plantation</li> <li>Sheraton Desert Oasis</li> <li>Sheraton PGA Vacation Resort</li> <li>Sinai Stars Resort</li> <li>Snowater</li> <li>Sosua By The Sea</li> <li>Spirit Ridge Vineyard Resort and Spa</li> <li>St. James's Place</li> <li>St. Maarten Sea Palace</li> <li>Steamboat Landing</li> <li>Summerfield Condo Resort</li> <li>Sunscape Casa del Mar</li> <li>Surfside Inn</li> <li>Sweetwater Park City Lift Lodge</li> <li>Tamarack Beach Resort</li> <li>Tanglewood Resort</li> </ul>	<ul style="list-style-type: none"> <li>Tattershall Park Country Club</li> <li>Tenerife Sun Club</li> <li>Tierra Verde Island Resort</li> <li>Topsider I Resort</li> <li>Torch, The</li> <li>Torrenza Boutique Resorts</li> <li>Tortuga Beach Club</li> <li>Traders Inn Beach Club</li> <li>Tranquility Bay Antigua</li> <li>Tree Tops Resort of Gatlinburg</li> <li>Vail Run Resort</li> <li>Varsity Clubs of America – Tucson Chapter</li> <li>VCI at Land and Park House, Phuket</li> <li>Veranda Beach Club</li> <li>Victoria Court I &amp; II</li> <li>Villaggio Cala Mancipa</li> <li>Villaggio Torre Macauda</li> <li>Villas at Flying L, The</li> <li>Villas at Lantern Bay</li> <li>Villas El Rancho Exclusive Vacation Club</li> <li>Villas Mar-Bel</li> </ul>	<ul style="list-style-type: none"> <li>Villas of Loma Linda, The</li> <li>Villas Playa Samara</li> <li>Vistana's Beach Club</li> <li>Wapato Point</li> <li>Warner Springs Ranch</li> <li>Westgate River Ranch</li> <li>Westgate RVS at Orlando</li> <li>Westgate RVS at Orlando II</li> <li>Whaler Inn Beach Club</li> <li>Wharf, The</li> <li>White Sands Beach Club</li> <li>White Sands Country Club</li> <li>White Sands of Longboat</li> <li>Willow Valley Resort</li> <li>Windward Passage Resort</li> <li>Winners Circle Beach &amp; Tennis Resort</li> <li>Wintergreen at Midway</li> </ul>
<ul style="list-style-type: none"> <li>Residenza Torre Rinalda</li> <li>Resorts West Vacation Club</li> <li>– Cabana Club Condominium</li> <li>– Embarcadero Resort</li> <li>– Kala Point Village</li> <li>– Snowater</li> <li>– Surfside Inn</li> <li>– The Inn at Silver Creek</li> <li>Rhinefield House</li> <li>Ridge Resort, The</li> <li>Royal Dunes Resort</li> <li>Royal Golf Resort</li> <li>Saint Tropez Condominium</li> <li>San Clemente Inn</li> <li>San Francisco Suites</li> <li>San Luis Bay Inn</li> <li>Sandy Point Beach Resort</li> <li>Sandstone Creek Club</li> </ul>			

## PROGRAMS WITH 1 – 100 MEMBERS

<ul style="list-style-type: none"> <li>Ahlen Village</li> <li>Ähtäri Loma-Club</li> <li>Al Marsa Fouka Resort</li> <li>Alf Leila Wa Leila</li> <li>Alia Club</li> <li>Alii Kai II</li> <li>Aloha Villas Owners Club, Marbella</li> <li>AlpeAdria Club</li> <li>Amapolla Vacation Club</li> <li>Amarras</li> <li>Amathus Vacation Club at Aphrodite Hills</li> <li>Anchorage Resort &amp; Yacht Club</li> <li>Andorra II</li> <li>Angsana Resort and Spa</li> <li>Apartur en el Valle de las Leñas</li> <li>Apartur Mountain Club</li> <li>Apple Valley Resort</li> <li>Aquamarina Suites</li> <li>Arcobaleno</li> <li>Aspen Ridge</li> <li>Atalaya Towers</li> <li>Atlantic Beach Casino Resort</li> <li>Atlantic Beach Villas</li> <li>Atlantic Garden</li> <li>Atlantic Terrace</li> <li>Atlantica Princess</li> <li>Auramar Beach Club</li> <li>Avalon Grand Panama</li> <li>Azure Sky Resort</li> <li>Bali Gardenia Resort</li> <li>Bali Grande Resort Vacation Club</li> <li>Banana Palms Marina and Resort</li> <li>Barra Palace</li> <li>Barrncas del Este – Estacion Bosque</li> <li>Barrancas del Este – Estacion Mar</li> <li>Batam View Beach Resort</li> <li>Bayerischer Hof Residenz</li> <li>Beach Club at St. Augustine</li> <li>Beach Republic</li> <li>Beaches Sandy Bay</li> <li>Beach Condominiums, The</li> <li>Bear Lake Timeshare</li> <li>Beaver Village Condominiums</li> <li>Bedford Hotel</li> <li>Belize Legacy Beach Resort</li> <li>Belize Vacation Club</li> </ul>	<ul style="list-style-type: none"> <li>Bellaseria Tuscan Villas and Piazza</li> <li>Berkshire by the Sea</li> <li>Berkshire on the Ocean, The</li> <li>Bilmar Beach Resort Condominium</li> <li>Birdland Home and Holidays</li> <li>Blue Ridge Village</li> <li>Blue Water Acres</li> <li>Blue Water Resorts at Guanahani Village</li> <li>Boambee Bay Resort</li> <li>Boardwalk One</li> <li>Bonita Resort and Club</li> <li>Borgata Lodge at Quail Ridge Resort, The</li> <li>Brahma Blue Holistic Vacation Club</li> <li>Brandermill Resort &amp; Marina Timeshare</li> <li>Brant Point Courtyard</li> <li>Brantridge Park</li> <li>Bresmay Vacation Club</li> <li>Briarwood</li> <li>Brockway Springs Resort</li> <li>Bungalows Los Robles</li> <li>Burn Park Country Club</li> <li>Cabana Club Condominium</li> <li>Calabogie Highlands Vacation Villas</li> <li>Calinda Club Travelers Plus</li> <li>Calini Beach Club</li> <li>Catta Rossa</li> <li>Camelot by the Sea</li> <li>Canada House Beach Club</li> <li>Canary Islands Holiday Club</li> <li>Cancún Clipper Club</li> <li>Canyon Woods Grande International Vacation</li> <li>Cap Maison</li> <li>Cape Cod Holiday Estates</li> <li>Capri by the Sea</li> <li>Capri Waters Country Club</li> <li>Caribbean Beach Club</li> <li>Caribe Beach Resort</li> <li>Casa Velas Hotel Boutique</li> <li>Casa Vida</li> <li>Casablanca Vacation Suites (Villas)</li> <li>Casitas del Monte</li> <li>Castle View</li> <li>Causeway on the Gull</li> </ul>	<ul style="list-style-type: none"> <li>Cedar Lake Country Club</li> <li>Cedar Village</li> <li>Chalet High South</li> <li>Channel Island Shores</li> <li>Chapare Tropical Resort</li> <li>Chapel Stile at Langdale Estate</li> <li>Charm and More Club</li> <li>Charter Club Resort on Naples Bay</li> <li>Cherry Tree Condo Hotel</li> <li>Chetola Resort</li> <li>Christie Village</li> <li>Christmas Mountain Village</li> <li>Ciel et Logis Invest I</li> <li>Classic Cruisers</li> <li>Clermont</li> <li>Clermont Pinamar</li> <li>Club Ambassador</li> <li>Club Baccara</li> <li>Club Biodorf Bad Waltersdorf</li> <li>Club Buena Vista</li> <li>Club Calypso</li> <li>Club Casablanca</li> <li>Club del Bosque</li> <li>Club Donatello</li> <li>Club El Moro</li> <li>Club Elite Vacation at La Fenice Resort</li> <li>Club Flamingo</li> <li>Club Gran Dorado</li> <li>Club Imperial Park</li> <li>Club La Costa alpine Centre</li> <li>Club La Costa at Las Farolas</li> <li>Club Marina Tenerife Sur</li> <li>Club Mondial International</li> <li>Club Mykonos II</li> <li>Club Noosa Timeshare Resort</li> <li>Club Orlando</li> <li>Club Patara</li> <li>Club Playa Blanca</li> <li>Club Pazo de Rio</li> <li>Club Regency at Regency Towers</li> <li>Club Resort La Boheme</li> <li>Club Royal Regency</li> <li>Club Ruyakent</li> <li>Club Sol del Este</li> <li>Club Sol y Vista</li> <li>Club Sol Mar Del Plata</li> </ul>	<ul style="list-style-type: none"> <li>Club Sultán de Marbella</li> <li>Club Tahiti II</li> <li>Club Tahoe Resort</li> <li>Club Tiara</li> <li>Club Unicum</li> <li>Club Vacacional en la Torre Azúl Fontan</li> <li>Clube do Mónaco</li> <li>Clube Hotel do Algarve</li> <li>Coconut Bay Resort Condominium</li> <li>Coconut Mallory Marina and Resort</li> <li>Coconut Palms Beach Resort</li> <li>Colibri Beach Club – Porlamar</li> <li>Colinas del Faro</li> <li>Condominio da Lagoa</li> <li>Condominio Week Inn</li> <li>Condorama International at Monte Ste. Anne</li> <li>Corfu Resort</li> <li>Costa Blanca del Pacífico</li> <li>Costa Bonita Condominium and Beach Resort</li> <li>Costa del Sol Resort</li> <li>Costa Sul Beach Resort</li> <li>Cottages at South Seas Plantation</li> <li>Country Club Villas</li> <li>Country Vacation Villas (Amador)</li> <li>Crystal Suites Apartments</li> <li>Cypress Pointe Resort II</li> <li>Dana Inn Resort Pousada Tabatinga</li> <li>Dawn Beach Resort</li> <li>Days Suite Jumbo</li> <li>Daytona Beach Regency</li> <li>Deckshare Club at Anderton Marina</li> <li>Deerhurst Residences</li> <li>Deerhurst Resort</li> <li>Del Rio Country Club</li> <li>Divi St. Croix Beach &amp; Racquet Club</li> <li>Dolphin Beach Club</li> <li>Domaine Mont Sainte-Anne</li> <li>Donato House Hotel, The</li> <li>Don Pancho Beach Resort</li> <li>Dorisol Vacation Club International</li> <li>– Ancorar Suite and Beach Hotel</li> <li>– Fortaleza Grand Hotel</li> <li>– Florasol Hotel</li> <li>– Recife Grand Hotel</li> </ul>
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Double JJ Resort	HHoliday Vacation Club	Jan Theil Resort	Macdonald Elmers Court Country Club & Resort
Dream Plaza Vacation Club	Habitat 2000 Timeshare	Jean Lafitte House	Macdonald Elmers Court Country Club II
Dunes Village Resort	Hainan Resort	Jerusalem Gold Hotel	Macdonald Forest Hills Hotel and Resort
Durango Riverside Resort & R.V. Park	Hamilton Harbor Resort	Kaanapali Keys at Papakea Beach	Macdonald Leila Playa Resort
Eagle Crest	Harbor at Depoe Bay, The	Kahlua Beach Club	Maison Pierre Lafitte
Eaglewood at Ruttger's Sugar Lake Lodge	Harbor Club – a Villa Resort, The	Kala Point Village	Maisons Hollywood
Edgewater Resort	Harbourside II	Kalajoki	Malolo Lai Lai Lagoon Resort Club
Edificio Amarilis	Heffley Boutique Inn	Kamaole Beach Club	Mandalay Shores Resort
Edificio Rambla	Heidelberg Inn	Ke Nani Kai	Mansión del Río
Edinburgh Residence	Herod's Residence	Kermikkä	Marbella Suites
Eduard's Hotel Suites & Resort	Hideaway Sands Resort	Ketch Court Resort	Marblewood Village
El Bergantín Menorca Club	Hilton Craigendarroch Resort	Killington Grand Hotel	Mares Marmaris
El Kantaoui	Hipocampus Resort	Kimball, The	Marina Club
El Ocotail	Holiday Club Airisto	Kingsfisher Inn	Marina Palace
El Peñon Inn	Holiday Club Åre	Kingswear Park	Marina Shores Resort & Beach Club
El Pueblito Beach Resort	Holiday Club Calahonda	Kona Reef	Marlin Quay
Elterwater Hall at Langdale Estate	Holiday Club Kuusamo	Kulta-Katti	Marriott's Grand Residence, Tahoe
Emerald Grande at Harborwalk Village	Holiday Club Pyhä	Kuleana Club, The	Marriott's Grande Vista Resort
Equivest Bay Voyage Inn	Holiday Club Resorts	Kultakivi	Marriott's Ocean Pointe
Equivest Lightfoot Plantation	Holiday Club Ruka	Kyriad Torcy	Marriott's Villas at Doral
Equivest Sands	Hollywood Beach Hotel	L'Eyssina	Marsa Alam
Escapes! to Greens at Bella Vista	Hostería Bellavista Vacation Club	La Boca Casa	Marti Vacation Club at Marmaris
Escapes! to Hot Springs	Hostería del Lago	La Casa Cottage Resort	Marti Vacation Club at Tekirova
Escapes! to Tropical Breeze at Panama City Beach	Hotel Acapulco Malibu	La Ermita	Mary's Boon Beach Plantation
Estancia Apartur Mar del Plata	Hotel Ahlen Moghane	La Piana	Matecumbe Resort
Estrella del Mar	Hotel and Club de Playa el Parador	La Rosa dei Venti	Maui Sunset Timeshare Association
Exclusive Resorts International – Cape Suites	Hotel Apartemento Clube Ocean	La Sammana	Menam-Lifetime Resort
ExclusiVacations at Miami Beach	Hotel Belensate	La Victoria Casa de Campo	Mill Resort & Suites Vacation, The
F.D.R. Vacation Club	Hotel Breckenridge	Landmark Resort	Minerals Resort and Spa
Fairfield Pagosa Resort	Hotel Bristol	Laguna Shores	Mirror Lake/Tammarack
Fairway Lodge	Hotel Cristal Palace	Laguna Surf	Mission Bay Resort
Fairway Villas	Hotel Cristina Suites	Lake Marion Resort and Marina	Mittersill Alpine Resort
Fairways of the Mountain	Hotel des Congre	Lake Placid Club Lodges	Montana Vista
Fantasy Island Resort II	Hotel Fazenda & Golf Solar Das Andorinha	Lakelands, The	Monte Cairo
FantasyWorld Club Villas	Hotel Internacional Foz	Lakeside Villas, The	Mount Malarayat Golf & Country Club
Fern Hill Club	Hotel Jalim	Lakeside Villas	Mountain Club on Loon, The
Fishermen's Village at Jot's Resort	Hotel La Pedregosa	Lako Mai Resort	Mountain Meadows Resort
47 Park Street by Marriott Grande Residence Club	Hotel Las Naciones Suites & Tower	Landing at Seven Coves, The	Na Pali Kauai Club Alii Kai II
Fountain Vacation Ownership – Fountain City Suites	Hotel Marbella Acapulco	Landmark Holiday Beach Resort	Naema Heights
– Fountain Hotel	Hotel Palace Club	Langdale Lodges	Native Sun, The
– Fountain Resort	Hotel Punta Centinela Inn	Laurel Point Condominiums	Navigator Beach Club
– Fountain Suites	Hotel Residence Fontanelle	Lawai Beach Resort – Alii Building	Nautical Watch Beach Resort
Four Seasons Pacifica	Hotel Residencia Atenea Suites	Lawai Beach Resort – Banyan Building	Nepean Country Club
Four Seasons Racquet and Country Club	Hotel São Sebastião Da Praia	Lawai Beach Resort – Coral Building	Night Heron Loft
Four Winds Beach Resort	Hotel Serena Beach Club	Lawai Beach Resort – Lika Lani Building	Nob Hill Inn
Fox Run Resort	Hotel Spanberger	Le Green Andaluz	Northslope at Shawnee Mountain
Foxfire Resort and Golf	Hotel St. Moritz	Le Soleil Vacation Ownership Club	Norwood Resorts Fractional Ownership
Foxhunt Townhouses	Hotel Terraza del Pacífico	Leader Club San Cipriano	Nostos Village
Galaxy Aparthotel	Hôtel Vacances Tremblant	Lehigh Resort Club	Ocean Beach Club
Galleon Resort, The	Hotel Villas la Audiencia	Lepokatti	Ocean Club
Gama Club	Hotelcal-Hotel Apartamentos Calypso I	Les Chalets	Ocean Club at Jamaica Inn, The
Garden Hotel, The	Huerta Grande Village Resort	Les Marines de Gassin	Ocean Isle Beach Club
Garland Resort	Huka Village Estate	Les Terrasses de Saint Honorat	Ocean Park Vacation Club
Gaslamp Plaza Suites	Hurricane House	Lifetime in Hawaii	Ocean View
Georgian Inn Beach Club	Hyatt Pinon Pointe	Lifetime Vacation Club at Miraflores II	Ocean View at Island Club
Girolamar Beach Club	I Lodge de la Maree	Lighthouse Resort and Club	Ocean Villas
Golden 5 Resort	Iguassu Resort	Lion Resorts – Club Akamas	Ocean Watch Beach Club
Golden Shores Holiday Club	Ikaalinen Spa Holiday Village	Little Gull on Longboat Key	Ocho Cascadas
Golden Tulip Club Dead Sea	Ile des Pêcheurs	Liehr House Vacation Club	Old Bahama Bay Resort at Ginn Sur Mer
Golf Beach Hotel Tabarka	Ilha do Breu Eco Resort	Lodge Alley Inn, The	Old Killarney Village
Golf Hotel Punta Ala	Indian Peaks	Lodge at Lake Tahoe, The	Olympic Village Inn, The
Gomera Palms Beach Club	Inn at Los Abridados, The	Lodge Kura Hurlanda and Beach Club	Open Sud Aparthotel
Gran Hotel Huatulco	Inn at Pelican Bay	Lodges at Cresthaven	Oreti Village
Grand Hotel Misurina	Inn at Silver Lakes, The	Lodges at Fox Hollow Lake, The	Orofino by Straight Creek
Grand Lodges	Inn at SilverCreek, The	LomaSirmakka	Orsa Maggiore
Great Bay Beach Hotel & Casino	Inn at Tamarisk	Long Bay Beach Resort and Villas	Outer Banks Beach Club
Greens at Copper Creek, The	Inverness at Walden – Phase II	Los Delfines Golf & Country Club	Outer Banks Beach Club II
Gulf Pointe Intervals, Inc.	Irotama XXI	Los Indios	Outrigger Beach Club
Gulf Stream Beach Resort	Isla Dorado	Los Pájaros	Owners Resorts & Exchange at St. George – Villas at Southgate
	Island Gulf Resort	Los Tajibos Vacation Club	
	Island Links Resort	Macdonald Dalfaber Resort Chalets	
	Jackson Hole Racquet Club Resort		
	Jackson Hole Towncenter		

Pacific Grove Plaza	Résidence Acropolis	Seawatch Inn at the Landing	Tropical Trades at Paki Maui
Pacific Palms	Résidence Antigone Montpellier	Sedes Club Calador	Tubana Apartments
Pafiana Heights	Residence Baiazurra	Sentinels at Kirkwood Private	Twin Oaks Villas
Pahio at Ka 'Eo Kai	Résidence Club South Shore	Shanty Creek Shuss Mountain Resort	Tyrana Beach Resort
Pailahue	Résidence de la Tour	Shared Ownership Interest at Kingswood Village	Ute Hotel
Paki Maui Beach Villas	Résidence des Pins Bleus	Shared Ownership Interest at Tahoe	Vacaciones Aca-Azul A.C.
Palace View Resort	Résidence du Chateau d'Acqueville	Shearwater Resort	Vacation Villas at FantasyWorld
Palm Bay Resort	Résidence le Christiania	Shell Island Beach Club	Valley Inn, The
Palm Beach Resort & Beach Club	Résidence le Diamant	Shenandoah Crossing Resort	Vanderbilt Beach & Harbour Club
Palm Springs Villas	Résidence le Grand Bois	Sheraton Vistana Villages	Ventura
Palma Real Hotel and Villas	Résidence le Ruitor	Sheraton Private Pool Villas	Veranda Vacation Club, The
Pan Holiday Village	Résidence le Silveralp	Sheraton Island Villas	Via Roma Beach Resort
Panama City Resort and Club	Résidence le Trianon	Shirat Hayam Ashkelon	Vila Baia
Papakea Beach Resort	Résidence les Cottages Du Golf	Shores at Lake Travis, The	Villa del Arco
Paraíso Country Club	Résidence les Félibriges	Signum Resort Miami Beach	Villa del Palmar Cancún
Parc-Ferienwohnungen	Résidence les Rivages de Rochelongue	Smoketree Lodge	Luxury Beach Resort & Spa
Park Plaza at Beaver Creek	Résidence Marsa Sicla	Snow Lake Lodge	Villa del Sol
Park Station II	Résidence Mer et Golf	Snowater Association	Villa La Paloma
Peaceful Bay Resort and Club	Résidence Mer et Golf Le Boucanier	Sofitel Tikal Resort	Villa L'Auberge
Pearl of the Dead Sea, The	Résidence Pamplemousse II	Solar Dos Nobres Resort	Villa Pacifico
Pebble Beach Village	Résidence Pamplemousse-Chatellaillon	Sole-Bello Resort	Villa Rubinacci
Pebbles Vacation Club	Résidence Sokoburu	Somni Aragones	Village at Carefree Conference Resort, The
Pend Oreille Shores Resort	Résidence Van Gogh	Somni Aranes	Village at Palmetto Dunes
Penina Golf Apartments	Residencial Diana	South Seas Club at South Seas Plantation	Village by the Gulf
Peppertree By The Sea	Residencial Pousada do Serrano	South Shore Club	Village La Corte
Peppertree Maggie Valley	Residencial Sajo	South Shore Lake Resort	Village Maritalia
Peregine Townhomes at San Luis Pass	Residencial Vale Dourado	Southern California Beach Club	Villaggio la Guaria Morada Beach Resort
Petit Crest Villas	Residenza Castelvivo	Spinnaker Penthouse 902	Villaggio Piccolo Mondo
Phoenix, The	Residenza Olivieri	Spirit Ridge Vineyard Resort and Spa	Villagio Italia
Phoenix Timeshare Resort	Residenza Valle Fiorita	St. Christopher Club	Villas at Poco Diablo
PierGiorgio VIP Vacation Club	Résidôtel Le Stanley	Stanzamare Coral Comfort	Villas at Polo Park
Pinares de Punta del Este Vacation Club	Resort at Seaside, The	Stella del Sud	Villas Bavaro Club
Pinares del Cerro Club Vacacional	Resort at Whale Pointe Condominium, The	Strand Lakeside Resort	Villas Cabo Alto
Pinares del Mar	Resort on Cocoa Beach, The	Sugarwood at Ruttger's Sugar Lake Lodge	Villas La Hacienda
Pine Acres Lodge	Resort Sixty-Six	Suites at Hershey	Villas Mediterraneas
Pine Ridge Inn Vacation Club	Riosol Club	Summerfield Condo Resort	Vista Mirage
Pines at Island Park, The	River Club, The	Sun Bay Beach Club	Villas of Gold Mountain
Pinnacle, The	Rockridge Townhomes	Sun Bay Lodge	Villas of Sedona
Pirates Cove Resort	Royal Oasis Club at Benal Beach	Sun Dunes Villas	Vistana's Beach Club
Pirates Cove Villas – Buccaneer Lodge	Royal Savoy Resort II	Sunborn Vacation Club	Voyager Resort
Pire Hue	Royal Sunset Heights	Sunburst Condominiums	Waikiki Banyan, The
A Place at the Beach	Rukan Lomakylä 1	Sunchase Beachfront Condominiums	Walton Hall
Plantation Bay Villas	Saariselkä	Sunquest Gardens	Waterwood Townhouses
Plantation Beach Club at South Seas Plantation	Salou Aquamarina	Sunrise Bay Resort and Club	Wave Crest
Plantation Club Villas	Samoset Resort	Sunrise Beach Club	Wellington, The
Plantation House	San Diego Country Estates	Sunrise Ridge Resort	Westerwalder Hof – CSC Ferienclub
Playa del Sol Los Cabos	San Marcos Apartamentos	Sunset Shores Resort	Westgate Maingate
Players Club of Hilton Head Island	Sanctuary Resort & Spa, The	Suntide Island Beach Club	Westgate Tunica Resort Mississippi
Point to Point Destinations	Sand Pebble Resort	Surf Club of Marco Island, The	Westin Ka'anapali Ocean Resort Villas
Points North Resort	Sandcastle Cove	Surfers Royale	Westin Kierland Villas
Pono Kai-Pacific Fantasy Timesharing	Sandcastle Village II	Surfrider Beach Club	Westin Mission Hills Resort Villas
Port d'Albret Le Boucanier	Sandpebble Beach Club	Sutherland Crossing Resort	Westin St. John Resort and Villas
Port Trinitie	Sands Vacation Resort	Surrey Vacation Resort, The	Whaler, The
Port Villas	Sandy Shores III	Swan Mountain Resort	Whispering Pines Villas
Potrero de los Funes	Sandy Square	Sweetwater at Lake Conroe	Whitbarrow Country Club
Powder Ridge Village Resort	Sanibel Beach Club I	Taba Paradise	Whitbarrow Hall Owners Club
Powell Place	Sanibel Beach Club II	Tahoe Summit Village	White Cliffs Beach Resort
Predator Ridge – Falcon Point Cottages	Sanibel Cottages	Tahoe Vacation Condominiums	Wildwood Shores
President Hotel	Sapphire Beach Club and Resort	Tamarack Lodge	Williamsburg Plantation
Pueblo Laguna Vera	Scottsdale Resort Club	Tennis Ranch Pinamar Resort	Windemere, The
Pueblo Vista Alegre	Sea Club V of Marco Island	Terrazas al Mar	Windjammer at Nags Head, The
Puerto Bunge Apart Hotel	Sea Gardens Beach & Tennis Resort	Thurnham Vacation Club at Thurnham Hall	Windjammer Resort and Beach Club
Puerto Horizonte Apart Hotel	Sea Horse Inn	Tiki Village International Resort	Windsurf II
Pyhaniemi	Sea Mystique	Tilcara Sierras	Windy Shores II
Pyramid Resort Vacation Club	Sea Oats Beach Club	Timber Ridge	Wolf Creek Village II
Rachaburi Country Club	Sea Ranch II	Timberline Lodges (Juniper)	Woods and Legends at Copper Creek, The
Racquet Club Villas	Sea Shells	Thunder Mountain Condominiums	Xurupita Holiday Resort
Reef at Marathon, The	Sedona Springs Resort	Treasure Shores Beach Club	Ylläs 1
Reemyvera Resort & Marina	Seaside Beach Club	Treehouse Village at Lake Forest	Ylläs 2
Renlyle Strand	Seasons at Whistler, The	Triton Suites and Beach	
	Seaview Condominiums	Tropical Sands Resort	
	Seawatch		

## TELEPHONE AND MAIL DIRECTORY

LOCATION	CONTACT INFORMATION	MEMBER-SERVICES CENTER HOURS OF OPERATION	LANGUAGES SPOKEN
<b>U.S.A.</b> <b>WORLD HEADQUARTERS</b> Post Office Box 431920 6262 Sunset Drive Miami, Florida 33243-1920 IntervalWorld.com	<b>("800," "888," AND "877" NUMBERS ARE TOLL-FREE FROM U.S., CANADA, P.R., U.S.V.I.)</b>	<b>(U.S. EASTERN TIME)</b>	
<b>EXCHANGE SERVICES</b> Post Office Box 432170 Miami, Florida 33243-2170	<b>DEPOSITS AND REQUESTS</b> IntervalWorld.com 800-828-8200 • 305-666-1884 305-665-1918 (Spanish) Fax 305-667-5321  <b>CHECK-IN ASSISTANCE</b> 877-700-1154 • 305-668-3411 • Fax 305-667-5321  <b>TELECOMMUNICATIONS DEVICE FOR THE DEAF</b> 800-822-6522	Monday through Friday 9:00 a.m. to 11:00 p.m. Saturday, Sunday, and holidays 10:00 a.m. to 8:00 p.m.	English Spanish French
<b>MEMBERSHIP SERVICES</b> Post Office Box 430960 Miami, Florida 33243-0960	<b>INFORMATION</b> 800-843-8843 • 305-666-1884 • Fax 305-667-5321	Monday through Friday 9:00 a.m. to 11:00 p.m. Saturday, Sunday, and holidays 10:00 a.m. to 8:00 p.m.	English Spanish French
<b>MEMBERSHIP PROCESSING</b> Post Office Box 432170 Miami, Florida 33243-2170	<b>MEMBERSHIP RENEWAL/ADDRESS CHANGE</b> IntervalWorld.com 800-843-8843 • 305-666-1884 • Fax 305-667-5321		
<b>CUSTOMER SUPPORT</b> For IntervalWorld.com	888-784-3447 • 305-668-3414 <i>CustomerService@intervalintl.com</i>	Monday through Friday 9:00 a.m. to 11:00 p.m. Saturday, Sunday, and holidays 10:00 a.m. to 9:00 p.m.	English Spanish
<b>CUSTOMER RELATIONS/ MEMBER CORRESPONDENCE</b> Post Office Box 430960 Miami, Florida 33243-0960	<i>CustomerService@intervalintl.com</i>		
<b>INTERVAL TRAVEL</b> Post Office Box 431920 Miami, Florida 33243-1920	<b>CRUISES</b> IntervalWorld.com 800-622-1540 • 305-668-3496 • Fax 305-598-4093  <b>AIRLINE, HOTEL, CAR RENTAL</b> IntervalWorld.com  <b>GETAWAYS RESERVATIONS</b> IntervalWorld.com 800-722-1861 • 305-668-3462  <b>GETAWAYS AVAILABILITIES</b> IntervalWorld.com 800-722-1860  <b>TELECOMMUNICATIONS DEVICE FOR THE DEAF</b> 800-822-6522	Monday through Friday 9:00 a.m. to 11:00 p.m. Saturday, Sunday, and holidays 10:00 a.m. to 8:00 p.m.	English French Italian Spanish
		7 days a week, 24 hours a day	
		Monday through Friday 9:00 a.m. to 5:00 p.m.	
<b>U.K.</b> <b>INTERVAL INTERNATIONAL LIMITED</b> Coombe Hill House Beverley Way London SW20 0AR IntervalWorld.com  <b>MEMBER SERVICES:</b> 44 844 701 4444 • Fax 44 844 701 7023 <b>(Hours are indicated in local time.)</b> Monday through Friday 9:00 a.m. to 8:00 p.m. Saturday 9:00 a.m. to 5:00 p.m.  <b>CUSTOMER RELATIONS DEPARTMENT:</b> 44 844 701 7123 Monday through Friday 9:00 a.m. to 5:30 p.m.  <b>LANGUAGES SPOKEN:</b> English, Arabic, Dutch, French, Greek, Hebrew	<b>SINGAPORE</b> <b>INTERVAL INTERNATIONAL SINGAPORE (PTE) LTD.</b> 1 Finlayson Green #19-00 Singapore 049246 IntervalWorld.com  <b>MEMBER SERVICES:</b> 65 6318 2500 • Fax 65 6318 2511 <b>(Hours are indicated in local time.)</b> Monday through Friday 9:00 a.m. to 6:00 p.m.  <b>LANGUAGES SPOKEN:</b> English, Bahasa Indonesia, Cantonese, Japanese, Malay, Mandarin, Tagalog, Thai	<b>MEXICO</b> <b>INTERCAMBIOS INTERNACIONALES DE VACACIONES S.A. DE C.V.</b> Edificio Torre Caballito Paseo de la Reforma No. 10, Piso 9 Colonia Centro, Delegación Cuauhtémoc 06300 Mexico, D.F. IntervalWorld.com  <b>MEMBER SERVICES:</b> 52 55 5627 7300 • Fax 52 55 5627 7310 <b>(Hours are indicated in local time.)</b> Monday through Friday 9:00 a.m. to 7:00 p.m.  <b>LANGUAGES SPOKEN:</b> English, Spanish	

## Report of Independent Certified Public Accountants

The Board of Directors  
Interval International, Inc.

We have examined the accompanying Report of Key Operating Exchange Statistics (the Report) of Interval International, Inc., and its subsidiary companies and a representative office (the Company), as of and for the year ended December 31, 2009. The Company's management is responsible for the Report. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining on a test basis, evidence supporting the Report and performing such other procedures as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the Report referred to above presents, in all material respects, the information set forth therein as of and for the year ended December 31, 2009, in accordance with Sections 721.18(1)(q) and (r) of the Florida Vacation Plan and Timesharing Act.

*Ernst & Young LLP*

April 12, 2010

## INTERVAL INTERNATIONAL, INC. REPORT OF KEY OPERATING EXCHANGE STATISTICS AS OF AND FOR THE YEAR ENDED DECEMBER 31, 2009

Number of accommodations and facilities or properties that have current affiliation agreements and are eligible to participate with Interval International as of December 31, 2009	1,958
Number of accommodations and facilities or properties which are no longer under a formal affiliation agreement with Interval International, but Interval International is currently providing exchange services directly to active individual purchasers or owners as of December 31, 2009	276
Number of accommodations and facilities or properties which are available, pursuant to a written contract, to Interval International members for exchanges as of December 31, 2009	124
Number of accommodations and facilities or properties that have current affiliation agreements but are not eligible to participate with Interval International as of December 31, 2009	<u>216</u>
	<u><b>2,574</b></u>
Number of purchasers or owners, for which a fee has been paid, currently enrolled and eligible to participate as members in the Interval International exchange system as of December 31, 2009	<b>1,836,873</b>
Number of weeks for which Interval International has an obligation to provide an exchange opportunity in subsequent years to an owner who relinquished a week during the current year	<b>490,556</b>
	<b>Exchanges</b>
	<b>Number</b>
	<b>Percent</b>
Regular exchanges properly applied for and subsequently confirmed in 2009 by Interval International	887,058
Special exchanges properly applied for and subsequently confirmed in 2009 by Interval International	<u>143,913</u>
Total exchanges properly applied for and subsequently confirmed in 2009 by Interval International	<u><u>1,030,971</u></u>
	97.5%

**THE ABOVE LISTED PERCENTAGE OF CONFIRMED EXCHANGES IN 2009 IS A SUMMARY OF THE EXCHANGE REQUESTS ENTERED WITH THE EXCHANGE PROGRAM AND DOES NOT INDICATE A PURCHASER'S PROBABILITY OF BEING CONFIRMED TO ANY SPECIFIC CHOICE OR RANGE OF CHOICES, SINCE AVAILABILITY AT INDIVIDUAL LOCATIONS MAY VARY.**

*See notes to Report of Key Operating Exchange Statistics.*

## INTERVAL INTERNATIONAL, INC. NOTES TO REPORT OF KEY OPERATING EXCHANGE STATISTICS AS OF AND FOR THE YEAR ENDED DECEMBER 31, 2009

### 1. Basis of Presentation

The accompanying Report of Key Operating Exchange Statistics includes the combined exchange statistics of Interval International, Inc. including, operations performed by subsidiary companies and a representative office (collectively, Interval International or II) after eliminating intercompany activities for the year ended December 31, 2009. The statistics reflected in the Report of Key Operating Exchange Statistics have been computed and are being disclosed in accordance with Sections 721.18(1)(q) and (r) of the Florida Vacation Plan and Timesharing Act.

### 2. Description of Company

Interval International is a service company offering an exchange service for owners of resort timeshare or other vacation ownership interests. Resorts affiliated with II are located throughout the world. II's world headquarters are located in South Miami, Florida.

### 3. Resort Affiliations

Resorts have contracted with II to provide exchange services for purchasers of their timeshare or other vacation ownership interests. Included in the current number of resorts in the category of accommodations and facilities or properties that have current affiliation agreements but are not eligible to participate with Interval International as of December 31, 2009, are those resorts which were conditionally accepted as member resorts of the Interval International exchange program or were in a suspended status as of December 31, 2009.

### 4. Individual Memberships

Individual memberships and participation in II's exchange program are dependent upon his or her resort's continued affiliation with II. An individual's exchange privileges may be suspended during periods when the resort is not in good standing with II. Upon the payment of an annual membership fee, individual members generally receive various publications and the opportunity to exchange the use and occupancy of their vacation interest for another, as well as other benefits offered by II. Individual members are considered as members for 120 days after their scheduled expiration date, although II may discontinue providing services to individuals who own vacation interests at resorts participating in a corporate membership program where the resort's developer fails to timely remit the applicable corporate membership fee. Also, where an individual owns a vacation interest, both at a resort participating in a corporate membership program, and a resort at which owners participate as individual members, generally, such individual must maintain separate and distinct memberships and, for the purpose of determining the number of owners participating as members, will be counted as two members.

### 5. Deposits

Generally, members may choose to deposit weeks available for occupancy into the II exchange program up to one year in advance of the occupancy date, unless the resort at which they own has elected to participate in the Early Deposit/Request Program. When a week is deposited into the II exchange program, the right to use said week is immediately relinquished by the member. Members depositing a vacation week may submit an exchange request and travel at any time after II's receipt of the deposit up until 24 months after the commencement date of the deposited week, unless the member has extended the redemption window applicable to a particular deposit through the payment of a fee designated by II.

During the year ended December 31, 2009, members had deposited 490,556 weeks with the II exchange program for which they have the right to an exchange opportunity. II's obligation to accept exchange requests against the deposited weeks ends on varying dates through 2013. II has no obligation to provide a member depositing a vacation week with exchange accommodations in a subsequent year if: (a) the member fails to submit a valid exchange request and travel within his or her available request and travel window or a permitted extension thereof; (b) the requested accommodations are not available and any alternative accommodations offered by II are not accepted by the member; (c) the member cancels an issued Confirmation less than seven days prior to occupancy of the Host Accommodations or otherwise fails to comply with the requirements of II's Exchange Cancellation Policy; or (d) II's use of the deposited week is lost or impaired due to circumstances beyond II's control.

### 6. Exchange Requests and Confirmations

Exchange requests must be properly submitted in accordance with II's Terms and Conditions of Individual Membership and Exchange in order to be included in this report.

Exchanges are arranged on a space available basis. II does not guarantee fulfillment of a specific request.

In order for an exchange request to be considered properly applied for, and, therefore, included in the key operating exchange statistics, the member must either fully complete a written or electronic exchange request in accordance with the instructions furnished by II and in accordance with the Terms and Conditions of Individual Membership and Exchange, or the member must provide the same information that is requested to the II vacation advisor at the time he or she places a request by telephone. If the exchange request is made electronically or through a telephone request, it may be confirmed instantly if the accommodations requested by the member are available. Otherwise, if the request is for accommodations more than 59 days in advance of the week requested, it will be entered into the computer as a properly applied for exchange request. The key operating exchange statistics made available in this report also include requests made and confirmations issued pursuant to the Special Exchange Services outlined in II's Terms and Conditions of Individual Membership and Exchange (i.e., II's Getaway and Interval Options Programs), as well as requests made and confirmations issued pursuant to exchange incentives periodically made available to select individual members. Confirmations reported also include properly submitted exchange requests against which exchange alternatives were offered and accepted by members.

If the member fails to complete all the required information at the time of placing a request (such as, fails to request the minimum number of resorts or time periods, requests a larger unit than the standard traveling party associated with his or her home unit, fails to remit the necessary exchange and/or membership fees, requests to travel outside the required time periods, etc.), such request is not included in the key operating exchange statistics because the member failed to adhere to the prescribed exchange procedures. Also, excluded from the statistics are any exchange requests made by a member, whom, based on information provided to II by the home resort, is either no longer an owner at such resort or is not currently in good standing with such resort due to nonpayment of maintenance fee assessments or similar charges.

[illegible]

THIS PAGE IS TO BE COMPLETED BY PURCHASER

Name

Address

City State Zip

Name of resort

I hereby acknowledge receipt of this publication containing required disclosure information about Interval International's Exchange Program.

Signature Date

Signature Date



**IntervalWorld.com**

**MANAGEMENT AGREEMENT  
FOR  
OCEAN RESORT VILLAS VACATION OWNERSHIP PLAN**

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of this 1st day of July, 2002, by and between OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, a Hawaii non-profit corporation, whose address is Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761, and whose fax number is (407) 239-3131 ("Association"), and SVO HAWAII MANAGEMENT, INC., a Hawaii corporation, whose address is 10 Hoohui Street, Suite 307, Lahaina, Maui, Hawaii 96761, and whose fax number is (407) 239-3131 ("Manager").

**RECITALS**

A. SVO Pacific, Inc., a Florida corporation (the "Developer") is the developer of the Ocean Resort Villas condominium (the "Condominium") located at Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761. The Condominium was established as a condominium property regime by that certain (i) Declaration of Condominium Property Regime of Ocean Resort Villas, dated August 24, 2001, and recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on August 31, 2001, as Document No. 2734238 (the "Condominium Declaration"), (ii) Bylaws of the Ocean Resort Villas Apartment Owners Association dated August 24, 2001, and recorded as aforesaid on August 31, 2001, as Land Court Document No. 2734239 (the "Condominium Bylaws"), and (iii) Condominium Map No. 1431 filed in said Office of the Assistant Registrar of the Land Court (the "Condominium Map").

B. The Developer has submitted certain Apartments in the Condominium to that certain Ocean Resort Villas Vacation Ownership Plan Declaration of Covenants, Conditions, Easements and Restrictions, dated September 14, 2001, and recorded as aforesaid on September 18, 2001, as Land Court Document No. 2737947 (the "Declaration"). Capitalized terms not expressly defined in this Agreement shall have the meaning given to them in the Declaration.

C. The Declaration establishes the Ocean Resort Villas Vacation Ownership Plan (the "Plan"). The Developer intends to offer for sale and sell "Vacation Ownership Interests" in the Plan as that term is defined in the Declaration.

D. As required by Chapter 514E, Hawaii Revised Statutes (the "Act"), the Developer established the Association to act as the association of Owners of Vacation Ownership Interests.

E. Under the Vacation Plan Documents, the Association has the authority and the obligation to engage and maintain a managing agent or "Plan Manager" for the Plan and to delegate to the Plan Manager the duties and obligations of the Association.

F. The Association desires to engage the Manager to be the Plan Manager of the Plan, and the Manager desires to accept such engagement, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**AGREEMENTS**

1. Engagement of Manager. Association, on its own behalf and on behalf of all Owners of Vacation Ownership Interests, hereby engages Manager as an independent contractor to perform the services described herein, and Manager hereby accepts such engagement and agrees to perform such services on the terms and conditions herein set forth. Manager agrees at all times during the term hereof to act in good faith and to exercise business judgment in the

performance of its duties and responsibilities. Association, on its own behalf and on behalf of all of the Owners, enters into and agrees to be bound by this Agreement and delegates to Manager, to the exclusion of all persons and entities, all the powers and duties of Association (except those that, by law or under the Vacation Plan Documents, cannot be delegated). This delegation in no way relieves Association of any fiduciary obligations owed by it to the Owners under applicable law. Manager accepts such delegation and agrees to manage and operate the Vacation Ownership Plan and manage, operate, maintain and repair the Vacation Property in accordance with the provisions of the Vacation Plan Documents and such other documents pertaining to the creation, operation, or management of the Vacation Property, the Vacation Ownership Plan or the Association (collectively the "Documents").

2. Term.

a. Initial Term. The initial term of this Agreement shall be for a period of five (5) years commencing on the Starting Date ("Initial Term").

b. Renewal Terms. This Agreement automatically shall be renewed for successive three (3) year periods (a "Renewal Term") upon the expiration of the Initial Term and each successive Renewal Term unless a written notice canceling this Agreement is sent by either party at least ninety (90) days before the next renewal date. The Association cannot give this notice unless a Majority of the Owners vote to do so at an Annual or Special Meeting of the Association held within one year before the renewal date. The Developer must abstain from the vote and the Developer's votes will not be considered when determining whether a Majority of the Owners have voted to give the notice. The Board cannot make a decision to cancel or not renew this Agreement pursuant to this Subparagraph 2.b. It has no power or authority to do so in its own right or on behalf of the Association. Neither the Board nor any officer, director, employee or agent of the Association can send a written notice canceling this Agreement unless and until after a Majority of Owners vote to cancel this Agreement at an Annual or Special Meeting of the Association. Any notice sent before such time will be void. The Initial Term as extended by one or more renewal terms is hereinafter referred to as the "Term".

c. Termination. Notwithstanding anything to the contrary herein:

(1) Association may terminate this Agreement upon ninety (90) days' advance written notice if termination is permitted under Paragraph 25 hereof.

(2) Manager may terminate this Agreement upon ninety (90) days' advance written notice if: (i) the Manager is no longer affiliated with the Brand Owner; (ii) termination is permitted under Paragraph 24 herein; or (iii) a court declares any portion of this Agreement invalid or unenforceable, which in the sole discretion of Manager makes the performance of the balance of this Agreement impractical.

(3) This Agreement shall automatically terminate upon: (i) termination of the Vacation Ownership Plan as provided in the Documents; or (ii) subject to the provisions of Paragraph 3.e., termination of the Licensing Arrangement.

3. Manager's Responsibilities. Manager shall be responsible for the efficient and satisfactory management, operation, maintenance and repair of the Vacation Property and operation of the Vacation Ownership Plan. Association acknowledges and agrees that pursuant to this Agreement and in consideration of the Management Fee described in Paragraph 10, Manager, in its sole discretion, shall perform itself, hire personnel to perform, or procure providers to perform all services necessary for the management, operation, and repair of the Vacation Property and operation of the Vacation Ownership Plan in a reasonable and professional manner, and shall supervise the performance of all services provided to, or on behalf of, Association pursuant to this Agreement. Notwithstanding any provision in this Agreement to the contrary, Manager shall perform all services required of it under this Agreement at no cost whatsoever to Manager, but solely at the cost and expense of the Association. Manager does not undertake to pay Plan Expenses, taxes, or any Association obligation(s) from its own funds and shall only be required to perform its services and make disbursements to the extent that, and so long as, payment received from Assessments or other revenue, if any, of the Association are sufficient to pay the costs and expenses of such services and the amounts of such disbursements.

a. Employees. Manager shall hire, pay, and supervise such employees as the Manager, in its sole discretion, deems necessary to properly, adequately, safely, and economically perform the duties and responsibilities of Manager set forth in this Agreement; and Manager shall hire, pay, and supervise employees to provide for services not obtained by a separate provider pursuant to Paragraph 3.b. Any persons actually hired by Manager shall be the employees of Manager rather than of Association, unless Manager specifically hires the employees to be employees of Association. Manager, in its absolute discretion, may determine to discharge and cause to be discharged any employee so hired. All matters pertaining to the employment, interviewing, and screening process, supervision, compensation, promotion, and discharge of employees of Manager and Association are the responsibility of Manager. Manager hereby acknowledges that Manager is responsible for the payment of any and all wages, payroll taxes, "fringe benefits" or other compensation with respect to all such persons employed with respect to the duties of Manager hereunder, except to the extent such employee has been specifically hired by Association. Association, however, shall reimburse Manager for all such amounts as provided in Section 7 hereof. As used herein, the term "fringe benefits" shall, without limitation, include the cost of pension or profit sharing plans, workers' compensation benefits, group life and accident and health insurance or equivalent benefits and similar benefits available to employees by virtue of their employment by Manager.

(1) Protection of Manager's Employees. The Association covenants and agrees that during the term of this Agreement and for twelve (12) months thereafter, it shall not, directly or indirectly, for its own account or either as an agent, servant or employee, or as a shareholder, director or officer of any corporation, or member of any firm, engage, hire, employ or solicit the employment of any employees of the Manager unless the Manager consents thereto in writing. The Association agrees that the time limitations contained in this paragraph are reasonable and the Association's promises in this Subparagraph 3.a.(1) are necessary to protect the business and good will of the Manager. It is further agreed, between the parties hereto, that a breach of any of the covenants contained in this Subparagraph will result in irreparable and continuing damage to the Manager for which money damages cannot provide adequate relief. Accordingly, in the event of a violation of this Subparagraph 3.a.(1), Manager will, in addition to any other right or remedy available at law or in equity, be entitled to a temporary, preliminary and/or permanent injunction in order to enforce this paragraph.

b. Procurement of Separate Providers of Services.

(1) Manager may procure necessary services for the Plan from third parties or may provide such services itself. All services procured by Manager, regardless of source, shall be provided on a fee per service basis; provided, however, those services that cannot practicably be provided on a fee per service basis, as determined by Manager in its sole discretion, will be provided on a cost basis.

In procuring providers of specific services from any source pursuant to its authority under this Agreement, Manager shall enter into service agreements on behalf of Association based on the following factors:

- (a) the quality and timeliness of the work obtainable for the desired level of service, and
- (b) a reasonable practicable price for the service obtainable in the local market.

Manager shall use its best judgment in evaluating these factors with respect to each proposed service; provided, however, nothing in this Agreement shall require Manager to obtain the lowest price available as to any service, material, or purchase, or in instances in which bids are obtained, to accept the lowest bid.

Manager has the authority to enter into and cancel any service agreements contemplated pursuant to this Subparagraph, in either Association's or Manager's name, as determined by Manager in its sole discretion. Furthermore, Association shall execute on its own behalf such service agreements as are deemed necessary by Manager from time to time to effectuate the obligations set forth in this Agreement. The fees or costs arising out of any agreements entered into by Manager pursuant to this Subparagraph shall be a Plan Expense. Association agrees to

assume and be responsible for all obligations under any service agreements entered into by Manager pursuant to the terms of this Agreement.

(2) Notwithstanding the powers of Manager as set forth in Subparagraph (1) of this Paragraph 3.b., the Manager shall not enter into a contract with a third person or entity whereby such person or entity will furnish goods or services to the Association or for the Vacation Property for a term longer than one (1) year without the vote or written consent of a Majority of the Owners (not counting the Developer's votes and Vacation Ownership Interests), except for:

(a) A contract with a public utility company at the regulated rates charged for the materials or services under the jurisdiction of the Public Utilities Commission of the State of Hawaii; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(b) Prepaid casualty and/or liability insurance policies not to exceed three (3) year's duration; provided, however, that the policy permits short rate cancellation by the insured; and

(c) The following types of contracts provided that the contract does not have a term of more than five years and provided that the lessor or provider is not an entity in which the Developer or the Manager has a direct or indirect interest of ten percent (10%) or more:

- (i) A lease of furnishings for the Vacation Units;
- (ii) A lease of laundry room fixtures and equipment not to exceed five (5) years duration;
- (iii) Agreements for cable television services and equipment or satellite television services and equipment; and
- (iv) Agreements for the sale or lease of burglar alarm and fire alarm installation, services and equipment.

(3) The Association has entered into or will enter into a separate agreement (the "Club Affiliation Agreement") with SVO Hawaii Management, Inc. pursuant to which Owners in the Plan will participate in the Starwood Pacific Vacation Club (the "Club"). It is possible that Manager will perform certain services required of Manager hereunder in its capacity as the Club Operator instead of in its capacity as the Manager. The activities of SVO Hawaii Management, Inc. as Club Operator under the terms of the Club Affiliation Agreement are separate and distinct from any that the Manager may have as the Manager under this Agreement. Accordingly, the parties recognize, acknowledge and agree that SVO Hawaii Management, Inc. has the responsibility and obligation under the terms of the Club Affiliation Agreement to provide reservation and exchange services to the Owners, which duties are separate and apart from any duties that it may have as Manager hereunder, and that any compensation due SVO Hawaii Management, Inc. as a Sub-manager is separate and distinct from the compensation due SVO Hawaii Management, Inc. as the Club Operator under the terms of the Club Affiliation Agreement. The services of Manager hereunder do not include any of the services provided by Club Operator under the Club Affiliation Agreement.

(4) The Association has entered into or will enter into an Affiliation Agreement with Starwood Vacation Exchange Company, a Delaware corporation ("SVEC") pursuant to which Owners in the Plan will participate in the Starwood Vacation Network (the "Network"). It is possible that Manager will enter into an agreement with SVEC to perform certain services required of Manager hereunder. The activities of SVEC under the terms of the Affiliation Agreement are separate and distinct from any that SVEC may have as a permitted Sub-manager under this Agreement. Accordingly, the parties recognize, acknowledge and agree that SVEC has the responsibility and obligation under the terms of the Affiliation Agreement to provide reservation and exchange services to the Owners, which duties are separate and apart from any duties SVEC may have as a Sub-manager of

Manager hereunder, and the compensation due SVEC as a Sub-manager under any separate agreement with Manager is separate and distinct from the compensation due SVEC under the terms of the Affiliation Agreement. The services of Manager hereunder do not include any of the services provided by SVEC under the Affiliation Agreement.

c. Standard of Operation and Licensing Arrangement. Association acknowledges that Manager, as an affiliate of The Westin Corporation (“Brand Owner”), has the right to use the “Westin” name (the “Brand” or “Brand Name”) and all service marks and trademarks (“Marks”) associated therewith. Pursuant to such right and in accordance with the terms and conditions of this Management Agreement, Manager and Association agree that, during the term of this Agreement, Manager will manage and operate the Vacation Property and the Vacation Ownership Plan in accordance with the “License Standards” as a “Westin”, “Westin Vacation Ownership Resort” or under such other comparable brand names and marks as may be used to identify the Vacation Property or the Vacation Ownership Plan as part of the vacation ownership resort system operated, managed, or owned by Starwood Hotels & Resorts Worldwide, Inc., its successors and assigns or any of its affiliates (including the Manager, the Seller, and Brand Owner) or licensees (“Comparable Brand”). As used in this Agreement, the “License Standards” refer generally to any standards of construction, maintenance, and operation of vacation ownership resort properties owned or operated by Starwood Hotels & Resorts Worldwide, Inc., its successors or assigns, or any of its affiliates or licensees and designated as “Westins”, “Westin Vacation Ownership Resorts”, or by any other name associated with a Comparable Brand. The License Standards may be published from time to time as “License Standards” or “Brand Standards”.

The availability and use of the Brand and Marks, and any brands or marks associated with any Comparable Brands shall be subject to the terms, conditions, and requirements set forth in this Management Agreement and the agreements between Manager and the owner or owners of any such brands or marks (“Licensing Arrangement”) and the costs and expenses incurred by the Association or by Manager to comply with such terms, conditions, and requirements with respect to the Vacation Property or the Vacation Ownership Plan shall be part of the Vacation Ownership Plan’s Plan Expenses. For purposes hereof, unless the context evidences a contrary intent, the use of the terms “Brand”, “Brand Name” or “Marks” shall be deemed to include any brands or marks associated with a Comparable Brand; the term “Licensing Arrangement” shall be deemed to include the Manager’s rights to use any Comparable Brand and the brands and marks associated therewith; the term “Brand Owner” shall be deemed to include the owner of any Comparable Brand being used in connection with the Vacation Property; and the term “Licensing Standard” shall be deemed to include any standards promulgated by the owner of any Comparable Brand being used in connection with the Vacation Property

Association acknowledges that the Brand Name, Marks, and Licensing Arrangement are not part of the Vacation Property or the Vacation Ownership Plan, and agrees that neither the Association nor Owners have, nor shall it claim on its own behalf or on behalf of the Owners, any right, title, or interest in the Marks or the Brand Name or in the Licensing Arrangement. Association also acknowledges that the Developer has certain rights to use the Brand and Marks with respect to the operation, sale, and marketing of certain property, which has not been declared as part of the Vacation Ownership Plan, and agrees that neither Association nor Owners have, nor shall it claim on its own behalf or on behalf of the Owners, any right, title or interest in the Marks, Brand Name or Licensing Arrangement.

d. Assessments to Support Maintenance of the “License Standards.” Association acknowledges and agrees that Manager’s ability to operate the Vacation Property in accordance with the License Standards and requirements of the Licensing Arrangement is in large part dependent on the annual approval by Association of an Estimated Budget (defined below) that is adequate both in terms of operating and reserve assessments to support such efforts by Manager. In this regard, Manager and Association agree to use their best efforts, consistent with their duties and obligations as set forth herein and in the Documents, to prepare and approve annual Estimated Budgets sufficient to cover the costs of maintaining the Vacation Property in accordance with the Licensing Standards. Association acknowledges that, if requested by Manager, on occasion it may have to approve a Special Assessment against the Owners with respect to an item of operating expense mandated by the Licensing Arrangement in order for the Vacation Property to continue to conform with the “License Standards” and requirements of the Licensing Arrangement, which item of operating expense is so immediate in nature that a delay in assessment of same until the next Association fiscal year is not practicable. If the amount of the Special

Assessment is such that, under the Vacation Plan Documents, a vote of the Owners shall be required to approve the same, the Association shall use its best efforts to obtain such approval.

e. Term of Licensing Arrangement. Association acknowledges that, pursuant to an arrangement between Manager and Brand Owner, the Licensing Arrangement shall continue for the term of this Management Agreement; provided, however, that Brand Owner may immediately terminate the Licensing Arrangement if (i) Brand Owner determines that the Vacation Property is not being operated, managed and maintained in accordance with the License Standards, or (ii) if the management agreement between the Condominium Association and Manager is terminated or cancelled for any reason, or if it expires and is not renewed. Additionally, Association acknowledges that the Brand Owner may, pursuant to its arrangement with Manager, terminate the Licensing Arrangement in the event of the: Association's bankruptcy or insolvency; Association's liability for a large adverse court judgment; or Association's dissolution or liquidation. Additionally, Brand Owner may also terminate the Licensing Arrangement in the event Manager is no longer affiliated with the owner of the Brand or the Marks; provided however that if Brand Owner terminates the Licensing Arrangement because the Manager is no longer an affiliate of Brand Owner, then Manager shall have the right, but not the obligation, to enter into another Licensing Arrangement for a comparable hospitality brand including that brand's service marks and trademarks, in which event such replacement brand and mark shall for all purposes hereunder be deemed a "Comparable Brand".

f. Use of "Ka'anapali". Association acknowledges that the term and the word "Kaanapali" is a federally registered service mark of Amfac/JMB Hawaii, L.L.C. ("A/JMB"), a Hawaii limited liability company and/or Amfac Property Investment Corp., a Hawaii corporation ("APIC"). Pursuant to an agreement between A/JMB, APIC, and an affiliate of Manager, Manager has the right to use the names "Kaanapali Ocean Resort", "Ka'anapali Ocean Resort", "Kaanapali North Beach" and "Ka'anapali North Beach" with respect to the development, marketing and sale of the Condominium and the Plan (the "Ka'anapali Agreement"). Pursuant to such right and subject to the terms and conditions of the Ka'anapali Agreement, Manager and the Association agree that during the term of this Agreement, the Plan will be designated as the "Ka'anapali Ocean Resort Villas Vacation Ownership Plan" or under such other comparable names as may be used to identify the Vacation Property or the Vacation Ownership Plan as being located in Ka'anapali North Beach. The availability and use of the Ka'anapali name shall be subject to the terms, conditions, and requirements set forth in this Management Agreement and the Ka'anapali Agreement, and the costs and expenses incurred by the Association or by Manager to comply with such terms, conditions, and requirements with respect to the Vacation Property or the Vacation Ownership Plan shall be part of the Vacation Ownership Plan's Plan Expenses. Association acknowledges that the Ka'anapali name is not part of the Vacation Property or the Vacation Ownership Plan, and agrees that neither the Association nor Owners have, nor shall it claim on its own behalf or on behalf of the Owners, any right, title, or interest in the Ka'anapali name. Association acknowledges that use of the Ka'anapali name shall continue for the term of this Management Agreement; provided, however, that Manager may immediately terminate the use of the Ka'anapali name (i) if Manager does not have or if Manager loses the right to use the Ka'anapali name, or (ii) if the management agreement between the Condominium Association and Manager is terminated or cancelled for any reason, or if it expires and is not renewed, or (iii) in the event of the Association's bankruptcy or insolvency, the Association's liability for an adverse court judgment exceeding \$100,000, or Association's dissolution or liquidation.

In the event that the Manager terminates the use of the Ka'anapali name, Association will take whatever action is necessary to assure that the Vacation Property and the Vacation Ownership Plan are no longer associated with or identified with the Ka'anapali name (other than being located in the Ka'anapali North Beach community), and that the Ka'anapali name is not being used by the Association, the Owners or any of their agents, in connection with the Vacation Property and/or the Vacation Ownership Plan. Further, Association shall take whatever action is necessary to assure that any materials related to the Ka'anapali name in the possession of or under the control of the Association are immediately returned to Manager and the Association shall, or shall cause Manager to, remove all materials utilizing the Ka'anapali name, including but not limited to signage, and take all other actions (collectively, "Name Removal Actions") required to preclude any possibility of confusion on the part of the public that the Vacation Ownership Plan, the Vacation Property or any part thereof are still associated or in any way identified with the Ka'anapali name (other than being located in the Ka'anapali North Beach community). If, within 30 days after Manager terminates the use of the Ka'anapali name, the Association fails to comply with this Paragraph, Manager or its agents, at Association's

expense and on Association's behalf, shall have the right and license to enter onto the Vacation Property and perform any and all Name Removal Actions.

4. Power and Duties. By way of illustration and not of limitation, Manager's powers, duties and responsibilities under this Agreement include the following:

a. Management and Operations. Manager is responsible for: (i) the general operation of the physical properties that constitute the Vacation Property, including but not limited to Vacation Units and the Common Furnishings; (ii) front desk check-in and check-out services; (iii) cleaning and linen services for Vacation Units, as necessary; and (iv) any other operational matters. Manager shall perform management and operational services as required or as Manager deems prudent in its judgment.

b. Maintenance and Repair. Manager is responsible for the management, maintenance and repair of the Vacation Property, including all real and personal property comprising all or portions of the Vacation Units, their Limited Common Elements, and the Common Furnishings to the extent that the Association or Manager is required to maintain and repair same, as provided in the Documents, the Condominium Documents, or this Agreement. Manager shall perform maintenance and repair services as required or as Manager deems prudent in its judgment.

c. Accounting and Financial Reporting. Manager has the following powers and shall be responsible for the following duties concerning accounting and financial reporting services:

(1) Establishment and Administration of Association Bank Accounts. Manager shall deposit all funds collected from the assessment of Owners or funds otherwise accruing to Association in accounts with a bank or other institution as permitted by law and by the Vacation Plan Documents. Such accounts shall be held in the name of Association with suitable designations indicating the source of the funds. In the alternative, Manager is authorized to invest collected funds on behalf of the Association in accordance with the Documents; provided, however, that such investments are styled so as to indicate the custodial nature thereof. Manager shall maintain all funds collected separately, and shall not commingle them with similar funds collected on behalf of other condominium or owners' associations. Manager shall not commingle the reserve and operating funds of Association, except to the extent permitted under the Documents. Manager shall not be liable for any loss resulting from the insolvency of any depository or the loss from any investment authorized or permitted by law or by the Documents.

Manager is authorized to draw on Association accounts for any payments to be made by Manager or Association to discharge any liabilities or obligations incurred pursuant to this Agreement, for the payment of the Management Fee (as set forth in Paragraph 10), or any other disbursements properly incurred on Association's behalf. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

(2) Maintenance of Books and Records. Manager is responsible for maintaining Association's financial records, books, accounts, and other official records as provided by applicable law and under the Documents. Such records shall include, among other things, detailed and accurate records, in chronological order, of the receipts and expenditures of the Association. Manager shall issue the Statements of Unpaid Amounts required by the Declaration to Owners, Lenders, potential Owners and potential Lenders. Manager shall do so on request and after payment of a reasonable fee in an amount approved by the Board, and without liability for errors unless made as a result of gross negligence. Subject to the limitations imposed in the Vacation Plan Documents including but not limited to any limitations intended to protect the list of Owners, on reasonable notice: (i) Manager shall produce copies of any such records in accordance with applicable law at the expense of the party requesting them, and (ii) all books and financial records of Association shall be made available by Manager for inspection by Association members at convenient hours on working days at a place designated by the Association and for inspection in the State of Hawaii by any applicable governmental agency on request and at Association's expense. Services to be performed pursuant to this Subparagraph shall be performed monthly, or more often if necessary, with the exceptions of the issuance of Statements of Unpaid Amounts and the provision of books and records which shall be performed as required.

(3) Annual Financial Report. Manager shall prepare, or cause to be prepared and disseminated to the Owners, the Annual Report required by the Declaration at the time required by the Declaration. Manager shall also provide to the Owners a statement of receipts and expenditures which shall include but not be limited to: (a) management fees paid; (b) total compensation paid to the Board, if any; and (c) amount of reserves set aside or, if no reserves have been set aside, the reason therefor. Services to be performed pursuant to this Subparagraph shall be performed annually or as otherwise required by the Documents.

(4) Taxes. Manager shall engage competent, professional assistance as necessary for the preparation of any tax returns, forms, or other filings required by any local, state, or federal agency, and Manager will provide any assistance necessary in the compilation of financial data from the books and records of Association required for the completion of these documents. Without limiting the foregoing, Manager shall maintain records of any general excise tax due and owing with respect to the Vacation Units as required by Section 514E-3(b), HRS. Services to be performed pursuant to this Subparagraph shall be performed annually or as required or as Manager deems prudent in its judgment.

(5) Maintenance of Owners List. Manager shall maintain among its records a complete list of the names and addresses of all Owners, including all vendees under agreements of sale. This Owners list shall not be published and may not be provided to any Owners or to any third party other than as may be specifically required by law and the Vacation Plan Documents; provided, however, that Manager shall furnish the Owners list to the Developer, the Club Operator, or the Network Operator if requested by them from time to time. Association acknowledges and agrees that Manager, the Developer, the Club Operator, and the Network Operator shall have the right, from time to time, to use the list of Owners for the purpose of sending to the Owners promotional information about them or their affiliates, or about the goods, services, and/or benefits offered by them or their affiliates. Without limiting the foregoing, Manager, the Developer, the Club Operator, and/or the Network Operator may include with any mailing (including but not limited to any email transmission) sent to the Owners such materials as they may choose; provided, however, that Manager, the Developer, the Club Operator, or the Network Operator must pay the cost of printing such additional materials and any increase in the cost of postage caused by the inclusion of the additional materials. Manager, the Developer, the Club Operator, and the Network Operator may also send mailings (including but not limited to any email transmission) of their own to the Owners and may use the list of Owners for such purpose; provided, however, that they must pay all costs and expenses of any such mailing.

d. Estimated Budget. Annual budget services shall include the preparation of a recommended budget for management and operation of the Vacation Ownership Plan and the operation, repair, maintenance and replacement of the Vacation Property (the "Estimated Budget") for review by the Board, which shall in turn adopt a final budget (the "Budget"). The Budget shall include all items required by law or by the Documents. Manager will distribute a copy of the Budget to each Owner at the times stated in the Documents. Should a Special Assessment be required during the year, it shall be recommended and presented to the Board or Association for adoption in compliance with the Documents, and the Members of Association shall be advised thereof and each of the Members shall pay their Fair Share of such Special Assessment pursuant to the Documents. Manager shall use reasonable efforts to collect Regular and Special Assessments from the Members based on the foregoing. Services to be performed pursuant to this Subparagraph shall be performed annually or as needed.

e. Replacement of Common Furnishings. Manager has the sole authority and responsibility to maintain or replace the Common Furnishings, and in such capacity:

(1) Manager has the sole discretion while this Agreement remains in effect for making determinations as to replacements of the Common Furnishings, decor, and all other judgments relating to Vacation Units. Notwithstanding the foregoing and subject to the provisions of Sections 3.c and 3.d above, all replacements shall at least maintain the standard of quality of the furniture, other personal property, and decor as originally contained in the Vacation Units at the time such units are included in the Vacation Ownership Plan.

(2) The assessment for reserves for replacements will be set aside as reserves for replacement and repair as required by the Documents.

Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

f. Compliance with Terms of This Agreement and Applicable Laws. Manager is authorized to and shall be responsible for taking action as may be necessary to comply with the terms of this Agreement and all laws, statutes, ordinances, and rules of all appropriate governmental authorities and with the rules and regulations of the National Board of Fire Underwriters (or in the event it shall terminate its present functions, those of any other body exercising similar functions). Services to be performed pursuant to this Subparagraph shall be performed as required.

g. Coordination of Annual and Special Meetings of Owners.

(1) Manager shall provide a representative to attend all meetings of the Owners and shall be responsible for delivery of notices of all such meetings in accordance with the Documents.

(2) Manager shall provide assistance to the Board in preparing an agenda for all such meetings and in preparing any reports, charts, or other material for presentation at such meetings that are reasonably requested by the Board. Manager shall also prepare a draft of the minutes of all such meetings for review and approval by Association's secretary.

(3) Manager shall make copies of the Association minutes available for inspection by Association members at convenient hours on working days at a place designated by the Association, and shall mail copies to Owners at the times required by the Documents. Manager may charge a reasonable fee to defray any administrative or duplicating cost of mailing copies of the minutes to an Owner.

(4) Services to be performed pursuant to this Subparagraph g. shall be performed as required.

h. Coordination of All Board Meetings.

(1) Manager shall provide a representative to attend all meetings of the Board and shall be responsible for delivery of notice of all such meetings in accordance with the Documents.

(2) Manager shall provide assistance to the Board in preparing an agenda for all such meetings and any reports, charts, or other material for presentation at such meetings that are reasonably requested by the Board. Manager shall prepare a draft of the minutes of all such meetings for review and approval by Association's secretary.

(3) Manager shall make copies of the Board minutes available for inspection by Association members at convenient hours on working days at a place designated by the Association, and shall mail copies to Owners at the times required by the Documents. Manager may charge a reasonable fee to defray any administrative or duplicating cost of mailing copies of the minutes to an Owner.

(4) Services to be performed pursuant to this Subparagraph h. shall be performed as required.

i. Rules and Regulations. Manager is responsible for the promulgation, adoption, and amendment of all Rules and Regulations as it deems advisable for the use and occupancy of the Vacation Property, and is responsible for enforcing same, all subject to the approval of the Board, not to be unreasonably withheld. Manager shall be responsible to provide to all Owners and Occupants copies of the house rules of the Condominium, if any. In addition, Manager shall supervise the enforcement of the house rules and take such reasonable actions as are necessary to enforce the Declaration and any other Documents. Manager shall determine, in its sole discretion, all activities and programs to be carried on as to the Vacation Property and shall employ the personnel or contract for the service required therefor as it determines in its sole discretion. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

j. Alterations and Additions. Manager shall replace or make alterations or additions to the Vacation Property as authorized, pursuant to and in accordance with the Documents and the Condominium Documents. Manager shall make any and all alterations or additions to the Vacation Property that (i) would be capital improvements, (ii) relate to the structural integrity of the Vacation Units or their Limited Common Elements, or (iii) relate to defects in design, materials or workmanship in the construction of the Vacation Property. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

k. Employment of Professionals. Manager shall retain and employ such professionals and such other experts whose services may be reasonably required to allow Manager to effectively perform its duties and exercise its powers under this Agreement and as it deems most beneficial. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

l. Damage to Vacation Property. The Condominium Documents govern all matters covered in them relating to damage or destruction to a Vacation Unit or the Common Elements. In all other cases, if all or any part of the Vacation Property is damaged or destroyed, other than by ordinary wear and tear, Manager shall repair or restore the Vacation Property as set forth under Subparagraph 4.j. hereof. Manager may use any available insurance or condemnation proceeds to pay for the repair or replacement. Manager also may use any money set aside in a Reserve Account to repair or replace the damaged property. If the event that the damage is not be covered by insurance, or the available proceeds or applicable Reserve Accounts are insufficient to pay the total cost of repairing or replacing the damaged property, then the Manager shall determine the amount of the shortfall. The Association shall thereupon levy a Special Assessment among the Owners to cover the amount thereof and the Manager is authorized and empowered to collect the same. Services to be performed pursuant to this Subparagraph shall be performed as required.

m. Maintenance of Relationship with Exchange Company. Manager may be requested to act on behalf of Association regarding any exchange company or companies associated with the Vacation Ownership Plan. If so requested, Manager shall use reasonable efforts to maintain relationships with such exchange company or companies in such a manner as to maximize the benefits available to the Owners. In addition, if so requested, Manager also will be responsible for working with such exchange company or companies to stay abreast of relevant exchange procedures and for informing Association, the Board, and the Owners of any significant changes in these procedures. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

n. Insurance. Manager shall obtain and maintain all insurance policies required to be obtained and maintained by Association pursuant to applicable law and the Documents. This includes but is not limited to property insurance, liability insurance, a fidelity bond or fidelity insurance covering the Manager, and errors and omissions insurance covering the Manager. Manager is authorized to act as agent for Association, each Owner, and for each owner of any other insured interest and, further, to adjust all claims arising under the insurance policies subject to the provisions of the Documents. Manager is also authorized to file lawsuits and deliver releases on payments of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties, and to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Documents. Whenever possible, insurance policies shall name the Manager and any party retained by Manager pursuant to any sub-management agreement to perform all or a portion of Manager's obligations under this Agreement (each such party being herein referred to as a "Sub-manager") as additional insureds or co-insureds. The cost of all insurance obtained under this Agreement shall be a Plan Expense. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment. The Association acknowledges that the Manager or its affiliates manage various other associations and projects. Whenever it is prudent in the determination of the Manager to do so, Manager may obtain blanket insurance policies and/or bonds covering the Association and other homeowners associations. In such event, Manager shall allocate the costs of such policies and/or bonds equitably among the various associations and projects as discussed in Paragraph 5, below.

o. Lockout and Liens. Manager shall be responsible for the collection, on behalf of Association, of all Assessments for Plan Expenses, Personal Charges, and other payments from the Owners including the Regular Assessment and all other monies and debts that may become due to Association. In accordance with Section

15.3 F. of Declaration, the Board hereby delegates to the Manager the power to carry out any disciplinary actions imposed by the Board, and the right to suspend, without a hearing, an Owner's right to reserve or occupy a Vacation Unit when the Owner has not paid all Assessments or Personal Charges on time. In addition, Manager is authorized, in accordance with the Documents, to reserve a Vacation Period on behalf of a delinquent Owner and to rent out that Vacation Period. The proceeds of such rental will be applied first to the cost of arranging any such rental, including any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the Manager in securing rentals, then to the delinquent Owner's unpaid Assessments and Personal Charges (including penalties, late fees, and so on). The balance will be used to pay any Plan Expenses and will not be credited to the Owner's account. (The intent here is to be sure that the Owner does not profit by his or her wrongdoing and to avoid violating any securities laws.) If the Owner has already rented his or her Vacation Period, the Manager may collect any unpaid rental from the renter until all amounts due are paid in full.

Further, Manager is authorized to file a Notice of Lien on behalf of the Association against the Vacation Ownership Interest of any Owner who fails to pay his or her Assessments, Personal Charges, and all other sums due from the Owner as required by and provided for in the Documents. Manager has the right to enforce any lien for unpaid Assessments, Personal Charges, and all other sums due from an Owner to the same extent as Association has this right by virtue of the Documents and/or by law. Association also authorizes Manager to assign any such liens to a third party as it deems advisable in Association's best interest. Manager may compromise liens for interest, late charges, or any fines imposed in such amounts as it deems advisable, in its sole discretion, and may record a Release of Lien and render statements as to the current status of an Owner's Assessments. Manager is further authorized to use the services of a collection agency for collection of delinquent accounts and to charge the delinquent Owner for such costs in accordance with applicable law. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

p. Vacation Ownership Plan. At any time when the Plan is not part of the Club, Manager shall be responsible for the promulgation, adoption, and amendment of such reservation rules as it deems advisable and is responsible for enforcing same, all in accordance with the Declaration. At any time when the Plan is not part of the Club, Manager shall also be responsible for operating the reservation system. Manager shall supervise and monitor occupancy scheduling so that the Owners or Occupants will be provided with the promised use of the Vacation Units. Manager shall cause the design and implementation of a guest satisfaction survey system, and shall report the results of such surveys to the Board. Manager shall employ the personnel or contract for the service required therefor as it determines in its sole discretion. Services to be performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

q. Authority to Lease, Rent, or Purchase Materials and Supplies. Subject to the limitations of Subparagraph 3.b.(2), Manager may lease, rent, or purchase equipment, tools, vehicles, appliances, goods, supplies, and materials as reasonably necessary to perform its duties and responsibilities pursuant to this Agreement. Association acknowledges that Manager may enter into any such leases or rentals with or make such purchases from affiliates of Manager, provided, the terms of any such leases, rentals or purchases shall comply with the provisions of Paragraph 5 hereof. Purchases shall be in the name of Association at Manager's discretion and the costs for the purchases shall be Plan Expenses. All purchases made pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment. Notwithstanding anything in this Agreement to the contrary, all personal property of Manager, including property acquired by Manager with its own funds during the term of this Agreement shall remain the property of Manager regardless of the use of such property in carrying out Manager's duties and obligations under this Agreement.

r. Authority to Lease, Rent, or Negotiate the Purchase of Real Property. Subject to the limitations of Subparagraph 3.b.(2), Manager may lease or rent real property as agent for and on behalf of Association in compliance with the Documents. At the request of the Association, Manager may act as Association's agent in conjunction with the negotiation for the purchase of real property in compliance with the Documents. Services performed pursuant to this Subparagraph shall be performed as required or as Manager deems prudent in its judgment.

s. Concessions, Licenses, and Coin-operated Vending Machines. Manager may contract, on such terms and conditions and for such purpose as Manager deems necessary, and may grant concessions and licenses,

subject to the approval of the Board, for the providing of facilities and services as to and within the Vacation Property, and may purchase, rent, or cause to be installed coin vending machines and coin operated equipment and pay telephones on the Vacation Property.

t. Payment of Taxes. Subject to Paragraph 9, below, Manager shall be responsible to pay real property taxes and transient accommodations taxes on the Vacation Units to the extent that the same are not collected as part of the Common Expenses of the Condominium Association or separately charged to the Owners.

u. Right of Entry. Manager shall have and may exercise any or all the Association's rights to enter the Vacation Units and their Limited Common Elements:

(1) As may be necessary or appropriate for the performance of its duties hereunder, including entry for the purpose of cleaning, housekeeping, maintenance and repairs (including emergency repairs), and

(2) For the purpose of abating any activity or condition, or removing any thing, that (i) violates the law, the Governing Documents, or (ii) is unauthorized, prohibited, harmful, offensive, or potentially dangerous to others or their property, or (iii) threatens the property, rights, or welfare of others.

v. Licensing. Manager shall have the right to obtain any and all licenses required or appropriate to the operation of the Vacation Property. It may do so in its own name and/or in the name of the Association. To the extent required by any liquor licensing law, Manager shall have exclusive control of the Vacation Property with respect to all matters governed by such law.

w. Other Services. Manager shall perform such other acts, and shall perform such other responsibilities as may be reasonably delegated by the Board from time to time, which are necessary for the satisfactory management, operation and maintenance of the Vacation Property or the Vacation Ownership Plan, provided such other responsibilities shall be consistent with the nature and scope of the duties and responsibilities of Manager herein.

5. Manager's Duty. Manager shall act in a fiduciary capacity with respect to the proper protection of and the accounting for the Association's funds. In this capacity, Manager shall deal at arm's length with all third parties, and Manager shall also use reasonable efforts to serve Association's interests at all times. This Agreement shall not be construed as prohibiting Manager, or any firm or corporation, or any affiliate of Manager, from conducting or possessing an interest in any other business or activity, including but not limited to the ownership, financing, leasing, operation, development, management, or brokerage of real or personal property. Manager is expressly authorized to sub-contract with one or more of its affiliates in carrying out its obligations under this Agreement and/or, in addition to the Licensing Arrangement, contract with or engage affiliated entities for the provision of any services or goods provided by Manager hereunder; provided such contract or engagement is commercially reasonable and disclosed to the Board.

Manager or its affiliates, or their respective officers, directors, employees, shareholders, and agents, may be performing services similar to the services performed under this Agreement for other associations and entities. In this connection, Manager is authorized to provide or cause to be provided such services as appropriate on a consolidated basis whereby such services are provided to more than one association. To require the Manager to cost account with regard to each association and between Association and other persons in interest as to other properties managed by Manager, would substantially increase the costs of administration under this Agreement borne by Association. Accordingly, the Manager may allocate to Association its appropriate and fair share of such costs and expenses as are general, and as to those which are not general, to charge the same to the appropriate party(s) on such basis (weighted or not) as Manager deems fair and equitable. In the case of personnel, costs shall be fully-loaded costs, which will be comprised of salary and benefit costs, payroll taxes, and employee-related insurance for staff, as well as facilities and equipment rent, costs of utilities and supplies, and similar expenses. Travel expenses and *per diem* for travel to and from the various projects, and charges for communications, shall also be allocated equitably.

6. Independent Contractor. Manager is an independent contractor of Association. Association releases any right of control over the method, manner, or means by which Manager performs its duties and responsibilities under this Agreement.

7. Plan Expenses. All expenses incurred by Manager on behalf of Association pursuant to this Agreement, including Manager's fee, overhead, and expenses, shall be Plan Expenses, except for any expenses that may be incurred by individual Owners and may not be treated as Plan Expenses, which shall be charged to such individual Owners. Plan Expenses shall also include any costs associated with Manager's employees as set forth under Paragraph 3.a hereof, as well as any and all costs incurred by Manager in connection with the licensing arrangement with Brand Owner which costs may include, but are not limited to, the license fee

8. Aid and Assistance. Association shall aid and assist Manager, in any reasonable manner requested by Manager, in collecting assessments and effectuating the purposes of this Agreement.

9. Deficits. Manager shall not be required to undertake to pay any costs or expenses for the benefit of Association or its Members from its own funds, and shall only be required to perform its services and make disbursements to the extent that, and as long as, the payment of Assessments or other revenue, if any, received from Association or its Members are sufficient to pay, in full, the costs and expenses of such services and the amounts of such disbursements. If at any time the funds in the bank accounts of the Association are not sufficient to pay the charges incident to this Agreement, Manager, although not obligated to do so, may advance such sums as it deems necessary, and in such event, Manager shall be entitled to reimburse itself from Association funds for the amount of such advances, together with interest at the rate of one and one-half percent (1.5%) per month, pro-rated daily, commencing from and after the date of the advance by Manager. Manager's duties and responsibilities under this Agreement and the performance thereof shall be subject to and limited by the availability of funds for the payment of the expenses associated therewith and the payment of the other amounts required in this Agreement. In that regard, Manager does not represent, guarantee, or promise any specific standard of services and performance of such obligations and duties under this Agreement, but agrees only to use reasonable efforts, with available funds. If it appears to Manager that the Assessments and other revenue are insufficient to pay the same and to adequately provide full reserves, Manager promptly shall determine the amount of additional Assessments required and advise the Board accordingly.

10. Management Fee.

a. Basic Fee. Manager shall provide the services required of it under this Agreement, for which services Association shall pay to Manager an annual management fee (the "Management Fee") equal to ten percent (10%) of all Regular Assessments and Special Assessments levied against any Owners, for such period. The Association shall pay the fee to Manager on a monthly basis with adjustments made in the next monthly payment of the fee as necessary to reflect changes in the level of money required to be collected. Payment of the fee shall be in addition to any other costs and expenses paid to Manager by Association pursuant to this Agreement, including but not limited to those described in Paragraph 3.

Notwithstanding the foregoing, the parties understand and agree that the provisions of this Paragraph which, subject to its terms, fix the fees under this Agreement for a specified time, are made in recognition of the fact that all of the active functions of Association have been delegated to Manager under this Agreement. However, if Association undertakes any action or incurs any expense in addition to those actions or expenses incurred by Manager, or as set forth in the Budget prepared by Manager, the same shall be paid by Association.

b. Additional Fees. In addition to the Management Fee, Manager may also charge the following Additional Fees.

(1) Manager may charge a reasonable fee to the Owner, any prospective purchaser of a Vacation Ownership Interest, or any Lender or prospective Lender for a Statement of Unpaid Assessments, to furnish documents in connection with the sale of any Vacation Ownership Interest, and/or to register the change of ownership on the records of the Association. The amount of each such fee shall not exceed \$150, subject to increase

by an amount equal to the percentage change between (i) the C.P.I. Index published for December, 2001, and (ii) the most recent C.P.I. Index, as "C.P.I. Index" is defined in Vacation Plan Documents.

(2) All unpaid fees and costs due Manager hereunder shall bear interest, from the date such fee or cost becomes due until fully paid, at the lesser of one and one-half percent (1.5%) per month, prorated daily, or the maximum rate permitted by law.

(3) In addition to the Management Fee, the Association shall pay to the Manager as an additional fee, together with each payment of the Management Fee or any other payment hereunder (for example, any interest on unpaid Management Fees) that is subject to the State of Hawaii general excise tax on gross income, as such taxing statute may be amended, and all other similar taxes imposed on the Manager on said Management Fee or other payment in the nature of a gross receipts tax, sales tax, privilege tax or the like (excluding federal or state net income taxes) whether imposed by the United States of America, the State of Hawaii, or the County of Maui, an amount which, when added to such Management Fee or other such payments, will result in the Manager's realization of a net amount equal to that which the Manager would have realized from such payments had no such tax been imposed.

11. Special Services. Manager may assess a Personal Charge against an Owner to recover the cost of providing special services on behalf of and at the request of the Owner in a reasonable amount determined by Manager.

12. Non-Interference. For so long as this Agreement remains in effect and is not properly terminated by the Owners as provided in this Agreement, Association shall not permit, allow, or cause any of its Officers, Directors, or Members to interfere with Manager in the performance of its duties and responsibilities or the exercise of any of its powers under this Agreement.

13. Indemnification of Manager. Manager and its affiliates and Sub-managers, and each of their respective representatives, shareholders, employees, officers, directors, and agents (collectively, the "Manager Indemnitees") shall not be liable to Association or Owners for any loss or damage not caused by the gross negligence or willful misconduct of Manager Indemnitees. Association will and does hereby indemnify and save harmless the Manager Indemnitees from and against any such liability for damages, costs, and expenses, including but not limited to reasonable attorneys' fees and costs, whether suit is brought or not, and other professionals' fees, in connection with the performance of Manager's duties under this Agreement and/or from injury to any person or property in and about, or in connection with the Vacation Property or the Vacation Ownership Plan from any cause whatsoever, unless such loss or injury shall be solely caused by the gross negligence or willful misconduct of any of the Manager Indemnitees. Manager and any Sub-managers each shall be designated as an additional insured in the comprehensive public liability policy obtained by or for the benefit of Association, and any additional premium therefor shall be the responsibility of Association. Association's indemnity obligations under this Paragraph arising prior to the termination or assignment of this Agreement shall survive termination or assignment.

14. Assignment. Manager may assign all or any part of its obligations under this Agreement. Thirty (30) days advance written notice of the assignment shall be delivered to Association. Nothing contained herein shall prevent the delegation by Manager to SVEC of any or all of Manager's duties hereunder, provided that Manager shall remain primarily responsible hereunder.

15. Amendments of Documents. The Board shall not propose that any amendments be made to the Documents that impair or prejudice the rights of Manager without the prior written consent of Manager.

16. Limitation of Liabilities. Association acknowledges that the Developer is an affiliate of Manager and Brand Owner. Association further acknowledges that nothing in this Agreement or in the relationship of the parties shall be construed as obligating the Developer, Brand Owner, or any shareholder, partner, or other subsidiary or affiliate of Developer or Brand Owner to assume, guarantee, or otherwise be responsible for any of the obligations, acts, or omissions of Manager in connection with this Agreement. Manager shall not be responsible for the acts, omissions to act or conduct of any of the Developer, Brand Owner, the Board, the Association, any Owner or any Occupant of the Vacation Property, or for the breach of any of the obligations of any of the Developer, Brand

Manager, the Board, the Association, any Owner or any Occupant of the Vacation Property. Manager shall not be liable to third parties for any debts, liabilities or obligations of the Association. The Manager shall have no responsibility for compliance of the Vacation Property with the requirements of any ordinances, laws, rules, or regulations (including those relating to the disposal of solid, liquid and gaseous wastes) of the City, County, State, or Federal Government, or any public authority or official thereof having jurisdiction over it, except the obligation to notify the Board promptly, or forward to the Board promptly, any complaint, warning, notice, or summons received by the Manager relating to such matters. The Association authorizes the Manager to disclose, if Manager so chooses, the ownership of the Vacation Property to any officials of the City, County, State or Federal Government or any public authority having jurisdiction over the Vacation Property, and agrees to indemnify and hold harmless the Manager Indemnitees from and against all loss, cost, expense and liability whatsoever which may be imposed on them or any of them by reason of any present or future violation or alleged violation of such laws, ordinances, rules and regulations, unless such loss or injury shall be solely caused by the gross negligence or willful misconduct of any of the Manager Indemnitees.

17. Vehicular Parking and Storage. Manager may regulate all vehicular parking by Owners and Occupants of the Vacation Units. Manager may regulate the use of storage areas, if any, of the Vacation Property.

18. Governing Law; Waiver of Jury Trial; Venue of Actions. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Hawaii. **THE PARTIES WAIVE ANY RIGHT THEY MAY HAVE UNDER ANY APPLICABLE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT OR LEGAL ACTION WHICH MAY BE COMMENCED BY OR AGAINST THE OTHER CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT, OR PERFORMANCE OF THIS AGREEMENT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.** In the event any such suit or legal action is commenced by either party, the other party agrees, consents, and submits to the personal jurisdiction of the First Circuit Court in Honolulu, Hawaii with respect to such suit or legal action, and each party also consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

19. Waiver. No waiver of a breach of any of the covenants in this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

20. Modification. No modification, release, discharge, or waiver of any provision of this Agreement shall be of any force, effect, or value unless in writing and signed by the parties.

21. Entire Agreement. This Agreement and the Documents constitute the entire agreement between the parties, and neither party has been induced by the other by representations, promises, or understandings not expressed in this Agreement or the Documents. There are no collateral agreements, stipulations, promises, or understandings whatsoever between Association and Manager, in any way relating to the subject matter of this instrument, or the instruments referred to in this Agreement that are not expressly contained in this Agreement or in the Documents.

22. Partial Invalidation. The invalidity in whole or in part of any covenant, promise, or undertaking, or any paragraph, subparagraph, sentence, clause, phrase, or words, or of any provision of this Agreement shall not affect the validity of the remaining portions of this Agreement.

23. Notices. Except as may be otherwise provided in this Agreement, any notice, demand, request, consent, approval, or communication under this Agreement shall be in writing and shall be deemed duly given or made: (i) three days after being deposited, postage prepaid, in the U.S. mail, certified or registered mail with a return receipt requested, addressed to the party at the address shown above; (ii) when delivered personally to the party at the address specified above; (iii) when delivered by a reliable overnight courier service, fee prepaid, with receipt of confirmation requested, addressed to the party as specified above; or (iv) when delivered by facsimile transmission with confirmed receipt of transmission. A party may designate a different address for receiving notices under this Agreement by giving notice to the other party in accordance with this Paragraph.

24. Default by Association. Association shall be deemed in default hereunder if: Association or its Members interfere with Manager in the performance of its duties and responsibilities or the exercise of its powers under this Agreement; Association fails to promptly do any of the things required of it under this Agreement; Association declares or is placed into bankruptcy or becomes insolvent; Association becomes liable for an adverse court judgment in excess of \$100,000; or Association dissolves or liquidates. In the event of a default by Association, Manager, at its election, shall give Association notice specifying the alleged default. If Association fails to cure the default within thirty (30) days after receipt of written notice from Manager, or if the default is not curable within thirty (30) days and Association fails to commence to cure and thereafter diligently proceed to cure, Manager shall have the right: (i) to exercise such rights or any other remedies given it by agreement or in law or equity, (ii) to terminate this Agreement, in which event it may also bring an action against the Association and/or the Owners for damages; or (iii) to bring an action against Association and/or the Owners for damages or injunctive relief. In connection with each default by Association, the Association shall be liable for Manager's reasonable attorneys' fees and costs, whether suit is brought or not and including any fees and costs incurred in all bankruptcy and probate proceedings, and other professionals' fees and costs incurred thereby. All rights of Manager, on default, shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other additional remedy. Notwithstanding anything herein to the contrary, in no event shall Association or the Owners or their respective affiliates, or its or their employees, officers, directors, agents, or assigns be liable to Manager for punitive damages or for incidental or consequential damages (specifically including, but not limited to, loss of anticipated income or intangible benefits or loss due to business interruption) resulting from any default hereunder.

25. Default by Manager. Manager shall be deemed in default hereunder if Manager fails to perform as required under this Agreement. In the event of a default by Manager hereunder, Association, at its election, shall give Manager notice specifying the alleged default. If Manager fails to cure the default within thirty (30) days after it receives written notice from Association, or if the default is not curable within said thirty (30) days and Manager fails to commence to cure and thereafter diligently proceed to cure, the Association shall have the rights: (i) to terminate this Agreement, in which event Association may also bring an action against the Manager for damages; or (ii) to bring an action against Manager for damages or injunctive relief. Notwithstanding anything herein to the contrary: (i) the termination of the Licensing Arrangement for any reason, shall not be deemed a failure to perform or default by Manager under this Agreement; and (ii) in no event shall Manager or its respective affiliates, or its or their employees, officers, directors, agents, or assigns be liable to Association or Owners for punitive damages or for incidental or consequential damages (specifically including, but not limited to, loss of anticipated income or intangible benefits or loss due to business interruption) resulting from any default hereunder. Upon termination of this Agreement by the Association, Manager shall turn over to the Association all books and records of the Association relating to the management and operation of the Vacation Property and the Vacation Ownership Plan but this shall not extend to internal or confidential or other records of the Manager.

26. Use of Marks, Brand Name and Other Proprietary Material. Association agrees that the Marks and Brand Name are and always shall be the personal property of Brand Owner, subject to the rights of Manager pursuant to the Licensing Arrangement. Accordingly, Association and all Owners shall have no right to use the Marks and Brand Name at any time during or after the term of the Licensing Arrangement. Association agrees that it shall take no actions that are inconsistent herewith or that may result in a termination of the Licensing Arrangement.

Association further acknowledges that Manager and its Sub-managers (if any) may use certain personal and intellectual property owned by Manager, a Sub-manager or Developer as may be necessary to manage, operate and market the Vacation Property (collectively, the "Manager Materials"). Association hereby agrees that the Manager Materials are and always shall be the personal property of Manager, such Sub-managers or Developer as the case may be. Accordingly, Association shall have no right to use any of the Manager Materials at any time during the Term.

Upon termination of the License Arrangement, Manager or Association, if this Management Agreement is no longer in effect, will take whatever action is necessary to assure that the Vacation Property and the Vacation Ownership Plan are no longer associated with or identified with the Brand or Marks, and that no such Brand or Mark is being used by the Association, the Owners or any of their agents, in connection with the Vacation Property and/or the Vacation Ownership Plan. Further, Association shall take whatever action is necessary to assure that any materials related to the

Brand or Mark in the possession of or under the control of the Association are immediately returned to Brand Owner and the Association shall, or shall cause Manager to, remove all distinctive Brand features, including but not limited to signage and take all other actions (collectively, "De-identification Actions") required to preclude any possibility of confusion on the part of the public that the Vacation Ownership Plan, the Vacation Property or any part thereof are still associated or in any way identified with the Brand or Marks. If within 30 days after termination of the Licensing Arrangement Manager or Association fails to comply with this Paragraph, Brand Owner or its agents, at Association's expense and on Association's behalf, shall have the right and license to enter onto the Vacation Property and perform any and all De-identification Actions. The preceding sentence shall not in any way limit Brand Owner's rights or remedies with regard to any unauthorized use of the Brand or Marks.

26. Excusable Delays. In the event that Manager is delayed in, hindered in, or prevented from the performance of any act required under this Agreement by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, act of God, or any other reason beyond Manager's control, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

28. Reasonableness Standard for Consents. Under any circumstance in which this Agreement requires one party to consent to the actions of the other party, the party whose consent is required shall not withhold such consent unreasonably.


29. Plural and Include. Where the context so indicates, a word in the singular form shall include the plural. The term "include" and similar terms (e.g., includes, including, included, comprises, comprising, such as, e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not of limitation.

30. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and date first above written.

OCEAN RESORT VILLAS VACATION OWNERS  
ASSOCIATION, a Hawaii non-profit corporation

By:

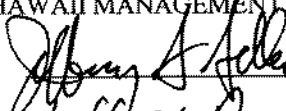
  
\_\_\_\_\_  
Thorp S. Thomas  
(Print Name)

As its:

President and Treasurer

SVO HAWAII MANAGEMENT, INC., a Hawaii corporation

By:

  
\_\_\_\_\_  
Jeffrey A. Adler  
(Print Name)

As its:

President

# Westin Ka'anapali Ocean Resort Villas

## Escrow Agreement

By this contract, Hawaii Resort Escrow, Inc. (the *Escrow Agent*) agrees with SVO Pacific, Inc. (the *Seller*) to provide escrow services to the Seller and the Buyers of "Vacation Ownership Interests" in the Ocean Resort Villas Vacation Ownership Plan (the *Plan*). This Escrow Agreement is part of each Westin Ka'anapali Ocean Resort Villas Purchase Agreement (the *Sales Contract*), so that, in addition to the Seller and the Escrow Agent, each Buyer is bound by it. It will also be binding on the Seller's sales agents when they sign a "Joinder of Sales Agent in Escrow Agreement" substantially in the form of Exhibit "A" which is attached to and part of this document.

### PART 1. DEFINITIONS

This Part 1 defines certain words or phrases having special meanings in the Sales Contract or this Escrow Agreement. Other key words or phrases are defined elsewhere in this Escrow Agreement to put them in context. The Sales Contract also contains certain definitions. Words defined in this Escrow Agreement have the same meaning in the Sales Contract, and vice versa. In case of a conflict, this Escrow Agreement controls.

The Vacation Plan Documents define some of the same key words and phrases. They are repeated or paraphrased here or in the Sales Contract to make these documents easier to read and understand. Where terms defined in the Sales Contract or Escrow Agreement differ from the definitions contained in the Vacation Plan Documents, the definitions in the Vacation Plan Documents control unless the context clearly requires otherwise. Terms not defined in the Contract Documents have the meaning given to them in the Vacation Plan Documents.

- 1.1 "Act" means the Hawaii Time Share Act (Chapter 514E, HRS) or any law that replaces that law.
- 1.2 "Apartment" means an Apartment in the Condominium, including its undivided interest in the Common Elements of the Condominium.
- 1.3 "Association" means the Ocean Resort Villas Vacation Owners Association.
- 1.4 "Blanket Lien" means "blanket lien" as defined in the Act. Generally, a "lien" is a claim against property as collateral for the payment of money. A "blanket lien" is a lien on more than one Vacation Ownership Interest.
- 1.5 "Buyer" means each person shown as a Buyer in a Sales Contract.
- 1.6 "Buyer's Unit" means the Apartment identified in the Buyer's Sales Contract as "Your Unit". If the Buyer's Sales Contract does not list a specific Apartment, then *Buyer's Unit* means an Apartment chosen by Seller that is the same Unit Type as identified in the Buyer's Sales Contract.
- 1.7 "Buyer's Funds, Notes and Loan Documents" means all Funds, Notes, and Loan Documents received before Closing from or on behalf of a Buyer in connection with a Sales Contract.
- 1.8 "Club" means the Starwood Pacific Vacation Club. *Starwood Pacific Vacation Club* is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered to Owners of Vacation Ownership Interests by the Club Operator from time to time. The benefits and services include: (i) a reservation system that lets Owner reserve a Vacation Unit in the Plan, (ii) an exchange program that lets Owners reserve units in other Club Resorts; and (iii) any other vacation, travel, entertainment, or other benefits that the Club Operator may offer to the Owners or other Club Members from time to time. The Club is not a legal entity or Association of any kind. It is a business owned and operated by the Club Operator, and it is subject to change from time to time as the Club Operator determines in its sole discretion, subject to any limitations contained in the Club Documents.

1.9 **"Club Documents"** means any documents governing the Club, and any changes and additions properly made to any of them from time to time, including but not limited to these documents:

A. **"Club Affiliation Agreement"** means an agreement between the Club Operator and the Association. The Developer may also be a party to the agreement. The Club Affiliation Agreement provides, among other things, that all Owners of Vacation Ownership Interests in the Plan automatically will be enrolled in and will continue to be members of the Club.

B. **"Club Rules"** means any rules adopted by the Club Operator from time to time. Among other things, the Club Rules describe how to reserve property in this Plan or in other Club Resorts.

C. **"Club Policies"** means any policies and procedures adopted by the Club Operator from time to time.

1.10 **"Club Operator"** means SVO Hawaii Management, Inc., a Hawaii corporation.

1.11 **"Close"** and **"Closing"** refer to completing the sale of a Vacation Ownership Interest to a Buyer.

1.12 **"Closing Costs"** means all costs and expenses of Closing a sale. It includes, for example: (i) the Escrow Agent's fee, (ii) conveyance taxes, (iii) notary fees, (iv) recording costs, (v) charges for credit reports on the Buyer obtained by the Seller, (vi) costs of preparing the Buyer's Vacation Ownership Deed and any loan or financing documents, (vii) costs of title insurance, (viii) all loan fees and costs, and (ix) postage and handling fees.

1.13 **"Closing Date"** means the date when a sale is supposed to Close (according to the Buyer's contract). The Closing actually may occur later, but the Closing Date is the day when the Closing is scheduled to occur.

1.14 **"Common Elements"** means all parts of the Condominium other than the Apartments.

A. **"Limited Common Elements"** means Common Elements designated as Limited Common Elements in the Condominium Documents. Generally, Limited Common Elements are set aside for use by the owners of certain Apartments.

1.15 **"Condominium"** means the Ocean Resort Villas Condominium located at Six Kai Ala Drive, Lahaina, Maui, Hawaii 96761.

1.16 **"Condominium Association"** means the Association of Apartment Owners of Ocean Resort Villas. It is an association of all of the owners of Apartments in the Condominium. The Condominium Association manages the Condominium.

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

A. **"Condominium Declaration"** means the "Declaration of Condominium Property Regime of Ocean Resort Villas". It established and governs the Condominium. It was recorded as Document No. 2,734,238.

B. **"Condominium Bylaws"** means the "Bylaws of the Association of Apartment Owners of Ocean Resort Villas". It was recorded as Document No. 2,734,239.

C. **"Condominium Rules"** means any rules and regulations adopted by the Condominium Association from time to time.

D. **"Condominium Map"** means the recorded drawings designated in the Condominium Declaration as the Condominium Map. The Condominium Map shows, among other things, the floor plans and elevations of the buildings in the Condominium.

E. **"Declaration of Merger"** means the "Declaration of Merger of Condominium Phases of Ocean Resort Villas". It provides for an administrative merger of the Condominium with one or more other condominium projects on adjacent parcels of land. This means that the condominium projects would be managed and used as if they were one.

1.18 **"Condominium Property Act"** means the Hawaii Condominium Property Act (Chapter 514A, HRS) or any law that replaces that law.

1.19 **"Condominium Regulations"** means the rules and regulations adopted by the State of Hawaii and authorized by the Condominium Property Act. They are contained in Chapter 107 of Title 16 of the regulations of the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.20 **"Contract Documents"** means, for each Buyer, (i) this Escrow Agreement, (ii) the Buyer's Sales Contract, (iii) the Buyer's Certification, and (iv) any written changes to any of those documents. Changes must be in writing and signed by the person whose duties change.

1.21 **"Director"** means the Director of the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.22 **"Disclosure Statement"** means the Disclosure Statement about the Plan required by the Act.

1.23 **"Escrow Agent"** means Hawaii Resort Escrow, Inc. It is a Hawaii corporation. Its address is 116 South Hotel Street, Suite 207, Honolulu, Hawaii, .

1.24 **"Funds"** means money.

1.25 **"HRS"** means Hawaii Revised Statutes.

1.26 **"Ka'anapali North Beach"** means all of the property subject to the Ka'anapali North Beach Declaration.

1.27 **"Ka'anapali North Beach Association"** means the Ka'anapali North Beach Master Association, Inc., a Hawaii nonprofit corporation. The Ka'anapali North Beach Association serves as the association of all of the owners of real property in Ka'anapali North Beach.

1.28 **"Ka'anapali North Beach Amenities"** means any amenities or other common areas in Ka'anapali North Beach that are available for use by Owners and occupants during their Vacation Periods.

1.29 **"Ka'anapali North Beach Documents"** means the following documents and any changes and additions properly made to any of them from time to time:

A. **"Ka'anapali North Beach Declaration"** means the "Declaration Of Covenants, Conditions and Restrictions for Ka'anapali North Beach". It established and governs the Ka'anapali North Beach community. It was recorded as Document No. 2,668,967.

B. **"Articles of Incorporation of Ka'anapali North Beach Master Association, Inc."** means the document filed with the Department of Commerce and Consumer Affairs of the State of Hawaii to establish the Ka'anapali North Beach Association as a corporation.

C. **"Bylaws of Ka'anapali North Beach Master Association, Inc."** means the bylaws adopted by the Ka'anapali North Beach Association.

D. **"Other Ka'anapali North Beach Documents"** means any documents that are "Governing Documents" as that term is defined in the Ka'anapali North Beach Declaration.

1.30 **"Loan Documents"** means any "purchase money contract" as defined in the Act. This includes, for example, any Note, Mortgage, Agreement of Sale, or other contract in which the Buyer agrees to repay a loan made to finance the Buyer's purchase of a Vacation Ownership Interest and made to the Buyer by the Seller or by a lender that is (i) affiliated with the Seller or (ii) to whom the Seller referred the Buyer. The Contract Documents and the Buyer's Vacation Ownership Deed are not Loan Documents.

1.31 **"Master Association"** means the Ocean Resort Master Association. It is a non-profit Hawaii corporation.

1.32 **"Master Association Documents"** means the following documents and any changes and additions properly made to any of them from time to time:

A. **"Master Declaration"** means the "Declaration Of Covenants, Conditions, Easements and Restrictions for the Ocean Resort Master Association". It dedicates certain property for use by the Master Association. It was recorded as Document No. 2,737,946.

B. **"Master Articles"** means the Articles of Incorporation of Ocean Resort Master Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. They established and govern the Master Association as a corporation.

C. **"Master Bylaws"** means the bylaws adopted by the Master Association.

D. **"Master Rules and Regulations"** means any rules and regulations adopted by the Master Association.

E. **"Master Association Amenities"** means the amenities available through the Master Association from time to time.

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

1.34 **"Public Report"** means a Condominium Public Report on the Condominium for which the Hawaii Real Estate Commission has issued an effective date. There are two kinds of Condominium Public Reports of interest: (i) Contingent Final Public Reports, and (ii) Final Public Reports.

1.35 **"Record"**, **"Recording"** and similar terms refer to and mean filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii. But if Hawaii law is changed to require that the deeds, mortgages, amendments to the Vacation Plan Documents, or other documents be recorded in the Bureau of Conveyances of the State of Hawaii, then *Record*, *Recording*, and similar terms will mean and refer to recording in the Bureau of Conveyances to the extent provided by the change in the law.

1.36 **"Reservation Rules"** means the reservation rules adopted by the Club Operator. If the Plan is not part of the Club, then "Reservation Rules" means the Association Rules. Note: At any time when the Plan is part of SVN, the Club Operator may adopt some or all of the SVN Rules as the Reservation Rules.

1.37 **"Receipt for Disclosure Statement"** means a Receipt for Time Share Disclosure Statement in the form approved by the Department of Commerce and Consumer Affairs of the State of Hawaii.

1.38 **"Rules"** means the Rules Relating to Time Sharing, Chapter 16-106, Hawaii Administrative Rules, and any other rules adopted under the Act.

1.39 **"Sales Contract"** means a Westin Ka'anapali Ocean Resort Villas Purchase Agreement. The Seller will not change the form of the Sales Contract without first giving the Escrow Agent a copy of the new form.

1.40 **"Seller"** means SVO Pacific, Inc., a Florida corporation. Its address is 10 Hoohui Street, Suite 307, Lahaina, Maui, Hawaii 96761.

1.41 **"SVN"** means the Starwood Vacation Network. *Starwood Vacation Network* is the name (in legal terms, the "servicemark") used to refer to the program of benefits and services offered to Owners of Vacation Ownership Interests by the SVN Operator from time to time. The benefits and services include: (i) an exchange program that lets Owners reserve units in other SVN Resorts; and (ii) any other vacation, travel, entertainment, or other benefits that the SVN Operator may offer to the Owners or other SVN Members from time to time. SVN is not a legal entity or Association of any kind. It is a business owned and operated by the SVN Operator, and it is subject to change from time to time as the SVN Operator determines in its sole discretion, subject to any limitations contained in the SVN Documents.

1.42 **"SVN Documents"** means any documents governing SVN, and any changes and additions properly made to any of them from time to time, including but not limited to these documents:

A. **"SVN Affiliation Agreement"** means an agreement between the Club Operator and the SVN Operator. The Association and/or the Developer may also be a party to the agreement. The Affiliation Agreement provides, among other things, that all Owners of Vacation Ownership Interests in the Plan automatically will be enrolled in and will continue to be members of SVN.

B. **"SVN Rules"** means any rules adopted by the SVN Operator from time to time. Among other things, the SVN Rules describe how to reserve property in other SVN Resorts.

C. **"SVN Policies"** means any policies and procedures adopted by the SVN Operator from time to time.

1.43 **"SVN Operator"** means Starwood Vacation Exchange Company, a Delaware corporation.

1.44 **"Use Period"** means a Use Week, a Split Week, or a Use Night. Under the Vacation Plan Documents, each year is divided into fifty-two or fifty-three "Use Weeks," each about one week long. Each Use Week may be further divided into seven "Use Nights." A "Split Week" is a period of less than seven consecutive Use Nights. The Reservation Rules may further define "Split Week".

1.45 **"Vacation Ownership Interest"** means an Every-Year Vacation Ownership Interest or an Every-Other-Year Vacation Ownership Interest. *Every-Other-Year Vacation Ownership Interest* means an Even-Year Vacation Ownership Interest or an Odd-Year Vacation Ownership Interest. A Vacation Ownership Interest consists of:

A. A membership in the Association.

B. An undivided interest in a Vacation Unit. The term "undivided interest" refers to the idea that the person will be one of the co-Owners of that Vacation Unit. The other co-Owners will be the Owners of other Vacation Ownership Interests in that Vacation Unit. The undivided interest will be one-fifty-second (1/52nd) for an Every-Year Vacation Ownership Interest and one-one-hundred and fourth (1/104<sup>th</sup>) for an Every-Other-Year Vacation Ownership Interest.

C. The right to reserve the use of a Vacation Unit. The Owner of an Every-Year Vacation Ownership Interest may reserve a Vacation Unit for one Use Week in every Use Year. The Owner of an Even-Year Vacation Ownership Interest may reserve the use of a Vacation Unit for one Use Week in every Use Year that ends in an even number (for example, 2004, 2006, and so on). The Owner of an Odd-Year Vacation Ownership Interest may reserve the use of a Vacation Unit for one Use Week in every Use Year that ends in an odd number (for example, 2005, 2007, and so on).

The reservation rights differ depending on whether a Vacation Ownership Interest has a *Floating Vacation Period*, a *Fixed Vacation Period*, an *Event Vacation Period*, or an *Ultra Premium Vacation Period*. The Unit that an Owner uses depends on whether the Owner's Vacation Ownership Interest has a *Fixed Unit Use Right* or a *Floating Unit Use Right*. These terms are defined in the Vacation Plan Documents.

D. During the reserved Use Period, the right to use (i) a Vacation Unit and the Common Furnishings in it, (ii) the Common Elements of the Condominium and any Limited Common Elements available to the Vacation Unit, (iii) the Master Association Amenities to the extent permitted under the Master Association Documents, and (iv) any Ka'anapali North Beach Amenities to the extent permitted under the Ka'anapali North Beach Documents.

1.46 **"Vacation Ownership Deed"** means a deed in which the Seller transfers the Buyer's Vacation Ownership Interest(s) to the Buyer.

1.47 **"Vacation Period"** means a Use Period reserved by an Owner or someone else who has the right to do so under the Vacation Plan Documents.

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

A. **"Vacation Plan Declaration"** means the Ocean Resort Villas Declaration of Covenants, Conditions, Easements and Restrictions for Vacation Ownership. It created the Vacation Ownership Plan. It was recorded as Document No. 2,737,947

B. **"Articles"** means the Articles of Incorporation of the Ocean Resort Villas Vacation Owners Association filed with the Department of Commerce and Consumer Affairs of the State of Hawaii. The Articles established and govern the Association as a corporation.

C. **"Bylaws"** means the Bylaws of the Association.

D. **"Association Rules"** means the rules adopted by the Seller and any changes made to them from time to time by the Plan Manager with the approval of the Association's Board of Directors.

1.49 **"Vacation Unit"** means an Apartment included in the Plan.

**PART 2.**  
**PURPOSE OF THIS ESCROW AGREEMENT**

This Escrow Agreement is intended to protect the Buyer, the Seller and the Escrow Agent in Closing the sale of Vacation Ownership Interests in the Vacation Ownership Plan. It is also intended to set up and maintain escrow accounts complying with the provisions of the Act and the Rules and the Condominium Property Act and the Condominium Regulations. This Escrow Agreement and the other Contract Documents also are intended:

- ❖ To protect the Buyer from any Blanket Liens. The Seller has chosen to protect Buyers from Blanket Liens in the manner provided by Section 514E-19(a)(1) of the Act. But if there are any mechanics' or materialmen's liens, then the Seller has chosen to protect Buyers in the manner provided by Section 514E-19(a)(4);
- ❖ To protect the Seller in case the Buyer defaults; and
- ❖ To be the escrow instructions of the Buyer and the Seller for the sale of each Vacation Ownership Interest.

**PART 3.**  
**RECEIPT OF BUYERS' FUNDS  
AND CLOSING PAPERS**

**3.1 Deposit of Closing Documents.** Each time the Seller accepts a Sales Contract, it will send to the Escrow Agent:

- A. A copy of the Sales Contract; and
- B. If the offer and sale was made entirely or partly in Hawaii, a copy of a Receipt for Disclosure Statement signed by the Buyer.

The Escrow Agent will also accept and hold any closing statement or settlement statement prepared pursuant to the Real Estate Settlement Procedures Act ("RESPA"), and all other papers from the Seller or any lender supplying money to or for the Buyer.

The Escrow Agent will handle and deliver all of these documents as instructed by the person who provided them and these escrow instructions.

**3.2 Buyer's Funds, Notes and Loan Documents.** The Seller and each sales agent will send each Buyer's Funds, Notes and Loan Documents to the Escrow Agent promptly after receiving them. There are two exceptions:

A. **Cancellation Period.** The Seller or a sales agent may hold any Notes and Loan Documents (i) made payable to the Escrow Agent, or (ii) that are not negotiable instruments (see Section 1.33), until the later of:

- 1) The end of the Seven-Day Cancellation Period under Section 514E-8 of the Act (if the Seven-Day Cancellation Period applies), or
- 2) The end of any other cancellation period provided to the Buyer in the Sales Contract.

B. **Sales Outside of Hawaii.** If the law of another state, country, or other government (national or local) requires it, an out-of-state escrow account may be set up in that state or country to handle sales made there. In that case, all Buyer's Funds, Notes and Loan Documents received in connection with sales made in that state or country will be deposited in the out-of-state escrow account there and will be handled according to this Escrow Agreement and any additional instructions required by the law of that state or country. A copy of any such added instructions will become a part of this Escrow Agreement after the Seller and the Escrow Agent sign it. The added instructions will apply only to sales made in that particular state or country.

**3.3 The Escrow Agent Will Handle The Buyer's Funds, Notes and Loan Documents.** The Escrow Agent will accept, hold, deposit, and pay out, according to the Contract Documents, all Funds, Notes and Loan Documents received from the Buyer or from anyone else for the Buyer. The Buyer's Funds may not be used for any purpose while the Escrow Agent is holding them except as otherwise expressly provided in this Escrow Agreement.

**3.4 Deposit of Funds.** The Escrow Agent will deposit all Funds it receives under this Escrow Agreement in a federally insured account at a bank, savings and loan association, or trust company authorized to do business in the State

of Hawaii. The accounts must pay interest at the prevailing interest rate. The Seller will receive the interest earned on the deposits unless the Buyer's Sales Contract says otherwise.

**3.5 Reports To The Seller.** Each month the Escrow Agent will give the Seller a written report of all receipts, interest-bearing deposits and disbursements under this Escrow Agreement and all Sales Contracts. If the Seller requests reports more often, the Escrow Agent will provide them in return for a reasonable service charge, not exceeding Fifty And No/100 Dollars (\$50.00), for each extra report the Seller requests.

#### PART 4. CANCELLATION PERIODS; CONDITION TO RELEASE OF FUNDS

**4.1 Seven-Day Cancellation Period.** For offers and sales made entirely or partly in Hawaii, a Buyer has the right to cancel the Sales Contract under Section 514E-8 of the Act (the *Seven-Day Cancellation Period*). To do so, a Buyer must mail or deliver a notice of cancellation to the Seller at the address stated in the Sales Contract. The Buyer must do this before the Seven-Day Cancellation Period ends. A Buyer's Seven-Day Cancellation Period ends on the later of:

- A. Seven (7) days after the Buyer's Sales Contract was signed; or
- B. Seven (7) days after the Buyer received the Disclosure Statement.

**4.2 Contingent Report Rescission Right.** A Buyer and the Seller each have the right to rescind the Sales Contract under Section 514A-64.5(b) of the Condominium Property Act (the *Contingent Report Rescission Right*) if the Hawaii Real Estate Commission does not issue an effective date for a Final Public Report for the phase of the Condominium in which the Buyer's Unit is located by the date on which the Condominium's Contingent Final Public Report for that phase expires. This rule applies only to sales made under a Contingent Final Public Report (meaning before the Hawaii Real Estate Commission issues an effective date for a Final Public Report for the phase of the Condominium in which the Buyer's Unit is located). Since the Hawaii Real Estate Commission has already issued an effective date for a Final Public Report on the Units in phase 1 of the Condominium (which includes, among other things, all Units located in the Kahakai Building), the Contingent Report Rescission Right no longer applies to sales of Vacation Ownership Interests in Units located in that building. Real Estate Commission Registration No. 4652 covers phase 1 of the Condominium and Registration No. 5129 covers phases 2 and 3.

**4.3 Release of Buyers' Funds.** No matter what else the Contract Documents say, the Escrow Agent may not release a Buyer's Funds, Notes or Loan Documents to or for the benefit of the Seller or a sales agent, or to someone else for the benefit of the Seller or a sales agent, or for construction, until the last of the following events occurs:

A. The Hawaii Real Estate Commission has issued an effective date for a Final Public Report on the phase of the Condominium containing the Buyer's Unit.

B. If the Contingent Report Rescission Right applies:

1) The Seller has given written notice to the Buyer, by certified mail, that the Buyer has the right to rescind the Sales Contract because the Real Estate Commission did not issue an effective date for a Final Public Report for the phase of the Condominium containing the Buyer's Unit by the date on which that phase of the Condominium's Contingent Final Public Report expired, and

2) Both the Seller and the Buyer have waived their rights to rescind in writing.

C. If the offer and sale is made entirely or partly in Hawaii:

1) The Buyer's Sales Contract "has become binding, and the requirements of Sections 514A-40, 514A-39.5, and 514A-63 have been met" as that phrase is used in Section 514A-65 of the Condominium Property Act.

2) The Escrow Agent has received a copy of a Receipt for Disclosure Statement signed by the Buyer whose Funds are being released.

3) The Seven-Day Cancellation Period under Section 514E-8, HRS, has expired as to the Buyer whose Funds are being released.

4) The Escrow Agent receives a sworn statement from the Seller in the form of either Exhibit "B" or Exhibit "C" attached to this document as to the Buyer whose Funds are being released. If the statement is in the form of Exhibit "B", the statement must be dated no earlier than five days after the Seven-Day Cancellation Period has expired. If the statement is in the form of Exhibit "C", the statement must be dated no earlier than the date that the Hawaii Real Estate Commission issues an effective date for the Final Public Report for the phase of the Condominium in which the Buyer's Unit is located (if such date is prior to the date on which the Contingent Final Public Report expires), or the date on which both Seller and Buyer have waived their Contingent Report Rescission Rights (if the Hawaii Real Estate Commission issues an effective date for the Final Public Report for the phase of the Condominium in which the Buyer's Unit is located after the date on which the Contingent Final Public Report for that phase expires).

D. If the offer and sale is not made in Hawaii, the Escrow Agent receives a sworn statement from the Seller in the form of either Exhibit "D" or Exhibit "E" attached to this document as to the Buyer whose Funds are being released. If the statement is in the form of Exhibit "D", the statement must be dated no earlier than the date that the Hawaii Real Estate Commission issues an effective date for the Final Public Report for the phase of the Condominium in which the Buyer's Unit is located (if such date is prior to the date on which the Contingent Final Public Report expires), or the date on which both Seller and Buyer have waived their Contingent Report Rescission Rights (if the Hawaii Real Estate Commission issues an effective date for the Final Public Report for the phase of the Condominium in which the Buyer's Unit is located after the date on which the Contingent Final Public Report for that phase expires).

## PART 5. RELEASE OF BUYER'S FUNDS WITHOUT A CLOSING

**5.1 Release of Buyers' Funds.** A Buyer's Funds, Notes and Loan Documents may be released from escrow without a Closing only as provided in Sections 5.2, 5.3, 5.4, 5.5, 5.6, and 9.4.

**5.2 Refunds to the Buyer.** The Escrow Agent will refund Buyer's Funds held by the Escrow Agent, without interest, if and only if any of the following things have happened:

A. The offer and sale is made wholly or partly in Hawaii and either the Buyer or the Seller gives a valid notice of cancellation during the Seven-Day Cancellation Period. In that event, all of the Buyer's Funds held by the Escrow Agent will be returned to the Buyer within fifteen (15) business days after the notice of cancellation is received.

B. The Buyer gives a valid notice of cancellation pursuant to Section 514A-63 of the Condominium Property Act. In that event, the Escrow Agent must promptly return to the Buyer all of the Buyer's Funds without interest.

C. The Buyer or the Seller gives a valid notice of rescission using its Contingent Report Rescission Right. In that event, the Escrow Agent must promptly return to the Buyer all of the Buyer's Funds, Notes and Loan Documents, with interest, and an amount sufficient to reimburse the Buyer for any required escrow fees.

D. The Seller gives notice to the Escrow Agent that the Buyer has exercised any right to cancel that the Buyer has under the Sales Contract (other than the rights described above in subsections 5.2A, 5.2B or 5.2C). In that event, all of the Buyer's Funds held by the Escrow Agent will be returned to the Buyer within fifteen (15) business days after the Escrow Agent receives the notice of cancellation.

E. The Buyer gives notice to the Escrow Agent that the Buyer has exercised any right to cancel that the Buyer has under the Sales Contract (other than the rights described above in subsections 5.2A, 5.2B or 5.2C). In that event, the Escrow Agent will give the Seller written notice of the Buyer's decision to cancel. The Seller has five (5) business days after it receives that notice within which to provide written notice to the Escrow Agent of the Seller's approval or disapproval of the cancellation. If the Seller gives it approval, then all of the Buyer's Funds held by the Escrow Agent will be returned to the Buyer, less any escrow cancellation fee, within fifteen (15) business days after the Escrow Agent receives written notice of approval from the Seller. If the Escrow Agent receives no notice or receives a notice of disapproval from the Seller, then the Escrow Agent may proceed as provided in Section 9.4.

F. If the Seller instructs the Escrow Agent to do so, the Escrow Agent will return to the Buyer all of the Buyer's Funds within fifteen (15) business days after the Escrow Agent receives that instruction.

Regardless of the things stated in subsections A - F, the Escrow Agent has no duty to use its own money to make a refund

to a Buyer whose check has not cleared. Instead, the Escrow Agent may wait until the Buyer's check clears but it must make any required refund promptly after that.

**5.3 Payment of Funds if the Seller Cancels Because the Buyer Defaulted.** If the Seller gives written notice to the Escrow Agent that the Seller is canceling a Buyer's Sales Contract because of the Buyer's Default then the Buyer's Funds will be delivered as provided in that Buyer's Sales Contract. If the Sales Contract provides that the Buyer's Funds will be released to the Seller as liquidated damages if the Buyer Defaults, then the following rules apply:

**A. Notice From Seller.** The Seller must provide the Escrow Agent with a copy of a notice of default sent by the Seller to the Buyer, together with a statement that at least fifteen (15) days have passed since the notice was sent and that the Buyer has not cured the Default.

**B. Notice From the Escrow Agent.** The Escrow Agent must then give the Buyer notice by certified or registered mail. The notice must say that:

- 1) The Seller has declared that the Buyer is in Default under the Sales Contract;
- 2) If the Buyer objects to this declaration, the Buyer must notify the Escrow Agent in writing; and
- 3) If the Escrow Agent does not receive any objection from the Buyer within thirty (30) days from the date the notice is sent, the Escrow Agent may treat the Buyer's Funds as belonging to the Seller and may release those Funds to the Seller.

**C. Release of Funds.** If the Escrow Agent receives an objection from the Buyer within thirty (30) days after sending the notice to the Buyer, then the Escrow Agent may proceed as provided in Section 9.4. Otherwise, the Escrow Agent must treat the Buyer's Funds as the Funds of the Seller and pay them out as provided in Section 5.7.

**5.4 Release of Funds Upon Posting a Bond or Other Financial Assurance.** The Escrow Agent shall release a Buyer's Funds to the Seller prior to Closing if, as permitted by the Act or as approved by the Director, the Seller posts a bond, letter of credit, or other financial assurance that assures the repayment to the Escrow Agent of any refund due the Buyer prior to Closing. The Seller may determine the amount of the bond, letter of credit, or other financial assurance. The Escrow Agent may not release a Buyer's Funds under this Section 5.4 unless the amount of the bond, letter of credit, or other financial assurance exceeds the sum of (i) the amount to be released, plus (ii) the total amount of the Buyers' Funds previously released to the Seller for sales that have not yet closed. If permitted by the Act or approved by the Director, the Escrow Agent may release a Buyer's Funds to the Seller before the end of the Seven-Day Cancellation Period, despite Section 4.3.

**5.5 Return of Documents if a Sale is Cancelled.** If any sale is canceled or rescinded before Closing by the Buyer or the Seller, the Escrow Agent will:

- A. Mark "canceled" on and return to the Seller the Vacation Ownership Deed and the Sales Contract; and
- B. Provide to the Buyer any original Notes (except for checks and so on that have already been cashed), each marked "canceled"; and
- C. Return all other papers to the person who gave them to the Escrow Agent.

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

**5.7 Payment of the Seller's Funds.** Any unclaimed refunds and any other Funds that the Escrow Agent may release to the Seller under this Escrow Agreement (such as interest payable to the Seller on Buyer's Funds) will be paid out as the Seller directs in writing. Limits on the release of Buyer's Funds do not apply to the release of the Seller's Funds by the Escrow Agent.

**PART 6.**  
**PRECLOSING AND CLOSING CONDITIONS**

**6.1 The Escrow Agent Will Gather The Buyer's Money And Documents.** Attached as Exhibit "C" is a list of documents that may be required to Close each sale. When the Escrow Agent receives each Sales Contract, it will promptly inform the Seller of any documents on the list that it still needs to Close the sale. It will also do anything else reasonably required by the Seller or any lender to Close the sale. If Seller asks, Escrow Agent will inform Seller of the amount of a Buyer's Funds held by the Escrow Agent.

**6.2 Closing Conditions.** The Escrow Agent will not Close any sale before the Closing Date set according to the Sales Contract. The Escrow Agent will Close each sale on the Closing Date if all of the following things (the *Closing Conditions*) have happened:

A. The Escrow Agent has not received notice that the Seller or the Buyer has cancelled as provided in Sections 5.2 or 5.3.

B. The Escrow Agent has received enough money to pay the Purchase Price stated on the Buyer's Sales Contract less (i) any credits allowed by the Seller and (ii) the amount of any loan made by the Seller to the Buyer.

C. The Escrow Agent has received all necessary Closing documents.

D. All requirements set by Seller or anyone else loaning money to the Buyer for the purchase have been met provided that Escrow Agent is notified of those requirements in writing.

E. The Buyer's Unit is included in the Plan if it isn't already.

F. A title insurance company authorized to do business in Hawaii is committed to issue, after the Buyer's Vacation Ownership Deed is recorded, a policy of title insurance on the Buyer's Vacation Ownership Interest.

1) The title policy must insure that the Buyer's Vacation Ownership Interest is subject only to any Mortgage signed by the Buyer, the "Permitted Encumbrances" listed in the Disclosure Statement, and anything else that doesn't make the Buyer's title unmarketable.

2) If the Closing will happen less than forty-six (46) days after the Date of Completion, the title policy must include an attachment (in legal terms, an "endorsement") insuring against any loss due to mechanics' liens. Note that "*Date of Completion*" has a special meaning under Section 507-43(f), HRS, and that meaning applies here. It generally refers to the date when construction is done.

G. As to each existing Blanket Lien, (i) the Escrow Agent is prepared to record or can confirm that someone else has already recorded a release of the Buyer's Vacation Ownership Interest from the Blanket Lien, or (ii) in the case of mechanics' or materialmen's lien, the commitment for a title policy required by Section 7.3 includes an endorsement providing coverage against such liens.

H. The requirements of Section 4.3 have been met.

**6.3 Late Closing.** If the necessary documents cannot be recorded, or if any of the Closing Conditions has not been met so that the sale cannot be Closed on the Closing Date: (i) the Escrow Agent will tell the Seller at once, and (ii) the Escrow Agent will not Close it later unless the Seller tells it to do so. If the Seller does so, the Escrow Agent will Close it on the new date picked by the Seller as long as all the Closing Conditions have been met. Neither the Seller nor the Escrow Agent must give notice to the Buyer of any change in the Closing Date.

**PART 7.**  
**CLOSING**

**7.1 Closing.** To Close each sale, the Escrow Agent will:

A. Date all documents and fill in any other necessary blanks in them; and

B. Record, or see that someone else records, all releases, the Buyer's Vacation Ownership Deed, any Mortgage, and all other appropriate documents; and

C. Pay, out of the Funds in escrow and after Seller's approval, all of the Closing Costs and additional charges; and

D. Disburse all sums due Seller under the Sales Contract in the manner provided in Part 8.

**7.2 After the Closing.** After Closing and except as otherwise provided in Section 8.3, the Escrow Agent will:

A. Mail or otherwise deliver, or have someone else deliver to the Buyer the Vacation Ownership Deed, and copies of any recorded Mortgage, any closing statement or RESPA settlement statement held by the Escrow Agent, and the original owner's title insurance policy; and

B. Mail or otherwise deliver to the Seller each release and a copy of the Vacation Ownership Deed and any closing statement or RESPA settlement statement; and

C. Mail or otherwise deliver the original Note and Loan Documents, any original lender's title policy, and copies of any closing statement or RESPA settlement statement, and any other documents to, and do anything else reasonably required by, the Seller or anyone else loaning money to the Buyer for the purchase; and

D. Refund any over-payment to the Buyer.

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

## **PART 8. SELLER'S FUNDS**

**8.1 Completion of Construction.** For purposes of this part, "*Completion of Construction*" means that the County of Maui has issued a temporary or permanent certificate of occupancy for the Buyer's Unit.

**8.2 Sales Closed After Completion of Construction.** If a sale is Closed after Completion of Construction, then the Escrow Agent will deliver the Buyer's Funds, Notes and Loan Documents to the Seller as part of the Closing.

**8.3 Sales Closed Before Completion of Construction.** If a sale is Closed before Completion of Construction, then these rules apply:

A. The Escrow Agent will hold in trust all Funds due Seller under the Sales Contract and will keep the Funds in a bank account with a bank or savings and loan association approved by the Seller and located in Honolulu, Hawaii. This account must pay interest at the prevailing interest rate. All interest will belong to the Seller. The account must be insured as to principal by the United States government or one of its agencies. The Escrow Agent will keep the sums in this account separate from Buyers' Funds.

B. The Escrow Agent will hold in trust all Notes and Loan Documents received from the sale. The Escrow Agent will cash any checks and similar documents which can be cashed, and hold the money as required under Section 8.3A. The Escrow Agent will keep the Notes and Loan Documents which it holds under this paragraph separate from Notes and Loan Documents of Buyers whose sale has not yet Closed.

C. The Escrow Agent will hold in trust all payments made by the Buyer pursuant to Notes and Loan Documents received from the sale. In performing this duty, the Escrow Agent may contract with a loan servicing company approved by the Seller to receive and account for all such payments. The Seller will pay all fees and charges of the loan servicing company but may pass the cost along to the Buyers making the payments. The Escrow Agent will hold and deposit the money as required under Section 8.3A.

D. If the Seller asks, the Escrow Agent will disburse the Funds held by it under this Section 8.3 from time to time to pay for:

1) Construction costs of the buildings and improvements in proportion to the valuation of the work completed by the contractor in accordance with the contract documents, as certified in writing by a registered architect or professional engineer, and

2) Architectural, engineering, finance, and legal fees and for other incidental expenses of the Condominium as approved by the Seller's mortgage lender (if it has a mortgage lender) in writing.

E. The Escrow Agent will return all Funds (including payments made by Buyers), Notes and Loan Documents to the Buyer from whom they were received if (1) the Seller directs the Escrow Agent to do so in writing or (2) a Buyer gives a valid notice of cancellation pursuant to section 514A-63, HRS. But the Escrow Agent will not return the Buyer's Funds, Notes and Loan Documents before recording a Deed transferring the Buyer's Vacation Ownership Interest(s) back to the Seller free of all encumbrances except those allowed in the title policy issued under Section 7.3. It is not the Escrow Agent's responsibility to obtain that Deed.

F. Upon Completion of Construction, the Escrow Agent will deliver to the Seller, or as the Seller directs in writing, all Funds, Notes and Loan Documents from the sale. But if there is a dispute or conflicting claims or demands, the Escrow Agent may interplead as provided in section 9.4.

**8.4 Assignment of Seller's Rights.** The Seller may give to a lender (called a "*Secured Party*") a "*Security Interest*" in the Funds, Notes and Loan Documents. (This means that the Seller is pledging its rights in the Funds, Notes and Loan Documents as collateral for a loan. If the Seller does not repay the loan, then the Secured Party may foreclose on the Seller's rights to the Funds, Notes and Loan Documents.) If the Seller gives someone such a Security Interest, then the Escrow Agent will have possession of and hold the Seller's interest in the Funds (including interest earned), Notes and Loan Documents in trust for the benefit of the Secured Party first and for the Seller second. If there is more than one Secured Party, then the Escrow Agent will hold the Funds, Notes and Loan Documents in trust for each of the Secured Parties in their order of priority and lastly for the Seller. Upon Completion of Construction, the Escrow Agent will deliver the Funds, Notes and Loan Documents to the Secured Party or as the Secured Party directs in writing instead of to the Seller under section 8.3F. This section will apply only while a Secured Party has a Security Interest in the Funds, Notes And Loan Documents. The Escrow Agent will sign any document reasonably requested by a Secured Party to confirm that the Escrow Agent has possession of and is holding the Funds, Notes and Loan Documents in trust for the benefit of the Secured Party.

**8.5 Other Release of Funds.** The Escrow Agent shall release to the Seller any Funds held in trust by the Escrow Agent pursuant to Section 8.3A if all requirements of one or more of the following subsections have been met:

A. The Seller posts a bond, letter of credit, or other financial assurance (a "Bond"), as permitted by the Act or as approved by the Director, assuring the repayment to the Escrow Agent of any refund due the Buyer after Closing and prior to the Completion of Construction. The Seller may determine the amount of the Bond. The Escrow Agent may not release a Buyer's Funds under this Subsection 8.5A unless the amount of the Bond exceeds the sum of (i) the amount to be released, plus (ii) the total amount of the Buyers' Funds previously released to the Seller for sales in Units the construction of which has not yet been substantially completed.

B. The Seller posts a bond, letter of credit, or other financial assurance, as permitted by the Act or as approved by the Director, assuring that construction of the Buyer's Unit, and the building in which it is located, will be substantially completed. For example, the Seller may post a completion bond for payment of the remaining costs of construction of the Buyer's Unit and the building in which it is located.

C. The Escrow Agent is otherwise allowed to do so by the Act, provided that any conditions to such release imposed by the Act must first be satisfied.

Funds released pursuant to this Section 8.5 are not subject to the restrictions on use imposed by Subsection 8.3D.

## **PART 9.**

### **ESCROW AGENT'S RIGHTS**

**9.1 Escrow Agent's Fees.** For its services under this Escrow Agreement, the Escrow Agent will be paid the following fees:

A. **Escrow Fee.** The Escrow Agent will be paid an escrow fee in an amount set by agreement of the Seller and the Escrow Agent in a separate document. The escrow fee will be charged to the Buyer or the Seller as stated in the Sales

Contract. The escrow fee for each sale is due and payable only when the sale Closes; provided that if the sale Closes before the Completion of Construction, the fee is due and payable only after Completion of Construction and delivery to the Seller, or as the Seller directs, of the Buyer's Funds, Notes, and Loan Documents.

**B. Cancellation Fee.** No cancellation fee will be charged for any Sales Contract that is canceled by the Buyer or the Seller.

**9.2 Lost Funds.** The Escrow Agent is not responsible for any Funds lost during the time that they are deposited in an account insured as to principal by the United States Government or the State of Hawaii, or an agency of either of them.

**9.3 Other Limits on the Escrow Agent's Liability and Duties.** The Escrow Agent will not be liable to the Buyer, the Seller or anyone else for acting as directed by the Contract Documents, even if the Seller, the Buyer or anyone else instructs it to do otherwise. The Escrow Agent does not have to tell the Seller or any Buyer about any other transaction or fact if that transaction or fact does not prevent the Escrow Agent from obeying the Contract Documents. The Escrow Agent is not responsible for documents or money not delivered to the Escrow Agent. The Escrow Agent is not liable if the Buyer gives a valid notice of cancellation to the Seller but the Seller does not notify the Escrow Agent in a timely fashion. The Escrow Agent need not determine if any Sales Contract it receives is valid or sufficient. For all purposes, the Escrow Agent may assume that:

- A. All documents were signed by the persons whose signatures seem to be on them; and
- B. The persons signing documents are old enough and competent to sign and had the authority to do so; and
- C. Anyone who signs for someone else has permission to do so; and

D. Any written notice or instruction from the Seller, or any lender providing financing for the purchase of a Vacation Ownership Interest, is true and accurate.

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

**9.5 The Buyer and Seller Will Indemnify the Escrow Agent.** The Buyer and the Seller, jointly and severally (together and separately) promise to indemnify the Escrow Agent against (which means the Buyer and the Seller agree to pay in full) all costs, damages, judgments, legal fees and expenses reasonably incurred by the Escrow Agent for acting as instructed in this Escrow Agreement. This does not, however, apply to anything caused by the negligence or misconduct of the Escrow Agent.

**9.6 Cancellation of This Escrow Agreement.** The Seller or the Escrow Agent can cancel this Escrow Agreement by giving written notice to the other thirty (30) days in advance. All Sales Contracts accepted by the Seller before the date of the cancellation notice will continue under this Escrow Agreement and will be Closed by the Escrow Agent according to these escrow instructions just as if no notice of cancellation had been given. The Seller may, however, have a different escrow company Close any Sales Contract delivered to the Escrow Agent before the date of the termination. In that case, the Escrow Agent will receive a fair cancellation fee based on the work done but not less than Twenty Dollars (\$20.00) nor more than the full escrow fee. The Escrow Agent will receive no fee for Sales Contracts accepted by the Seller but not delivered to the Escrow Agent as of the date of the termination. Buyers cannot cancel this Escrow Agreement.

**9.7 Application to Existing Sales.** This Escrow Agreement does not replace the Escrow Agreements dated August 31, 2001, and May 20, 2003, between the Seller and the Escrow Agent. Those escrow agreements will stay in effect for all sales made before the date of this Escrow Agreement.

## **PART 10. GENERAL MATTERS**

**10.1 Assignment.** The Escrow Agent cannot assign its rights nor delegate its duties under this Escrow Agreement without first getting the Seller's written consent. No Buyer's consent is necessary.

**10.2 Changes To This Agreement.** The Escrow Agent agrees to change this agreement as Seller asks in order to comply with (i) the legal requirements of the State of Hawaii, (ii) the legal requirements of any other state or the requirements of any governmental agency in a place where the Seller is registering the Plan for sale, or (iii) the requests of Seller's lenders. But the Escrow Agent need not agree to any change that increases its obligations or duties, reduces its fees, or violates the Act, the Rules, or the Condominium Property Act or the Condominium Regulations. No Buyer's consent is necessary.

**10.3 Giving Notices.** Any notice from the Seller or the Escrow Agent to the Buyer may be given by telephone or in writing, unless otherwise expressly stated. All other notices (including any from the Buyer) must be in writing only. Written notices must be personally delivered or mailed by certified or registered mail, postage prepaid, addressed to the person at the address shown on the Buyer's Sales Contract. If more than one person is listed as the Buyer on a Sales Contract, a notice given to any of them will be considered notice to all. If the Buyer is a corporation or partnership, the notice may be delivered or mailed to any officer or partner of the Buyer. If the Buyer is a limited liability company, the notice may be delivered or mailed (i) to any manager of a manager-managed company, or (ii) to any member of a member-managed company. The Buyer, the Seller or the Escrow Agent can change their addresses by sending written notice of the new address to the others. All written notices are considered given when they are personally received or are deposited in the mail.

**10.4 Time Is Of The Essence.** Time is of the essence. This means that the parties must do what they promised to do when they promised to do it. If anyone's promise does not set a date or time for performance, then that person must keep his or her promises as soon as reasonably possible. A party who does not keep his or her promises on time has violated the Contract Documents and will be in default.

**10.5 Who is Bound by the Contract Documents?** The Contract Documents are for the benefit of and binding on the Seller, the Buyer, the Escrow Agent, and anyone who, by law or by agreement, stands in any of their places. (In legal terms such people are called their "heirs," "personal representatives," "successors" and "assigns.")

**10.6 Captions.** Seller has tried to appropriately divide and caption the Contract Documents by their various sections. Captions are a part of the contract, but obviously cannot and do not completely or adequately explain each section or the entire agreement. Read with care each and every section of the Contract Documents and not just the captions alone. No court may treat the captions and headings as if they fully explain what the section means.

**10.7 Hawaii Law; No Jury Trial.** The Escrow Agent will perform all of its duties in the State of Hawaii. So this Escrow Agreement and all other parts of the Contract Documents pertaining to the Escrow Agent's duties are governed by and will be interpreted according to the laws of the State of Hawaii. **THE PARTIES GIVE UP ANY RIGHT TO A JURY TRIAL.**

**10.8 Conflicts.** This Escrow Agreement and the other Contract Documents are subject to the laws of Hawaii including, for example, the Act and the Rules, and the Condominium Property Act and the Condominium Regulations. If some part of the Contract Documents conflicts with a law or rule, the law or rule, and not that part of the Contract Documents, must be obeyed.

**10.9 The Provisions Of The Contract Are "Severable" (Separately Enforceable).** If any court decides that some part of the Contract Documents is not legal or can be ignored for any reason, the court must treat the Contract Documents as if they never included that part. All of the remaining parts will continue to be effective and binding.

**10.10 Legal Fees.** In any lawsuit or other legal proceedings over this Escrow Agreement, the losers must pay the winner's costs and expenses, including reasonable legal fees.

**10.11 Counterparts.** This Escrow Agreement will be effective so long as the Escrow Agent and the Seller sign copies of it. So long as they sign copies of this Escrow Agreement having identical content, it is not necessary for them to sign the exact same copy. A signature on a faxed copy will be sufficient as well.

By signing this document, the Escrow Agent and the Seller agree to all of the things written above. This agreement takes effect on August 12, 2003.

HAWAII RESORT ESCROW, INC.

By Brenda L. Daniels  
Its President

SVO PACIFIC, INC.

By Victor H. Paul  
Its Vice President

Exhibit "A" to Escrow Agreement

# Westin Ka'anapali Ocean Resort Villas

<p><b>Joinder of Sales Agent in Escrow Agreement</b></p>
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By signing this document, the undersigned, a real estate broker licensed under Chapter 467, HRS :

1. Acknowledges receiving a copy of the Escrow Agreement between SVO Pacific, Inc., a Florida corporation, and Hawaii Resort Escrow, Inc., a Hawaii corporation; and
2. Agrees to obey and be bound by that agreement.

[NAME OF BROKER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

*Exhibit "B" to Escrow Agreement*

**SWORN STATEMENT**  
(For Sales Made Wholly or Partly in Hawaii After Issuance of Final Public Report)

TO: Hawaii Resort Escrow, Inc.	BUYER:
ATTN:	UNIT NO.
DATE:	INTERVAL NO.

SVO PACIFIC, INC., (the *Seller*) hereby states as follows:

1. The Seven-Day Cancellation Period under Section 514E-8, HRS, has expired as to the Buyer whose Funds are being released;
2. At least five days have passed since the Seven-Day Cancellation Period has expired, and
  - (a) No cancellation notice postmarked on a date within the Seven-Day Cancellation Period was received from the Buyer whose Funds are being released; and
  - (b) No cancellation notice was otherwise received during the Seven-Day Cancellation Period from the Buyer whose Funds are being released.
3. The Hawaii Real Estate Commission has issued an effective date for a Final Condominium Public Report on the Condominium.
4. The Buyer's Sales Contract was made after the Hawaii Real Estate Commission issued an effective date for a Final Public Report on the phase of the Condominium in which the Buyer's Unit is located.
5. There has been no "material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use" as that phrase is used in Section 514A-63(a), HRS, that has not been disclosed to the Buyer in the Disclosure Statement or in a separate disclosure document.
6. Either:
  - (a) There has been no material change or changes in the Disclosure Statement within the meaning of Section 16-106-16(a) of the Hawaii Administrative Rules, or
  - (b) The Seller has prepared, and the Director of the Department of Commerce & Consumer Affairs has accepted, an amended or supplemental Disclosure Statement that specifies, in detail, any material change or changes which have occurred, and either:
    - (1) The Buyer is not adversely affected by the material change, and/or
    - (2) A true, accurate, and complete copy of the amended or supplemental Disclosure Statement has been given to the Buyer and (i) the Buyer signed a receipt for the amended or supplemental Disclosure Statement, or (ii) the Seller is otherwise able to verify that the amended or supplemental Disclosure Statement has been given to the Buyer.

SVO PACIFIC, INC.

By: \_\_\_\_\_  
Its Attorney-In-Fact

State of Hawaii            )  
                                      ) SS.  
County of Maui            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he or she is the Attorney-In-Fact for SVO PACIFIC, INC., a Florida corporation; that he or she executed the foregoing instrument as Attorney-In-Fact for said corporation; and that he or she executed the same as the same as the free act and deed of said corporation.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

*Exhibit "C" to Escrow Agreement*

**SWORN STATEMENT**  
(For Sales Made Wholly or Partly in Hawaii - Contingent Public Report)

TO: Hawaii Resort Escrow, Inc.	BUYER:
ATTN:	UNIT NO.
DATE:	INTERVAL NO.

SVO PACIFIC, INC., (the *Seller*) hereby states as follows:

1. The Seven-Day Cancellation Period under Section 514E-8, HRS, has expired as to the Buyer whose Funds are being released;
2. At least five days have passed since the Seven-Day Cancellation Period has expired, and
  - (a) No cancellation notice postmarked on a date within the Seven-Day Cancellation Period was received from the Buyer whose Funds are being released; and
  - (b) No cancellation notice was otherwise received during the Seven-Day Cancellation Period from the Buyer whose Funds are being released.
3. The Buyer's Sales Contract was made before the Hawaii Real Estate Commission issued an effective date for a Final Public Report on the phase of the Condominium in which the Buyer's Unit is located.
4. The Hawaii Real Estate Commission issued an effective date for the Final Public Report on the Condominium, either:
  - (a) By the date that the Contingent Final Public Report expired; or
  - (b) After the date on which the Condominium's Contingent Final Public Report expired, and:
    - (i) The Seller gave written notice to the Buyer, by certified mail, that the Buyer had the right to rescind the Sales Contract because the Real Estate Commission did not issue an effective date for a Final Public Report for the Condominium by the date on which the Condominium's Contingent Final Public Report expired;
    - (ii) Both the Seller and the Buyer waived their rights to rescind in writing; and
    - (iii) Following the issuance of an effective date for the Final Public Report, the Seller promptly provided Buyer with all disclosures required under Section 514A-62(f)(3), HRS.
5. There has been no "material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use" as that phrase is used in Section 514A-63(a), HRS, that has not been disclosed to the Buyer in the Disclosure Statement or in a separate disclosure document.
6. Either:
  - (a) There has been no material change or changes in the Disclosure Statement within the meaning of Section 16-106-16(a) of the Hawaii Administrative Rules, or
  - (b) The Seller has prepared, and the Director of the Department of Commerce & Consumer Affairs has accepted, an amended or supplemental Disclosure Statement that specifies, in detail, any material change or changes which have occurred, and either:
    - (1) The Buyer is not adversely affected by the material change, and/or
    - (2) A true, accurate, and complete copy of the amended or supplemental Disclosure Statement has been given to the Buyer and (i) the Buyer signed a receipt for the amended or supplemental Disclosure Statement, or (ii) the Seller is otherwise able to verify that the amended or supplemental Disclosure Statement has been given to the Buyer.

SVO PACIFIC, INC.

By: \_\_\_\_\_  
Its Attorney-In-Fact

State of Hawaii            )  
                                  ) SS.  
County of Maui            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he or she is the Attorney-In-Fact for SVO PACIFIC, INC., a Florida corporation; that he or she executed the foregoing instrument as Attorney-In-Fact for said corporation; and that he or she executed the same as the same as the free act and deed of said corporation.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

*Exhibit "D" to Escrow Agreement*

**SWORN STATEMENT**  
(For Sales Not Made in Hawaii - Contingent Public Report)

TO: Hawaii Resort Escrow, Inc.	BUYER:
ATTN:	UNIT NO.
DATE:	INTERVAL NO.

SVO PACIFIC, INC., (the *Seller*) hereby states as follows:

1. The offer and sale took place entirely outside of Hawaii.
2. The Buyer's Sales Contract was made before the Hawaii Real Estate Commission issued an effective date for a Final Public Report on the phase of the Condominium in which the Buyer's Unit is located.
3. The Hawaii Real Estate Commission issued an effective date for the Final Public Report on the Condominium, either:
  - (a) By the date that the Contingent Final Public Report expired; or
  - (b) After the date on which the Condominium's Contingent Final Public Report expired, and:
    - (i) The Seller gave written notice to the Buyer, by certified mail, that the Buyer had the right to rescind the Sales Contract because the Real Estate Commission did not issue an effective date for a Final Public Report for the Condominium by the date on which the Condominium's Contingent Final Public Report expired;
    - (ii) Both the Seller and the Buyer waived their rights to rescind in writing; and
    - (iii) Following the issuance of an effective date for the Final Public Report, the Seller promptly provided Buyer with all disclosures required under Section 514A-62(f)(3), HRS.
4. There has been no "material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use" as that phrase is used in Section 514A-63(a), HRS, that has not been disclosed to the Buyer in the Disclosure Statement or in a separate disclosure document.

SVO PACIFIC, INC.

By: \_\_\_\_\_  
Its Attorney-In-Fact

State of Hawaii            )  
                                      ) SS.  
County of Maui            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he or she is the Attorney-In-Fact for SVO PACIFIC, INC., a Florida corporation; that he or she executed the foregoing instrument as Attorney-In-Fact for said corporation; and that he or she executed the same as the same as the free act and deed of said corporation.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
  
My commission expires: \_\_\_\_\_

Exhibit "E" to Escrow Agreement

SWORN STATEMENT  
(For Sales Not Made in Hawaii – Final Public Report)

TO: Hawaii Resort Escrow, Inc.	BUYER:
ATTN:	UNIT NO.
DATE:	INTERVAL NO.

SVO PACIFIC, INC., (the *Seller*) hereby states as follows:

1. The offer and sale took place entirely outside of Hawaii.
2. The Buyer's Sales Contract was made after the Hawaii Real Estate Commission issued an effective date for a Final Public Report on the phase of the Condominium in which the Buyer's Unit is located.
3. There has been no "material change in the project which directly, substantially, and adversely affects the use or value of (1) such purchaser's apartment or appurtenant limited common elements, or (2) those amenities of the project available for such purchaser's use" as that phrase is used in Section 514A-63(a), HRS, that has not been disclosed to the Buyer in the Disclosure Statement or in a separate disclosure document.

SVO PACIFIC, INC.

By: \_\_\_\_\_  
Its Attorney-In-Fact

State of Hawaii        )  
                              ) SS.  
County of Maui        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he or she is the Attorney-In-Fact for SVO PACIFIC, INC., a Florida corporation; that he or she executed the foregoing instrument as Attorney-In-Fact for said corporation; and that he or she executed the same as the same as the free act and deed of said corporation.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
My commission expires: \_\_\_\_\_

EXHIBIT "F"

**Ocean Resort Villas  
Standard Escrow Documents**

**DOCUMENTS NEEDED FOR ALL SALES**

1. Sales Contract
2. Buyer's Acknowledgement form
3. Original Vacation Ownership Deed
4. Receipt for Time Share Disclosure Statement (only for sales made wholly or partly in Hawaii)
5. Recission Rights Notice(s)
6. Purchase money deposit - Copy & Back up
7. SVO Use Notification form
8. Correction Agreement / Limited Power of Attorney
9. Certification of Corporate Resolutions (if sale is to a corp.)
10. Guaranty Agreement (personal guaranty used in corp. sales)
11. Certification of Trustees Under Trust form
12. Developer's Affidavit RE: no cancellations
13. SVN StarOptions Chart

**ADDITIONAL DOCUMENTS NEEDED FOR FINANCED SALE:**

14. Promissory note
15. Mortgage
16. Mortgage modification document (if applicable)
17. Interest Rate Adjustment Rider (if applicable)
18. HUD 1 Settlement Statement
19. RESPA Good Faith Estimate of Closing Costs
20. Truth in Lending statement
21. RESPA servicing disclosure form
22. ACH / ACC debit form
23. Special Warranty Deed back to developer (upgrades only)

8/7/2003

## VACATION OWNERSHIP PLAN RULES AND REGULATIONS OF OCEAN RESORT VILLAS

Welcome to resort living at its very best. We want your use of your Vacation Ownership Interest to be a satisfying experience. The following Rules and Regulations have been established for the benefit of all Owners. These Rules and Regulations supplement the Vacation Plan Declaration and Vacation Plan Documents, as they may be amended from time to time, but do not change your obligations as an Owner under either the Vacation Ownership Plan or Vacation Plan Documents. These Rules and Regulations may be amended from time to time by the Board of Directors of the Vacation Ownership Plan (the "Board"). Compliance by you, your family and your guests with these Rules and Regulations will permit the Vacation Ownership Plan at the Ocean Resort Villas to run smoothly and efficiently. The Vacation Plan is located in the Ocean Resort Villas, a fee simple Condominium (the "Resort"), all references to the Resort include the Vacation Plan, Condominium and Master Condominium.

Each Owner shall be governed by and shall comply with these Rules and Regulations, the Master Declaration, the Condominium Declaration, the Vacation Plan Documents (as defined in the Vacation Ownership Plan) and the Starwood Vacation Network Documents (as defined in the Vacation Ownership Plan). These documents are collectively referred to as the Governing Documents. Please note that failure by you or your guests to comply with these documents shall entitle the Vacation Owners Association ("Association") to pursue any and all legal and equitable remedies to enforce the rules and may result in the suspension of your rights and privileges as an Owner.

**Antennas.** No antennas of any type shall be allowed on the Resort, except as may be provided by the Board to serve as a master antenna for the benefit and use of the condominiums within the Resort. No electrical or other equipment may be operated on the Resort which interferes with television signal reception.

**Barbecue Grills.** No barbecue grills may be used on the Resort, except in areas, if any, specifically designated by the Board, or the Board of the Master Association or Condominium Association, for such use.

**Children.** Owners are responsible for the conduct of their children or children in their care. Children are not permitted to play in corridors, parking areas, the lobby, pool areas, spas or any other common areas not designed for children's recreation. Children under thirteen (13) years of age must be accompanied by an adult. Owners will be held financially responsible for disturbance or damage caused their minor children or children under their care. Failure to pay for damages caused by such behavior may affect the Owner's use privileges.

**Common Elements.** Common elements of the Resort shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of and use by the Owners and others as permitted by the Governing Documents.

**Damage.** No Owner or guest, invitee, or lessee of such Owner shall deface, mar, or otherwise damage any part of the Resort. In the event of such damage, the Owner shall be liable for the cost of repair. If a Vacation Unit or facility is rendered unusable due to the intentional or negligent act or omission of an Owner, guest, invitee, or lessee of such Owner, the Owner also shall be responsible for the cost of securing alternative accommodations or facilities of comparable quality and location until the damaged accommodations or facilities are repaired.

**Decoration of Units; Additions, Alterations, and Renovations.** No Owner, guest, invitee, or lessee shall alter the furnishings, appliances, personal property, or decor of any Vacation Unit. No Owner, guest, invitee, or lessee shall paint or otherwise decorate or change the appearance of any portion of the Resort. The Board shall determine the interior color scheme, decor, and furnishings of each Vacation Unit as well as the proper time for redecorating and renovating such Unit and its contents. Except for Commercial Unit Owners as to the Commercial Unit owned and Owners of Units which are not committed to the Vacation Ownership Plan as to those Units, no Owner, guest, invitee, or lessee shall make any additions, alterations, or renovations to any part of the Resort.

**No Domiciliary Intent.** No person may enter, stay, or dwell on or about a Vacation Unit with the intent or desire to be or become a legal domiciliary of the State of Hawaii or any political subdivision thereof, and all persons waive, release, and remise any such intent or desire. No person may enter, stay, or dwell on or about a Vacation Unit with the intent that the Unit be or become that person's principal dwelling, and all persons shall maintain a principal dwelling at all times at a location other than within a Vacation Unit.

**Emergencies and Fire Safety.** In the event of an emergency, contact the Resort Operator by dialing "0," or contact the appropriate authority by dialing "9" for an outside line, then dialing "911." After dialing "911," contact the Resort Operator so that emergency vehicles can be directed appropriately. The Association has posted in conspicuous places throughout the Resort fire regulations that must be adhered to by Owners and guests during their stay at the Resort. Your conscientious compliance with these rules and regulations will help maintain the beauty of the Resort.

**Enforcement of Rules.** The Association expects all Owners and their guests to adhere to the requirements set forth in the Rules and Regulations and the Vacation Ownership Declaration. To assist the Association in the enforcement of the provisions of these two documents, the Association has delegated enforcement authority to the Managing Agent. Any Owner or guest who has been advised by the Managing Agent that they are in violation of the Rules and Regulations or the Vacation Ownership Declaration will immediately cease and desist that activity.

If any Owner or his guest, after being notified by the Managing Agent that he is in violation of the Rules and Regulations or Vacation Ownership Declaration, fails to comply with the Managing Agent's direction, the matter will be referred to the Board of Directors of the Association for consideration of the assessment of penalties by reason of such person's non-compliance. The Owner against whom such action is proposed to be taken has the right to appear before the Board of Directors at its next regularly scheduled meeting to contest such action, all as provided in the Bylaws and the Vacation Ownership Plan Declaration.

**Guests.** You may permit another person to occupy your Assigned Unit during your Use Period(s) without charge by the Association subject to the following restrictions: (i) the maximum allowable occupancy limits may not be exceeded, (ii) guests must observe the Check-In and Check-Out procedures. If you intend for a person other than yourself to use your Use Period or to accompany you during your Regular Use reservation, you must provide the Managing Agent with the name and address of such person(s) in writing not less than three days prior to commencement of the occupancy period. You will be responsible for all personal charges and/or damages to the Unit you have occupied resulting from use by your guests. Persons under twenty-one (21) years of age must be accompanied by you or a guest twenty-one (21) years of age or older. Additional rules and regulations governing the recreational areas and the use of such areas by guests will be adopted by the Association and/or the Managing Agent, and may be amended from time to time.

**Holdover Owners.** If any Owner or the guest, invitee, or lessee of such Owner fails to vacate a Vacation Ownership Unit at the expiration of the Use Period reserved, such Owner shall be deemed a "holdover owner." The Association shall take steps as may be necessary to remove a holdover owner from the Unit. The Association also shall assist the holder of a subsequent reservation who may be affected by the holdover owner's failure to vacate, in finding alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall use reasonable efforts to remove the holdover owner and/or secure, at its expense, alternate accommodations for any holder of a subsequent reserved use period who may not occupy the Unit due to the failure to vacate of any holdover owner. Such accommodations shall be as near in value as possible to the Unit owned. The holdover owner shall be charged for the cost of such alternate accommodations, any other costs incurred due to his failure to vacate, and a fine during this period of holding over. In the event it is necessary that the Association contract for a period greater than the actual period of holding over in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the holdover owner, although the fine shall cease on actual vacating by the holdover owner, or the guest, invitee, or lessee of such Owner. The Association shall submit a bill to the holdover owner in accordance with the Declaration.

The foregoing provisions shall not abridge the Association's right to take such other action against a holdover owner as is permitted by law including eviction proceedings. Further, the foregoing provisions shall not limit the Association's right to take any action permitted by Hawaii law against trespassers who are not Owners.

**Housekeeping.** The time between Check-Out Time and Check-In Time is reserved exclusively for the cleaning, inventory, repair and maintenance of units by the housekeeping and maintenance personnel. Currently, a full cleaning will be provided prior to Check-In in addition to a mid-week full clean. However, the mid-week full clean is subject to change or deletion at the discretion of the Board. Additional housekeeping services are available by contacting the front desk. A charge for additional housekeeping services will be made and must be paid prior to your departure.

**Lawful Use.** No immoral, improper, offensive or unlawful use shall be made on or of the Resort, and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

**Nuisances.** No nuisance shall be allowed on the Resort, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Resort by the Owners. All parts of the Resort shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. All common elements shall be kept free for their intended use, and shall in no event be used as storage areas, either on a temporary or permanent basis. No clothing towels, bedding, or other similar items may be dried or aired in any outdoor area or hung over or on balconies. No Owner shall make or cause to be made any noises, or use musical instruments, radios, televisions, amplifiers, or other such equipment in a manner that may tend to disturb other Owners. No Owner shall permit any use of the Condominium Property that will increase the cost of insurance on the Condominium Property.

**Occupancy and Check-In/Check-Out.** Check-In begins at 4:00 p.m. on the first day of a Use Period and Check-Out is at 10:00 a.m. on the last day of the Use Period. In addition to these times, the Board reserves the right to designate an alternative Check-In time for specific Vacation Units. No Owner shall be admitted into a Vacation Unit until the check-in process is complete at the reception desk designated for such purpose. The Board may from time to time change the check-in/check-out times, and such change shall not require an amendment to the Vacation Ownership Plan Declaration. The maximum occupancy for Two Bedroom Accommodations is eight (8) persons.

**Parking.** Commercial trucks, oversized vehicles, trailers, motorcycles, and bicycles shall not be parked on the Condominium Property except in those areas, if any, designated by the Board.

**Personal Charges.** The Association will charge a minimum fee of \$10.00 for any personal charges required to be billed to an Owner after Check-Out. All Personal Charges, including, but not limited to, extra services or damages, for guests are considered the responsibility of the Owner who requested access for such guest. If an Owner has no valid credit card, or is not in residence at the resort, all goods and services must be paid for in cash or by accepted credit cards at the time goods or services are purchased. Any unpaid Personal Charges payable to the Association will bear interest at the maximum rate specified in the Vacation Ownership Declaration.

**Personal Use Restriction.** Each Vacation Unit shall be occupied only as vacation accommodations. No Owner may occupy a Vacation Unit or use any facilities of the Resort at any time other than during the Vacation Week owned or reserved in accordance with the Governing Instruments. Use of all Vacation Ownership Units and the facilities of the Resort by Owners is limited solely to the personal use of Owners, their guests, invitees, and lessees and for recreational uses by corporations and other entities owning Vacation Ownership Weeks. Use of Vacation Units or the facilities of the Resort by Owners for commercial purposes or any purposes other than the personal use described in the Governing Instruments is expressly prohibited. "Commercial purpose" includes a pattern of rental activity or other occupancy by an Owner that the Association, in its reasonable discretion, could conclude constitutes a commercial enterprise or practice. This paragraph shall not apply to Units or Vacation Ownership Weeks owned by the Developer or to Commercial Units.

The Board reserves the right to charge a fee for Permitted Users to utilize the common area amenities on a daily basis during the hours established by the Board for such day use privileges. The Board, in its sole and absolute discretion, may promulgate rules and regulations regarding day use of the common area amenities, as well as

delegate the responsibility for enforcing the rules and regulations to such third parties as the Board sees fit from time to time.

Pets. No pets of any type are allowed on the Resort, unless required pursuant to the Americans With Disabilities Act. This restriction includes all Vacation Units.

Reservation Procedures. Your use rights depend on the type of Vacation Ownership Interest you own as specified on your grant deed. Please refer to the Vacation Plan Declaration, Disclosure Statement and Network Documents for further information on reservation procedures.

Reservation requests will be confirmed by mail or, when time is limited, by telephone or fax; provided, however, that the Managing Agent shall have the discretion to limit the method by which confirmations are made to one or more of the foregoing methods or provide for an alternate method of confirmation. No reservation request will be honored unless it has been confirmed by the Association.

Regardless of whether you own an Ultra, Event, Ultra Premium, Fixed or Floating Vacation Ownership Interest, your reservation request will not be confirmed nor will you be allowed to occupy an Assigned Unit for which you have an existing reservation if (a) you are delinquent in the payment of any amounts owed to the Association, or (b) your use rights have been suspended by the Board.

You may cancel a reservation which you made by giving notice to the Managing Agent at least thirty (30) prior to the Check-In Time for the reserved Use Period. A cancellation fee will be charged if you cancel your reservation. Your ability to make another reservation will be subject to remaining availability in the current Use Year and cannot be guaranteed. If you make a reservation less than thirty (30) days in advance, you may not cancel this reservation.

Signs. No sign, notice, other display, or advertising may be posted, displayed, maintained, inscribed, painted, or affixed on any part of the Resort Property without the prior written approval of the Board, except for those displayed by or on behalf of Developer in accordance with the Declaration.

Smoking. Smoking is prohibited inside your Assigned Unit, but you may smoke in the patio and balcony areas. Owners who violate this rule are subject to additional cleaning charges as determined by the Management Company or the Board.

Solicitation. No solicitation of any kind, whether commercial, religious, educational, or otherwise, shall be conducted anywhere on the Condominium Property unless specifically authorized in advance and in writing by the Board, except for the activity permitted to be performed by Developer or its designees in accordance with the Declaration.

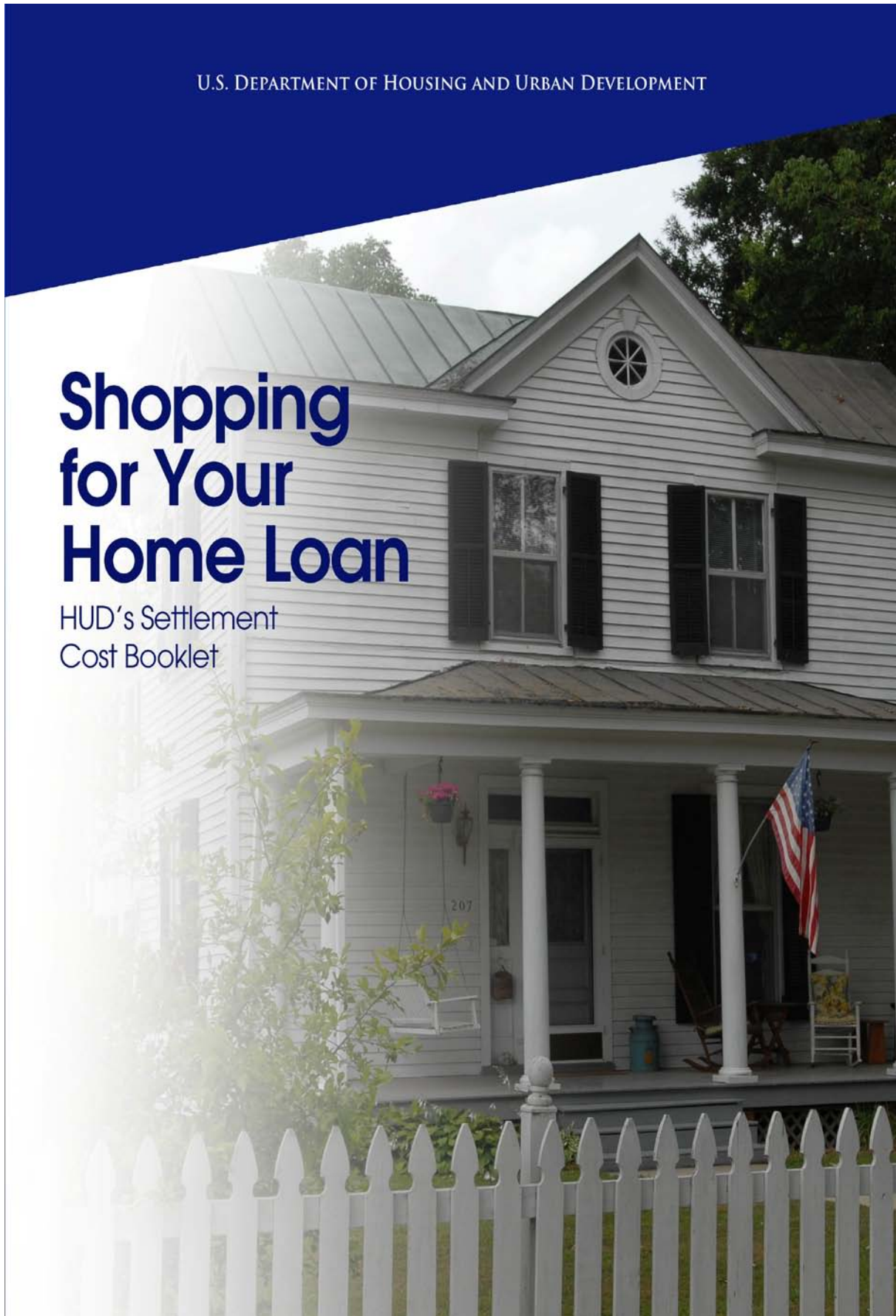
Telephone. Each unit is furnished with a private telephone. A record of all calls will be maintained by the Association. Any calls made during an Owner's Use Period which are not charged as directed above, will be charged to the Owner at check-out. The Association may impose reasonable charges for local and long-distance telephone calls, whether or not such calls are collect, billed to a credit card, billed to your home phone or billed to your business number.

Watercraft. No boats, jet skis, wave runners, or other watercraft of any kind whatsoever shall be used, stored, or brought onto the Resort Property without the prior written consent of the Board, and, if such consent is given, shall only be placed in the those areas designated by the Board for such time as designated by the Board.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

# Shopping for Your Home Loan

HUD's Settlement  
Cost Booklet



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## I. Introduction

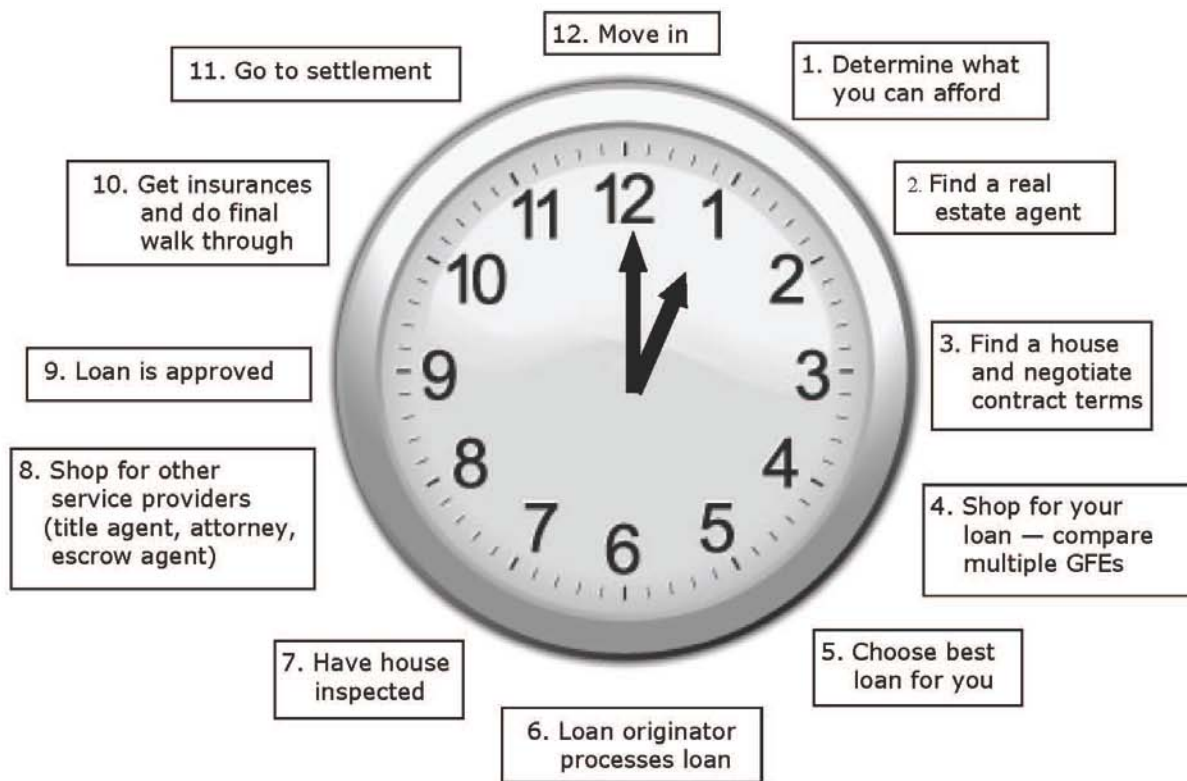
The *Real Estate Settlement Procedures Act (RESPA)* requires lenders and mortgage brokers to give you this booklet within three days of applying for a mortgage loan. RESPA is a federal law that helps protect consumers from unfair practices by settlement service providers during the home-buying and loan process.

Buying a home is an important financial decision that should be considered carefully. This booklet will help you become familiar with the various stages of the home-buying process, including deciding whether you are ready to buy a home, and providing factors to consider in determining how much you can afford to spend. You will learn about the sales agreement, how to use a *Good Faith Estimate* to shop for the best loan for you, required settlement services to close your loan, and the *HUD-1 Settlement Statement* that you will receive at closing.

This booklet will help you become familiar with how interest rates, points, balloon payments, and prepayment penalties can affect your monthly mortgage payments. In addition, there is important information about your loan after settlement, including how to resolve loan servicing problems with your lender, and steps you can take to avoid foreclosure. After you have purchased your home, this booklet will help you identify issues to consider before getting a home equity loan or refinancing your mortgage. Finally, contact information is provided to answer any questions you may have after reading this booklet. There is also a Glossary of Terms in the booklet's Appendix.

Using this booklet as your guide will help you avoid the pitfalls and help you achieve the joys of home ownership.

## **Purchasing Time-line**



## **II. Before You Buy**

### **Are You Ready to Be a Homeowner?**

Buying a home is one of the most exciting events in your life and is likely to be the most expensive purchase that you will ever make. Before you make a commitment, make sure you are ready.

Avoid the pressure to buy a home that you cannot afford. Here are some things to consider:

- Are you ready to be a homeowner? It is critical that you consider whether you have saved enough money to support a down payment in addition to your other debts. You must have job stability and a steady income.
- How long do you plan on living in your home? Real estate is not always an investment. No one can predict what will happen with your local housing market. If you plan to sell your home in the next few years, realize that the property may not increase substantially in value or may have actually lost value. You may ultimately owe more to pay off your mortgage than your home will be worth.

- What is your estimated monthly payment for the home? In addition to the monthly payment for principal and interest, you will have to pay for taxes and insurance and possibly homeowner association dues. If your down payment is less than 20%, your lender may require that you pay the added expense for mortgage insurance.
- What are the other costs of owning a home? Be realistic about the costs of owning a home like heating and cooling and other utilities. You will generally need to budget for repairs and routine maintenance of your home, especially if you buy an older home.
- What can you afford? Be confident that you can make the monthly payments. Have a financial plan and make a budget. Do you have a steady source of reliable income to pay your mortgage should your interest rate increase in the future? Consider how many long-term debts you have such as car or student loans, as well as credit card bills.
- Have you talked with a housing counseling agency? Housing counselors can be very helpful, especially for first-time home buyers. The U.S. Department of Housing and Urban Development (HUD) supports housing counseling agencies throughout the country that can provide free or low-cost advice. You can search online at HUD's web site, or you can call HUD's interactive voice system. This contact information can be found in the Appendix of this booklet.

After answering the questions above, have you determined that buying a house is right for you? If so, congratulations! Let's start shopping for a house and a loan.

### III. Determining What You Can Afford

To determine how much you can afford, you first need to know your monthly income. Second, you will need to calculate your monthly expenses which may include credit card bills, car payments, insurance premiums and all other debts. There is a worksheet in the Appendix ("**Determining What You Can Afford Worksheet**") that will help you calculate your income and expenses to help determine what you can afford.

Consider talking with a financial professional such as a housing counselor to help you determine what you can afford. Keeping your payments affordable is the best way to avoid foreclosure or other financial difficulties. While mortgage lenders will tell you how much they are willing to lend you (which is the loan amount you "qualify" for), you probably know your finances better than anyone, so you should determine how much you are willing and able to pay every month for your home.

## IV. Shopping for a House

### Role of the Real Estate Agent or Broker

Frequently, the first person you consult about buying a home is a real estate agent or broker. Although these agents and brokers provide helpful advice, they may legally be representing the interests of the seller and not yours. You can ask your family and friends for recommendations.

It is your responsibility to search for an agent who will represent your interests in the real estate transaction. **If you want someone to represent only your interests, consider hiring an “exclusive buyer’s agent”, who will be working for you.**

Even if the real estate agent represents the seller, state laws usually require that you are treated fairly. If you have any questions concerning the behavior of an agent or broker, you should contact your State’s Real Estate Commission or licensing department.

Sometimes, the real estate broker will offer to help you obtain a mortgage loan. He or she may also recommend that you deal with a particular lender, mortgage broker, title company, attorney, or settlement/closing agent. You are not required to follow the real estate broker’s recommendation, and you should compare the costs and services offered by other providers before making a decision.

### Role of an Attorney

Before you sign a sales agreement, you might consider asking an attorney to review it and tell you if it protects your interests. If you have already signed your sales agreement, you might still consider having an attorney review it.

If choosing an attorney, you should shop around and ask what services will be performed and whether the attorney is experienced in representing homebuyers. You may also wish to ask the attorney whether the attorney will represent anyone other than you in the transaction.

In some areas, an attorney will act as a settlement agent to handle your settlement.

### Terms of the Sales Agreement

Before you sign a sales agreement, here are some important points to consider. While the real estate broker will probably give you a preprinted form of the sales agreement, many terms are negotiable so you may make changes or additions to the agreement. The seller, however, must agree to every change you make in order for such changes to be incorporated into the sales agreement.

For most home buyers, the sales price is the most important term. Make sure you know what the sales price includes, such as appliances. Here are other important terms of the sales agreement:

## ❖ Mortgage Clause

The mortgage clause will provide whether or not your deposit will be refunded if the sale is cancelled should you be unable to get a mortgage loan. Your agreement could allow the purchase to be canceled if you cannot obtain mortgage financing at or below a specific interest rate or through a specific loan program.

## ❖ Settlement Costs

You can negotiate which settlement costs you will pay and which will be paid by the seller. The seller may contribute a lump sum amount or may agree to pay for specific items on your behalf.

## ❖ Inspections

Most buyers prefer to pay for the following inspections so that the inspector is working for them, not the seller. You may want to include in your sales agreement the ability to cancel the agreement or renegotiate the contract for a lower sales price or for the needed repairs if you are not satisfied with the inspection results.

- **Home Inspection:** You should have the home inspected. An inspection should determine the condition of the plumbing, heating, cooling and electrical systems. The structure should also be examined to assure it is sound and to determine the condition of the roof, siding, windows and doors. The lot should be graded away from the house so that water does not drain toward the house and into the basement. **You should be present to ask any questions.**
- **Pests:** Your lender may require a certificate from a qualified inspector stating that the home is free from termites and other pests and pest damage. Even if your lender does not require a pest inspection, you may want to obtain a pest inspection to ensure the property does not have termites or other pests.
- **Lead-Based Paint Hazards:** If you buy a home built before 1978, you have certain rights concerning lead-based paint and lead poisoning hazards. The seller or sales agent must give you the EPA pamphlet "Protect Your Family From Lead in Your Home" (or other EPA-approved lead hazard information). The seller must also disclose any known lead-based paint hazards in the property through a Lead Warning Statement and give you any relevant records or reports.
- **Other Environmental Concerns:** Your city or state may require sellers to disclose known environmental hazards such as leaking underground oil tanks, the presence of radon or asbestos, lead water pipes, and other such hazards. You may want to determine

the environmental condition of the home for your own safety. You could also be financially liable for the clean-up of any environmental hazards.

#### ❖ **Sharing of Expenses**

You need to negotiate with the seller about how expenses related to the property such as taxes, water and sewer charges, condominium fees, and utility bills, are to be divided on the date of settlement. Unless you agree otherwise, you should only be responsible for the portion of these expenses owed after the date of sale.

### **Affiliated Businesses**

When you are shopping for your home and your mortgage, a settlement service provider may refer you to its affiliated business. Affiliated business arrangements exist when several businesses are owned or controlled by a common corporate parent. When a lender, real estate broker, builder, or others refer you to an affiliated settlement service provider, RESPA requires that the referring party give you an Affiliated Business Arrangement Disclosure. **Except under certain circumstances, you are generally not required to use the affiliate and are free to shop for other service providers. You should shop around to determine that you are receiving the best service and rate.**

### **Builders**

If you are buying a newly constructed home, a builder may offer you an incentive or “deal” if you select its affiliated mortgage company or other settlement service business. You should shop and compare interest rates and other settlement charges before entering a contractual agreement to use these affiliated companies.

## **V. Shopping for a Loan**

Your choice of mortgage lender or broker, as well as type of loan itself, will influence your settlement costs and your monthly mortgage payment. You may find a listing of local lenders and mortgage brokers in the yellow pages and a listing of rates in your local newspaper. You may also wish to search the internet for lenders and brokers and their advertised rates. You can ask your family and friends about loan originators they have used and recommend.

## Loan Originator

A loan originator is a lender or a mortgage broker.

- **Mortgage Brokers** Some companies, known as “mortgage brokers,” offer to find you a mortgage lender willing to make you a loan. A mortgage broker may operate as an independent business and may not be operating as your “agent” or representative.
- **Lenders** A lender typically makes loans to borrowers directly. They receive payment through fees charged to you at settlement, payment from interest when you make your monthly mortgage payments and payments if they sell your loan or the servicing of your loan after settlement.

**Note:** Whether you apply for a loan with a lender or mortgage broker, you should receive *Good Faith Estimates* of settlement costs from multiple loan originators to make certain you get the best loan product at the lowest interest rate and lowest settlement costs.

## Types of Loans and Programs

Shopping for your loan is probably the most important step in your home-buying process. Mortgage brokers and lenders have a wide variety of mortgage products. The type of loan product and your interest rate will not only influence your total settlement costs but will determine the amount of your monthly mortgage payment.

### Government Programs

You may be eligible for a loan insured by the Federal Housing Administration (FHA), guaranteed by the Department of Veterans Affairs (VA) or offered by the Rural Housing Service (RHS). These programs usually require a smaller down payment. Ask your lender or mortgage broker about these programs. You should shop and compare quotes from different loan originators because each may offer different rates and loan terms.

If you are a first time homebuyer, ask your real estate agent/broker and loan originator about the availability of local or state programs such as reductions in transfer taxes, special income tax deductions or state homestead exemption discounts.

## Types of Mortgages

Two of the most common types of mortgage loans are fixed-rate mortgages and adjustable rate mortgages. The interest rate on a fixed-rate mortgage will remain the same for the entire life of your loan while the interest rate on an adjustable rate mortgage (ARM) may adjust at regular intervals and may be tied to an economic index, such as a rate for Treasury securities. When the interest rate on an ARM adjusts it may cause your payment to increase.

Some adjustable rate mortgages allow the borrower to pay either the “interest only” or less than the “interest only.” In both options, none of the mortgage payment is applied towards the loan balance (principal). In a less than “interest only” option, the unpaid interest is added to your loan balance and you can owe more than the amount you initially borrowed. **When the loan balance increases to the maximum amount the loan is “recast” and your loan payment may double or even triple.** When faced with “payment shock,” you may discover too late that the loan payments no longer fit within your budget and that the loan is difficult to refinance. **You may then be in danger of losing your home.**

**WARNING:** Choosing an ARM product could affect your ability to pay your mortgage in the future resulting in loan default or foreclosure. You need to become familiar with the features of ARM products to find the one that best fits your needs. If you decide to obtain an ARM, consider obtaining additional information. Additional information may be found by contacting the Federal Reserve Board. Contact information is given in the Appendix to this booklet.

## **Taxes and Insurance**

In addition to the principal and interest portion of your mortgage payment, you will have to pay property taxes and insurance to protect the property in the event of disaster such as a fire or flood. Based on your down payment, you may also have to pay mortgage insurance. Your lender may require an escrow or impound account to pay these items with your monthly mortgage payment. If an escrow account is not required, you are responsible for making these payments.

**Mortgage insurance** may be required by your lender if your down payment is less than 20% of the purchase price. Mortgage insurance protects the lender if you default on your loan. You may be able to cancel mortgage insurance in the future based on certain criteria, such as paying down your loan balance to a certain amount. Before you commit to paying for mortgage insurance, find out the specific requirements for cancellation. Mortgage insurance should not be confused with mortgage life, credit life, or disability insurance that are designed to pay off a mortgage in the event of a borrower’s death or disability. Your *Good Faith Estimate* should not have any charges for mortgage life, credit life, or disability insurance.

**Homeowner’s (hazard) insurance** protects your property in the event of a loss such as fire. Many lenders require that you get a homeowner’s policy before settlement.

**Flood insurance** will be required if the house is in a flood hazard area. After your loan is settled, if a change in flood insurance maps brings your home within a flood hazard area, your lender or servicer may require you to buy flood insurance at that time.

## **VI. Good Faith Estimate (GFE)**

The GFE is a three page form designed to encourage you to shop for a mortgage loan and settlement services so you can determine which mortgage is best for you. It shows the loan terms and the settlement charges you will pay if you

decide to go forward with the loan process and are approved for the loan. It explains which charges can change before your settlement and which charges must remain the same. It contains a shopping chart allowing you to easily compare multiple mortgage loans and settlement costs, making it easier for you to shop for the best loan. The GFE may be provided by a mortgage broker or the lender. **Until they give you a GFE loan originators are only permitted to charge you for the cost of a credit report.**

In the loan application process, the loan originator will need your name, Social Security number, gross monthly income, property address, estimate of the value of the property, and the amount of the mortgage loan you want to determine the GFE. Your Social Security number is used to obtain a credit report showing your credit history, including past and present debts and the timeliness of repayment.

## Your GFE Step-by-Step

### Page 1 of the GFE

Now let's go through the GFE step-by-step. The top of page 1 of the GFE shows the property address, your name and contact information and your loan originator's contact information.

### Important Dates

1. The interest rate for this GFE is available through	January 2, 2010 @ 4pm	. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through	January 22, 2010	
3. After you lock your interest rate, you must go to settlement within	30	days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least	15	days before settlement.

The Important Dates section of the GFE includes key dates of which you should be aware.

Line 1 discloses the date and time the interest rate offer is good through.

Line 2 discloses the date "All Other Settlement Charges" is good through. This date must be open for at least 10 business days from the date the GFE was issued to allow you to shop for the best loan for you.

Line 3 discloses the interest rate lock time period, such as 30, 45 or 60 days, that the GFE was based on. **It does not mean that your interest rate is locked.**

Line 4 discloses the number of days prior to going to settlement that you must lock your interest rate.

**Note:** "Locking in" your rate and points at the time of application or during the processing of your loan will keep the interest rate and points from changing until the rate lock period expires.

## Summary of Your Loan

Your initial loan amount is	\$ 200,000.00	
Your loan term is	30	years
Your initial interest rate is	5.0	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ 1,173.00 per month	
Can your interest rate rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, it can rise to a maximum of 10.0 %. The first change will be in 6 months	
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$	
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, the first increase can be in 6 months and the monthly amount owed can rise to \$ 1,290.00 . The maximum it can ever rise to is \$ 1,842.00 .	
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$	
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years.	

The Summary of Your Loan Terms discloses your loan amount, loan term, the initial interest rate and the principal, interest and mortgage insurance portion of your monthly mortgage payment. It also informs you if your interest rate can increase, if your loan balance can rise, whether your mortgage payment can rise and if there is a prepayment penalty or balloon payment.

In the example above, the loan amount is \$200,000 which will be paid over 30 years. The initial interest rate is 5 percent and the initial monthly mortgage payment is \$1,173 which includes mortgage insurance, but does not include any amounts to pay for property taxes and homeowner's insurances if required by the lender.

In our example, the loan has an adjustable interest rate. Since the interest rate can rise, the 'yes' box was checked, and the loan originator disclosed that the initial interest rate of 5 percent could rise as high as 10 percent. The first time your interest rate could rise is 6 months after settlement which could increase your payments to \$1,290. Over the life of your loan your monthly payments could increase from \$1,173 to \$1,842.

This example does not contain a balloon payment or a prepayment penalty.

**NOTE:** A prepayment penalty is a charge that is assessed if you pay off the loan within a specified time period, such as three years. A balloon payment is due on a mortgage that usually offers a low monthly payment for an initial period of time. After that period of time elapses, the balance must be paid by the borrower, or the amount must be refinanced. You should think carefully before agreeing to these kinds of mortgage loans. If you are unable to refinance or pay the balance of the loan, you could put your home at risk.

## Escrow Account Information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ .

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

The GFE also includes a separate section referred to as "Escrow account information," which indicates whether or not an escrow account is required. This account holds funds needed to pay property taxes, homeowner's insurance, flood insurance (if required by your lender) or other property-related charges.

If the GFE specifies that you will have an escrow account, you will probably have to pay an initial amount at settlement to start the account and an additional amount with each month's regular payment. If you wish to pay your property taxes and insurance directly, some lenders will give you a higher interest rate or charge you a fee. **If your lender does not require an escrow account, you must pay these items directly when they are due.**

## Summary of Your Settlement Charges

<b>A</b>	Your Adjusted Origination Charges (See page 2.)	\$3,750.00
<b>B</b>	Your Charges for All Other Settlement Services (See page 2.)	\$4,530.00
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	<b>\$ 8,280.00</b>

The final section on page 1 of the GFE contains the adjusted origination charges and the total estimated charges for other settlement services which are detailed on page 2. You should compare the "Total Estimated Settlement Charges" on several GFEs.

## Page 2 of the GFE

The price of a home mortgage loan is stated in terms of an interest rate and settlement costs. Often, you can pay lower total settlement costs in exchange for a higher interest rate and vice versa. Ask your loan originator about different interest rates and settlement costs options.

## Your Adjusted Origination Charges, Block A

1. <b>Our origination charge</b> This charge is for getting this loan for you.		\$6,750.00
2. <b>Your credit or charge (points) for the specific interest rate chosen</b> <input type="checkbox"/> The credit or charge for the interest rate of <input type="text"/> % is included in "Our origination charge." (See item 1 above.) <input checked="" type="checkbox"/> You receive a credit of \$ <input type="text" value="3,000.00"/> for this interest rate of <input type="text" value="5.0"/> %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ <input type="text"/> for this interest rate of <input type="text"/> %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.		-\$3,000.00
<b>A</b>	Your Adjusted Origination Charges	\$ 3,750.00

Block 1, "Our origination charge" contains the lender's and the mortgage broker's charges and point(s) for originating your loan.

Block 2, "Your credit or charge point(s) for the specific interest rate chosen."

- If box 1 is checked, the credit or charge for the interest rate is part of the origination charge shown in Block 1.
- If box 2 is checked, you will pay a higher interest rate and receive a credit to reduce your adjusted origination charge and other settlement charges.
- If box 3 is checked, you will be paying point(s) to reduce your interest rate and, therefore, will pay higher adjusted origination charges.

**Note: A point is equal to one percent of your loan amount.**

After adding or subtracting Block 2 from Block 1, "Your Adjusted Origination Charge" is shown in Block A.

In the example shown, the origination charge is \$6,750. No points were paid to reduce the interest rate. Instead, because of the interest rate chosen, the offer contains a \$3,000 credit that reduces the adjusted origination charge to \$3,750.

## Your Charges for All Other Settlement Services, Blocks 3 through 11

In addition to the charges to originate your loan, there are other charges for services that will be required to get your mortgage. For some of the services, the loan originator will choose the company that performs the service (Block 3). The loan originator usually permits you to select the settlement service provider for "Title services and lender's title insurance" (Block 4). "Owner's title insurance" is also disclosed (Block 5). Other required services that you may shop for are included in "Required services that you can shop for" (Block 6).

<b>3. Required services that we select</b> These charges are for services we require to complete your settlement. We will choose the providers of these services.		
<i>Service</i>	<i>Charge</i>	
Appraisal	\$275.00	\$383.00
Credit report	\$40.00	
Flood certification	\$12.00	
Tax service	\$56.00	
<b>4. Title services and lender's title insurance</b> This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.		\$1,275.00
<b>5. Owner's title insurance</b> You may purchase an owner's title insurance policy to protect your interest in the property.		\$175.00
<b>6. Required services that you can shop for</b> These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.		
<i>Service</i>	<i>Charge</i>	\$295.00
Survey	\$250.00	
Pest inspection	\$45.00	

Block 3 contains charges for required services for which the loan originator selects the settlement service provider. These are not "shoppable" services and often include items such as the property appraisal, credit report, flood certification, tax service and any required mortgage insurance.

Block 4 contains the charge for title services, the Lender's title insurance policy and the services of a title, settlement or escrow agent to conduct your settlement.

Block 5 contains the charge for an Owner's title insurance policy that protects your interests.

**NOTE:** Under RESPA, the seller may not require you, as a condition of the sale, to purchase title insurance from any particular title company.

Block 6 contains charges for required services for which you may shop for the provider. Some of these items may include a survey or pest inspection.

<b>7. Government recording charges</b> These charges are for state and local fees to record your loan and title documents.	\$50.00				
<b>8. Transfer taxes</b> These charges are for state and local fees on mortgages and home sales.	\$1,368.00				
<b>9. Initial deposit for your escrow account</b> This charge is held in an escrow account to pay future recurring charges on your property and includes <input checked="" type="checkbox"/> all property taxes, <input checked="" type="checkbox"/> all insurance, and <input type="checkbox"/> other <input type="text"/> .	\$306.00				
<b>10. Daily interest charges</b> This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ <input type="text" value="28.00"/> per day for <input type="text" value="1"/> days (if your settlement is <input type="text" value="1/31/2010"/> ).	\$28.00				
<b>11. Homeowner's insurance</b> This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1" data-bbox="259 619 1128 703"> <thead> <tr> <th>Policy</th><th>Charge</th></tr> </thead> <tbody> <tr> <td>Homeowner's insurance</td><td>\$650.00</td></tr> </tbody> </table>	Policy	Charge	Homeowner's insurance	\$650.00	\$650.00
Policy	Charge				
Homeowner's insurance	\$650.00				

Block 7 contains charges by governmental entities to record the deed and documents related to the loan.

Block 8 contains charges by state and local governments for taxes related to the mortgage and transferring title to the property.

Block 9 contains the initial amount you will pay at settlement to start the escrow account, if required by the lender.

Block 10 contains the charge for the daily interest on the loan from the day of settlement to the first day of the following month.

Block 11 contains the annual charge for any insurance the lender requires to protect the property such as homeowner's insurance and flood insurance.

### Total Estimated Settlement Charges

<b>B</b>	Your Charges for All Other Settlement Services	\$ 4,530.00
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	\$ 8,280.00

"Your charges for All Other Settlement Services", Blocks 3 through 11, are totaled in Block B. Blocks A and B are added together resulting in the total estimated settlement charges associated with getting the loan. These Blocks are carried forward to the bottom of page 1 of the GFE.

## Page 3 of the GFE

Page 3 of the GFE contains important instructions and information that will help you shop for the best loan for you.

### Understanding which charges can change at settlement

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"><li>■ Our origination charge</li><li>■ Your credit or charge (points) for the specific interest rate chosen <i>(after you lock in your interest rate)</i></li><li>■ Your adjusted origination charges <i>(after you lock in your interest rate)</i></li><li>■ Transfer taxes</li></ul>	<ul style="list-style-type: none"><li>■ Required services that we select</li><li>■ Title services and lender's title insurance <i>(if we select them or you use companies we identify)</i></li><li>■ Owner's title insurance <i>(if you use companies we identify)</i></li><li>■ Required services that you can shop for <i>(if you use companies we identify)</i></li><li>■ Government recording charges</li></ul>	<ul style="list-style-type: none"><li>■ Required services that you can shop for <i>(if you do not use companies we identify)</i></li><li>■ Title services and lender's title insurance <i>(if you do not use companies we identify)</i></li><li>■ Owner's title insurance <i>(if you do not use companies we identify)</i></li><li>■ Initial deposit for your escrow account</li><li>■ Daily interest charges</li><li>■ Homeowner's insurance</li></ul>

There are three different categories of charges that you will pay at closing: charges that cannot increase at settlement; charges that cannot increase in total more than 10%; and charges that can increase at settlement. You can use this as a guide to understand which charges can or cannot change. Compare your GFE to the actual charges listed on the *HUD-1 Settlement Statement* to ensure that your lender is not charging you more than permitted.

### Written list of settlement service providers

A written list will be given to you with your GFE that includes all settlement services that you are required to have, and that you are allowed to shop for. You may select a provider from this list or you can choose your own qualified provider. If you choose a name from the written list provided, that charge is within the 10% tolerance category. If you select your own service provider, the 10% tolerance will not apply.

Even though you may find a better deal by selecting your own provider, you should choose the provider carefully as those charges could increase at settlement. If your loan originator fails to provide a list of settlement service providers, the 10% tolerance automatically applies.

## Using the tradeoff table

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00
Your initial interest rate <sup>1</sup>	5.0 %	6.0 %	4.5 %
Your initial monthly amount owed	\$ 1,173.00	\$ 1,299.00	\$ 1,113.00
Change in the monthly amount owed from this GFE	No change	You will pay \$ 126.00 more every month	You will pay \$ 60.00 less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$ 1,500.00	Your settlement charges will increase by \$ 1,500.00
How much your total estimated settlement charges will be	\$ 8,280.00	\$ 6,780.00	\$ 9,780.00
<sup>1</sup> For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.			

The “tradeoff table” on page 3 will help you understand how your loan payments can change if you pay more settlement charges and receive a lower interest rate or if you pay lower settlement charges and receive a higher interest rate.

The loan originator must complete the first column with information contained in the GFE. If the loan originator has the same loan product available with a higher or lower interest rate, the loan originator may choose to complete the remaining columns. If the second and third columns are not filled in, ask your loan originator if they have the same loan product with different interest rates.

## Using the shopping chart

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	ABC Company	DEF Company	CS Company	
Initial loan amount	\$200,000.00	\$200,000.00	\$200,000.00	
Loan term	30 years	30 years	30 years	
Initial interest rate	5.0%	5.0%	5.375%	
Initial monthly amount owed	\$1,173.00	\$1,173.00	\$1,219.00	
Rate lock period	30 days	30 days	30 days	
Can interest rate rise?	yes	yes	yes	
Can loan balance rise?	no	no	no	
Can monthly amount owed rise?	yes	yes	yes	
Prepayment penalty?	no	no	no	
Balloon payment?	no	no	no	
Total Estimated Settlement Charges	\$8,280.00	\$8,309.00	\$5,840.00	

You can use this chart to compare similar loans offered by different loan originators. Fill in each column with the information shown in the "Summary of your loan" section from the first page of all the GFEs you receive. Compare each offer and select the best loan for you.

### **After You Choose the Best Loan for You**

**After comparing several GFEs, select the best loan for you and notify the loan originator that you would like to proceed with the loan.** Keep your *Good Faith Estimate* so you can compare it with the final settlement costs stated on your *HUD-1 Settlement Statement*. Ask the lender and settlement agent if there are any changes in fees between your GFE and your HUD-1 Settlement Statement. Some charges cannot be increased, and your lender must reimburse you if those charges were illegally increased.

### **New Home Purchases**

If you are purchasing a new home that is being built or has not been built yet, your GFE could change. If the GFE can change, the loan originator must notify you that the GFE may be revised at any time up to 60 days before settlement. If you get a revised GFE, look at it to determine if the loan and settlement costs it discloses are the best for you.

### **Changed Circumstances**

If there are changes involving your credit, the loan amount, the property value, or other information that was relied on in issuing the original GFE, a revised GFE may be issued. Only the charges affected by the changed circumstance may be revised.

## **VII. Shopping for Other Settlement Services**

There are other settlement services that the lender will require for your loan. You may be able to shop for these services or you may choose providers identified on the written list you receive from the loan originator. If you select providers on the list, the charges shown on the GFE must be within the 10% tolerance. Even though selecting a settlement service provider that is not on the list nullifies the 10% tolerance, you still may be able to find a better deal by shopping and selecting a provider yourself. However, remember that those charges could increase at settlement.

### **Title Services and Settlement Agent**

When you purchase your home, you receive "title" to the home. Certain title services will be required by your lender to protect against liens or claims on the property. Title services include the title search, examination of the title, preparation of a commitment to insure, conducting the settlement, and all administration and

processing services that are involved within these services. Many lenders require a lender's title insurance policy to protect against loss resulting from claims by others against your new home. A lender's title insurance policy does not protect you.

If a title claim occurs, it can be financially devastating to an owner who is uninsured. **If you want to protect yourself from claims by others against your new home, you will need an owner's policy.**

To save money on title insurance, compare rates among various title insurance companies. If you are buying a newly constructed home, make certain your title insurance covers claims by contractors. These claims are known as "mechanics' liens" in some parts of the country. In many states, title insurance premium rates are filed with the state and may not be negotiable, but other title service related charges may be. Be sure to ask your title agent about any available discounts such as a reissue rate or a simultaneous issue discount.

Title services also include the services of a settlement agent. Settlement practices vary from locality to locality, and even within the same county or city. Depending on the locality, settlements may be conducted by lenders, title insurance companies, escrow companies or attorneys for the buyer or seller. In some parts of the country, a settlement may be conducted by an escrow agent. Unlike other types of settlement, the parties may not meet around a table to sign documents. Ask how your settlement will be handled.

## **Survey**

Lenders or title insurance companies may require a survey to disclose the location of the property. The survey is a drawing of the property showing the location of the house and other improvements on the property. You may be able to avoid the cost of a new survey if you determine the company who previously surveyed the property and request an update. Check with your lender and title insurance company on whether an updated survey is acceptable.

## **Homeowner's Insurance**

As a condition to settle, many lenders will require that you procure homeowner's insurance, flood insurance or other hazard insurance to protect the property from loss. Don't forget to shop for the best rates.

## **VIII. Your Settlement and HUD-1**

You have determined what you can afford, found the right house and shopped for the best loan for you. After all the hard work, it is time to go to settlement, but don't forget to bring your GFE to compare with the charges listed on the *HUD-1 Settlement Statement*. It is a good idea to review your HUD-1 before your settlement. Let your settlement agent and lender know that you want to receive a completed HUD-1 at least one day prior to your settlement.

### **Settlement**

Your settlement may be conducted by your lender or your title insurance company, an escrow company, your attorney or the seller's attorney. Regardless of who performs the settlement, there will be many important documents that you will need to sign. Make sure you carefully read and understand all the documents before you sign them. Do not be afraid to ask the lender any questions you have about your loan documents.

### **HUD-1 Settlement Statement**

The *HUD-1 Settlement Statement* (HUD-1) is a form that lists all charges and credits to the borrower and seller in a transaction. You have the right under RESPA to inspect the *HUD-1 Settlement Statement* before settlement occurs. When you receive a copy of the HUD-1, compare it to your GFE. Ask the lender questions about any changes in fees between your GFE and the HUD-1. Your lender must reimburse you if a closing cost tolerance was violated.

## Page 1 of the HUD-1

### 100 – 300 Series, Summary of Borrower's Transactions

The first page of the HUD-1 summarizes all of the charges and credits to the buyer and seller.

Line 101 is the contract sales price.

Line 103 is the total settlement charges from page 2.

Lines 106 to 112 lists items you are reimbursing the seller for that were already paid for by the seller, such as property taxes or homeowner association dues.

Line 120 is the total of the 100 series section and is the total amount you owe.

Lines 200 to 209 contain credits for items paid by you, such as the earnest money deposit and other credits from the seller and other parties.

Lines 210 to 219 are credits from the seller for items owed by the seller that are due after settlement.

Line 220 is the total of all credits from Lines 201 to 219. Subtract the amount on Line 220 from the amount on Line 120.

Line 303 is the amount you must bring to settlement or the amount you will receive.

J. Summary of Borrower's Transaction			
<b>100. Gross Amount Due from Borrower</b>			
101. Contract sales price			\$210,000.00
102. Personal property			
103. Settlement charges to borrower (line 1400)			\$8,044.00
104.			
105.			
<b>Adjustment for items paid by seller in advance</b>			
106. City/town taxes	to		
107. County taxes	to		
108. Assessments	to		
109.			
110.			
111.			
112.			
<b>120. Gross Amount Due from Borrower</b>			<b>\$218,044.00</b>
<b>200. Amount Paid by or in Behalf of Borrower</b>			
201. Deposit or earnest money			\$2,000.00
202. Principal amount of new loan(s)			\$200,000.00
203. Existing loan(s) taken subject to			
204.			
205.			
206. Seller closing cost credit			\$2,000.00
207.			
208.			
209.			
<b>Adjustments for items unpaid by seller</b>			
210. City/town taxes	to		
211. County taxes	1/1/2010 to 1/31/2010		\$200.00
212. Assessments	to		
213.			
214.			
215.			
216.			
217.			
218.			
219.			
<b>220. Total Paid by/for Borrower</b>			<b>\$204,200.00</b>
<b>300. Cash at Settlement from/to Borrower</b>			
301. Gross amount due from borrower (line 120)			\$218,044.00
302. Less amounts paid by/for borrower (line 220)			( \$204,200.00 )
303. Cash	<input checked="" type="checkbox"/> From	<input type="checkbox"/> To Borrower	\$13,844.00

## Page 2 of the HUD-1

### 700 Series, Total Real Estate Broker Fees

700. Total Real Estate Broker Fees		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows :			
701. \$ 6,000.00	to ABC Real Estate Co.		
702. \$ 6,000.00	to XYZ Real Estate Co.		
703. Commission paid at settlement			
			\$12,000.00

This section of the settlement statement shows the commissions paid to the real estate agents. There are no corresponding lines on the GFE because the lender does not require this service before you get your loan.

### 800 Series, Items Payable in Connection with Loan

800. Items Payable in Connection with Loan			
801. Our origination charge	includes origination point(s) (1% or \$2,000)	\$ 6,750.00 (from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	- \$ 3,000.00	(from GFE #2)	
803. Your adjusted origination charges		(from GFE #A)	\$3,750.00

Line 801, "Our origination charge," lists the lender's and mortgage broker's charge for getting you the loan and references GFE Block 1. In this example, Line 801 designates an origination point of \$2,000 for possible tax deductibility.

Line 802 lists either the charge for the interest rate (points) or a credit and references GFE Block 2.

Line 803 lists "Your adjusted origination charges." This amount is the sum of Lines 801 and 802 and references Block A on the GFE.

804. Appraisal fee to Appraisal Company	(from GFE #3)	\$325.00
805. Credit report to Credit Report Company	(from GFE #3)	\$40.00
806. Tax service to Tax Service Company	(from GFE #3)	\$76.00
807. Flood certification to Flood Certification Company	(from GFE #3)	\$12.00
808.		

Line 804 is the charge for the appraisal report prepared by an appraiser.

Line 805 is the fee for a credit report showing your credit history.

Line 806 is the fee paid to a tax service provider for information on the real estate property taxes.

Line 807 is the fee paid to the service providing information on whether the property is in a flood zone.

Lines 804, 805, 806 and 807 usually reference GFE Block 3.

Lines 808 and any additional lines are used to list other third party services required by your lender, including FHA or VA fees.

### **900 Series, Items Required by Lender to be Paid in Advance**

900. Items Required by Lender to be Paid in Advance			
901. Daily interest charges from	1/31/2010 to 2/1/2010 @ \$ 28.00 /day	(from GFE #10)	\$28.00
902. Mortgage insurance premium for	months to	(from GFE #3)	
903. Homeowner's insurance for	1 years to Insure-It (\$600 P.O.C. by borrower)	(from GFE #11)	

These are charges which the lender requires to be prepaid at settlement.

Line 901 lists the daily interest charges collected for the period between the date of your settlement and the first day of the next month. This charge is disclosed in Block 10 of your GFE. In this example, the loan closed on 1/31/10, and the interest on the GFE was calculated with a 1/31/10 closing date so the charges are the same on both. This amount on Line 901 may differ from the amount on the GFE if the settlement date changes.

Line 902 lists the charge for any up-front mortgage insurance premium payment due at settlement. This is one of the charges disclosed in GFE Block 3 of your GFE. In this example, there is no payment due.

Line 903 is the charge for the homeowner's insurance policy and is one of the charges disclosed in Block 11 of your GFE. In the example, the homeowner's insurance was paid prior to the day of settlement so the charge is listed as "P.O.C. by borrower". P.O.C. stands for "Paid Outside of Closing". You typically have to bring a pre-paid insurance policy to your settlement.

## 1000 Series, Reserves Deposited with Lender

1000. Reserves Deposited with Lender				
1001. Initial deposit for your escrow account			(from GFE #9)	\$350.00
1002. Homeowner's insurance	1	months @ \$ 50.00	per month \$ 50.00	
1003. Mortgage insurance	1	months @ \$ 100.00	per month \$ 100.00	
1004. Property Taxes	2	months @ \$ 200.00	per month \$ 400.00	
1005.		months @ \$	per month \$	
1006.		months @ \$	per month \$	
1007. Aggregate Adjustment			-\$ 200.00	

This series of the HUD-1 lists the amounts collected by the lender to be placed in your escrow account for future payments of items such as homeowner's insurance, mortgage insurance and property taxes. Line 1007 is an adjustment to make sure lenders are only collecting the maximum amount allowed by law. In this example, even though the first year's homeowner's insurance premium has already been paid, the lender has started escrowing money to pay the next bill.

## 1100 Series, Title Charges

1100. Title Charges				
1101. Title services and lender's title insurance		(from GFE #4)	\$1,275.00	
1102. Settlement or closing fee to 3rd Party Closing Company	\$ 100.00			\$125.00
1103. Owner's title insurance to Title Town USA		(from GFE #5)	\$175.00	
1104. Lender's title insurance	\$ 725.00			
1105. Lender's title policy limit \$ 200,000.00				
1106. Owner's title policy limit \$ 210,000.00				
1107. Agent's portion of the total title insurance premium to	Title Town USA	\$ 720.00		
1108. Underwriter's portion of the total title insurance premium to	Underwriter	\$ 180.00		

Line 1101 lists the charge for all title services and the lender's title insurance policy. Title services includes any service involved with providing title insurance, such as title examination, preparing the title commitment, clearing the title to the property, preparing and issuing the title policies and conducting the settlement. These charges correspond to GFE Block 4.

Line 1102 is the amount of the settlement or closing fee if performed by a company different from the one providing title insurance. This charge is part of the charge listed in Line 1101.

Line 1103 lists the charge for the Owner's title insurance policy, if you decided to buy one. It corresponds to Block 5 of the GFE.

Line 1104 lists the charge for the Lender's title insurance policy which is part of the charge listed in Line 1101.

Line 1105 is the Lender's title policy limit. It often is lower than the value of the property because it only covers the amount of your lender's lien on your property.

Line 1106 lists the Owner's title policy limit. The liability limit of the owner's policy is typically the purchase price paid for the property.

Line 1107 lists the portion of the title insurance premiums retained by the title insurance agent.

Line 1108 lists the portion of the title insurance premiums retained by the underwriter.

## 1200 Series, Government Recording and Transfer Charges

1200. Government Recording and Transfer Charges				
1201. Government recording charges	(from GFE #7)		\$50.00	
1202. Deed \$ 25.00	Mortgage \$ 25.00	Release \$ 15.00		\$15.00
1203. Transfer taxes	(from GFE #8)		\$1,368.00	
1204. City/County tax/stamps	Deed \$ 684.00	Mortgage \$		
1205. State tax/stamps	Deed \$ 684.00	Mortgage \$		

Government recording charges listed in the 1200 series on the HUD-1 are charges paid to state and local governmental agencies to record important documents such as the deed and mortgage or deed of trust and transfer taxes to legally transfer property.

Line 1201 lists all government recording charges and corresponds to Block 7 of your GFE. This represents the cumulative amount the borrower is paying for government recording charges.

Line 1202 itemizes specific recording charges for the deed, the mortgage, and any releases of prior liens against your property shown in Line 1201. When the seller pays for an item, such as a release, the charge is listed in the seller's column.

In this example, the borrower is paying \$50.00 of the recording charges, and the seller is paying \$15.00. The total paid for the government recording charges was \$65.00 (borrower \$50.00 / seller \$15.00).

Line 1203 lists the charge for transfer taxes. Transfer taxes are charged by state or local government to transfer real property or place a new lien (mortgage or deed of trust) on a property. This charge is listed in Block 8 of your GFE.

Lines 1204 and 1205 itemize the charges for transfer taxes listed in Line 1203.

Line 1206 can be used to list additional items related to recording or transfer charges.

In our example, the government recording charge that appeared in block 7 of the GFE was \$50.00 which is illustrated in the column on line 1201 on the HUD-1.

### Series 1300, Additional Settlement Charges

1300. Additional Settlement Charges		
1301. Required services that you can shop for	(from GFE #6)	\$295.00
1302. Survey to Measure-It	\$ 250.00	
1303. Pest inspection to Rid-A-Bug	\$ 45.00	
1304. Home Warranty to Home Warranty Company		\$300.00
1305.		
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>		<b>\$8,044.00</b>

Line 1301 is the total of lender required services for which you chose the provider (other than title services). These services are itemized in the lines below 1301. These charges are listed in Block 6 of your GFE.

In addition to services the loan originator required there may be additional services that you chose. In our example, Line 1304 lists a homeowner's warranty to provide protection for your home's mechanical systems and appliances. A charge for a pest inspection or survey will appear as a line item in the 1300 series of the HUD-1, if the borrower elected to obtain an inspection or survey that was not a condition of the loan or required by the lender.

Line 1400 is the total of all charges listed in page 2 on the HUD-1 for the seller and you, the buyer. These totals are also listed on page 1 of the HUD-1. Your charges appear in Section J, Summary of the Borrower's Transaction, on Line 103. The seller's charges are listed in Section J, Summary of Seller's Transaction, on Line 502.

### Page 3 of the HUD-1

The third page of the HUD-1 is made up of two sections: the Comparison Chart and the Loan Terms. The Comparison Chart will help you compare the charges disclosed on your GFE and the actual charges listed on page 2 of the HUD-1. The Loan Terms section can assure you that the loan you applied for is the loan you received at settlement. This section should compare with the "Summary of Your Loan" on page 1 of the GFE.

## Comparison Chart

There are three categories in the Comparison Chart: charges that could not increase at settlement, charges that in total could not increase more than 10% and charges that could change. Compare the charges listed in the GFE column with the charges in the HUD-1 column. If the charges that cannot increase have increased or the total of the charges that cannot increase more than 10% have exceeded the 10% increase limit, the lender must reimburse you at settlement or within thirty (30) days after settlement.

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>	<b>HUD-1 Line Number</b>		
Our origination charge	# 801	\$6,750.00	\$6,750.00
Your credit or charge (points) for the specific interest rate chosen	# 802	-\$3,000.00	-\$3,000.00
Your adjusted origination charges	# 803	\$3,750.00	\$3,750.00
Transfer taxes	# 1203	\$1,368.00	\$1,368.00
<b>Charges That In Total Cannot Increase More Than 10%</b>		<b>Good Faith Estimate</b>	<b>HUD-1</b>
Government recording charges	# 1201	\$50.00	\$50.00
Appraisal	# 804	\$275.00	\$325.00
Credit report	# 805	\$40.00	\$40.00
Tax service fee	# 806	\$56.00	\$76.00
Flood certification	# 807	\$12.00	\$12.00
Title services and lender's title insurance	# 1101	\$1,275.00	\$1,275.00
Owner's title insurance	# 1103	\$175.00	\$175.00
	#		
<b>Total</b>		<b>\$1,883.00</b>	<b>\$1,953.00</b>
<b>Increase between GFE and HUD-1 Charges</b>		<b>\$ 70</b>	<b>or 4 %</b>
<b>Charges That Can Change</b>		<b>Good Faith Estimate</b>	<b>HUD-1</b>
Initial deposit for your escrow account	# 1001	\$306.00	\$350.00
Daily interest charges \$ 28.00 /day	# 901	\$28.00	\$28.00
Homeowner's insurance	# 903	\$650.00	\$600.00
Survey	# 1302	\$250.00	\$250.00
Pest inspection	# 1303	\$45.00	\$45.00

In the example above, the "Charges That In Total Cannot Increase More Than 10%" were only increased by \$70 or 4% and did not exceed the 10% tolerance. For the category "Charges That Can Change" in this example the borrower selected a pest inspection and survey provider that were not on the written list.

## Loan Terms

Loan Terms	
Your initial loan amount is	\$ 200,000.00
Your loan term is	30 years
Your initial interest rate is	5.0 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ 1,173.00 includes <input checked="" type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, it can rise to a maximum of 10.0 %. The first change will be on 6/1/2010 and can change again every 6 months after 6/1/2010 . Every change date, your interest rate can increase or decrease by 1.0 %. Over the life of the loan, your interest rate is guaranteed to never be lower than 5.0 % or higher than 10.0 %.
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, the first increase can be on 6/1/2010 and the monthly amount owed can rise to \$ 1,290.00 . The maximum it can ever rise to is \$ 1,842.00 .
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$ 250.00 that results in a total initial monthly amount owed of \$ 1,423.00 . This includes principal, interest, any mortgage insurance and any items checked below: <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Property taxes  <input type="checkbox"/> Flood insurance  <input type="checkbox"/> </div> <div> <input checked="" type="checkbox"/> Homeowner's insurance  <input type="checkbox"/>  <input type="checkbox"/> </div> </div>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

The last section on the HUD-1 clearly sets forth the terms of your loan, including the loan amount, your interest rate and your monthly payments. It will also disclose the monthly escrow payment account information. It lets you know whether your interest rate, your loan balance or your monthly payments can increase and whether your loan has a prepayment penalty or a balloon payment. Look at this information carefully and make sure that you are getting the loan and the terms that were set forth in your GFE. **If the loan terms do not match the loan terms on your GFE or if you have questions, contact your lender before signing any documents.**

## **IX. Your Loan after Settlement**

After settlement, RESPA requires that lenders give you disclosures concerning the servicing of your loan and any escrow account. RESPA also gives you certain protections in regard to the timely payment of your taxes and insurance.

### **Servicing and Escrow Disclosure Statements**

The company that collects your mortgage payments is your loan servicer. This may not be your lender. When you apply for your loan or within three business days, RESPA requires that your lender or mortgage broker tell you in writing whether someone else may be servicing your loan. After your settlement, if your loan servicer transfers the servicing of your loan to a new servicer, RESPA requires that you be notified in writing at least fifteen (15) days before the transfer. The notice must tell you when the transfer is effective and when you will begin making payments to the new servicer. The notice letter must also give you the contact information for the new servicer as well as other important information about the servicing of your loan.

If your loan requires an escrow account, the servicer of your loan must give you an initial escrow account statement at your settlement or within the following forty-five (45) days. That form will show all of the payments which are expected to be deposited into your escrow account and all of the disbursements which are expected to be paid from the escrow account during the year. Your servicer will review your escrow account annually and send you a disclosure each year which shows the prior year's activity and any adjustments necessary in the escrow payments that need to be made in the upcoming year. You will not receive this yearly disclosure if your loan is in default. Remember that your monthly payment can increase if your taxes or insurance payments increase.

### **Servicing Errors**

If you have a question any time during the life of your loan, RESPA requires the company collecting your loan payments (your "servicer") to respond to you. Write to your servicer and call it a "qualified written request under Section 6 of RESPA." A "qualified written request" (QWR) should be a separate letter and not mailed with the payment coupon. Describe the problem and include your name and account number. The servicer must investigate and make appropriate corrections within 60 business days.

### **Complaints**

**RESPA provides you with certain consumer protections during the loan process and during the servicing of your loan after settlement.** If your lender charged you more than the allowable tolerances at settlement and failed to reimburse you; if you are aware that one of your settlement service providers paid

or received a fee or kickback for referring business to someone; if you were required to use a company that was affiliated with your real estate agent, builder, or loan originator, if your loan servicer fails to timely pay your taxes and insurance premiums; or if your loan servicer does not respond to a QWR about the servicing of your loan, you may wish to file a complaint with HUD's Office of RESPA. You should describe what you believe to be a violation and identify each violator by name, address and phone number. You should also include your own contact information for any follow-up questions. You can find out how to file a complaint at the RESPA website or by contacting the RESPA Office. The address is located in the Appendix.

## **Avoiding Foreclosure**

Once you move into your new home, you will want to make sure that you do nothing that could threaten you with the loss of your home. Make all payments on time. If you are having a dispute with the servicer, do not stop making your full payment each month. Consider carefully before putting another mortgage or lien on your home.

If you do not make your monthly mortgage payments, you will be in default on your loan. Foreclosure is a legal process in which a mortgaged property is sold to pay off the defaulted loan. If you find yourself facing foreclosure, there are steps that you should take. Contact your lender and be prepared to provide financial information. There may be a workout plan available to help you keep your home. There are also HUD-approved housing counseling agencies that are available to provide you information on and assistance in avoiding foreclosure. HUD's web site provides homeowners this information as well as other guidance in its "Guide to Avoiding Foreclosure" which can be found at <http://www.hud.gov/foreclosure/>.

Beware of scams! Watch out for equity skimming when a buyer offers to repay the mortgage or sell the property if you sign over the deed and move out. Be aware that there are phony counseling agencies that charge you a fee for the same services you can usually receive at no charge. Be sure to use only HUD-approved counseling agencies. Most importantly, NEVER sign anything that you have not read or do not understand.

## **X. Home Equity and Refinances**

### **Home Equity Loan/Line of Credit**

As you make payments on your mortgage loan or make improvements to your property, or if property values in your neighborhood increase, the equity in your home may increase. Home equity is the difference between your home's fair market value and the outstanding balances of all the loans and other liens on your property.

If you have equity in your property, you may be able to use it as collateral for a home equity loan or a home equity line of credit, often called a HELOC.

A closed-end home equity loan is for a fixed amount of money that you receive at closing. You will not be able to borrow additional money under the terms of this type of loan. An open-end home equity loan has a credit line set by the lender. With this loan you can choose when and how often to borrow money up to your credit limit.

### **Is a Home Equity Loan/Line of Credit Right For You?**

You may want to make home improvements to increase the value of your home, or you may decide to consolidate your debts by paying off high-interest credit cards. Maybe you have unexpected medical bills or need funds to pay for school expenses. A home equity loan can be a convenient way to get money for these situations; however, before you get a home equity loan, there are things that you should carefully consider. Remember that a home equity loan creates another lien against your home and reduces the equity that you have built up. You could risk losing your home if you do not plan wisely.

**Ask as many questions as you asked when you were looking for your home loan.** The decision to get a home equity loan or line of credit should be made wisely. Make sure you can afford the loan. Have a solid financial plan and set up a budget, so you can be confident that you can make the additional monthly payment while still meeting your other financial obligations. You worked hard to get your home, don't risk losing it!

Additional assistance and guidance can be found in "What you should know about Home Equity Lines of Credit" published by the Federal Reserve Board. You can contact the Federal Reserve Board at the address and phone number provided in the Appendix at the end of this booklet for additional information.

### **Refinancing: Should You Consider Refinancing?**

Refinancing is paying off one loan by obtaining another and is usually done to secure better loan terms such as a lower interest rate. You might also want to refinance for the same reasons you may have considered a home equity loan or line of credit - to get cash from the equity that you have built up in your home for such things as home improvements, paying off other debts, major purchases, starting a business, or education costs, etc.

You should carefully consider the terms of a refinance as well as the long-term impact on your financial situation. You should shop as carefully for your refinance loan as you did when you bought your home. Refinancing can deplete the equity you have built up if you take out the equity in your home in cash, and it can negatively affect your ability to pay your loan if you do not closely review the terms of your new loan. Consider the same issues that you addressed when you first applied for your

home loan that have been discussed throughout this booklet.

On the positive side, if you shop carefully for your refinance, you could lower your monthly payments by getting a lower interest rate. Be wary of unsolicited refinancing offers that you may get in the mail or through e-mail. Although not all of these offers are deceptive, there are many unscrupulous loan originators who use the offers to find unsuspecting home owners. Some of these unscrupulous loan originators will even use the HUD and FHA logos in an attempt to make their solicitations appear legitimate. If you have any doubts about whether a communication has actually been sent by HUD, use the information in the Appendix to contact HUD.

## **XI. Appendix**

### **ADDITIONAL INFORMATION**

There are several federal laws which provide you with protection during the home buying process. The Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act prohibit discrimination, and the Fair Credit Reporting Act ("FCRA") provides you with the right to certain credit information.

#### **No Discrimination**

ECOA prohibits lenders from discriminating against credit applicants in any aspect of credit transactions on the basis of race, color, religion, national origin, sex, marital status, age, the fact that all or part of the applicant's income comes from any public assistance program, or the fact that the applicant has exercised any right under any federal consumer credit protection law.

The Fair Housing Act prohibits housing discrimination because of race, color, religion, sex, disability, familial status or national origin. This prohibition applies, among other things, to the sale of a home to you, the making of loans for purchasing, constructing, improving, repairing or maintaining a dwelling, and the brokering and appraising of residential real estate.

If you feel you have been discriminated against by a lender or anyone else in the home buying process in violation of the Fair Housing Act, you can file a complaint at no cost with HUD. Following an investigation, if HUD determines that there is a reasonable cause to believe that your rights under the Fair Housing Act have been violated, it will issue a Charge of Discrimination on your behalf that will be adjudicated in administrative proceedings or in federal court. You may also file a complaint under ECOA with the Board of Governors of the Federal Reserve System or with an appropriate state agency under the state's equal credit opportunity laws.

You may also be able to file a private legal action or take other appropriate action if you are the victim of discrimination. You may wish to consult with an attorney to understand your rights.

#### **Prompt Action/Notification of Action Taken**

Your lender or mortgage broker must act on your application and inform you of the action taken no later than 30 days after it receives your completed application. Your application will not be considered complete, and the 30-day period will not begin, until you provide to your lender or mortgage broker all of the material and information requested.

## **Statement of Reasons for Denial**

If your application is denied, ECOA requires your lender or mortgage broker to give you a statement of the specific reasons why it denied your application or tell you how you can obtain such a statement. The notice will also tell you which federal agency regulates the lender that denied your application so you can contact the agency if you believe it has illegally discriminated against you.

## **Obtaining Your Credit Report**

The Fair Credit Reporting Act ("FCRA") requires a lender or mortgage broker that denies your loan application to tell you whether it based its decision on information contained in your credit report. If that information was a reason for the denial, the notice will tell you where you can get a free copy of the credit report. You have the right to dispute the accuracy or completeness of any information in your credit report. If you dispute any information, the credit reporting agency that prepared the report must investigate free of charge and notify you of the results of the investigation.

## **Obtaining Your Appraisal**

The lender needs to know if the value of your home is enough to secure the loan. To get this information, the lender typically hires an appraiser, who gives a professional opinion about the value of your home. ECOA requires your lender or mortgage broker to tell you that you have a right to get a copy of the appraisal report. The notice will also tell you how and when you can ask for a copy.

## **HOEPA**

If you ever decide to refinance your loan, or if you apply for a home equity installment loan, you should know about the Home Ownership and Equity Protection Act of 1994 (HOEPA). This law addresses certain unfair practices and establishes requirements for certain loans with high rates and fees. You can find out more information by contacting the Federal Trade Commission at the address and phone number listed in the Appendix.

## DETERMINING WHAT YOU CAN AFFORD WORKSHEET

Use the worksheet below to calculate your monthly income and expenses to determine the amount you have left over every month to pay for house related expenses such as your monthly loan payment, property taxes and homeowner's insurance. There is also a mortgage calculator you may wish to use. It can be found at: [http://www.ginniemaegov/2\\_prequal/intro\\_questions.asp?Section=YPTH](http://www.ginniemaegov/2_prequal/intro_questions.asp?Section=YPTH).

Determine Your Monthly Income and Expenses	Monthly Amount
<b>Income (what you take home after taxes and other deductions)</b>	
Borrower salary	\$
Co-borrower salary	\$
Other income	\$
<b>INCOME TOTAL</b>	<b>\$</b>
<b>Expenses</b>	
Credit cards	\$
Car payment	\$
Car insurance	\$
Health insurance	\$
Savings and retirement	\$
Medical expenses	\$
Child support and alimony	\$
Tuition	\$
Utilities	\$
Clothing	\$
Entertainment	\$
Other expenses	\$
<b>EXPENSES TOTAL</b>	<b>\$</b>
<b>TOTAL MONTHLY INCOME</b>	<b>\$</b>
<b>SUBTRACT TOTAL MONTHLY EXPENSE</b>	<b>\$</b>
<b>EQUALS</b>	<b>\$</b>

## CONTACT INFORMATION

### **U.S. Department of Housing and Urban Development**

451 7<sup>th</sup> Street, SW  
Washington, DC 20410  
202-708-1112  
<http://www.hud.gov>

### **HUD's Office of RESPA and Interstate Land Sales**

202-708-0502  
<http://www.hud.gov/resp>

### **HUD Housing Counselors**

1-800-569-4287 (Interactive system)  
<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

### **HUD Foreclosure Prevention Information**

<http://www.hud.gov/foreclosure>

### **Buying a HUD Home**

<http://www.hud.gov/offices/hsg/sfh/reo/reobuyfaq.cfm>

### **FHA- Resource Center**

1-800-CALL FHA (800-225-5342)  
<http://www.hud.gov/offices/hsg/sfh/fharesourcectr.cfm>

### **Housing Discrimination Issues**

Office of Fair Housing and Equal Opportunity  
(See HUD address above)

1-202-708-1112  
1-800-800-3088  
[http://portal.hud.gov/portal/page/portal/HUD/program\\_offices/fair\\_housing\\_equal\\_opp](http://portal.hud.gov/portal/page/portal/HUD/program_offices/fair_housing_equal_opp)

To file a Housing Discrimination Complaint:

<http://www.hud.gov/offices/fheo/online-complaint.cfm>

## **Other Agencies**

### **Truth in Lending Act, the Equal Credit Opportunity Act, adjustable rate mortgages, and home equity lines of credit**

The Federal Reserve Board  
Division of Consumer and  
Community Affairs  
20th and Constitution Avenue  
Mail Stop 801  
Washington DC 20551  
202-452-3000  
[www.federalreserve.gov](http://www.federalreserve.gov)

### **Foreclosure Prevention Toolkit**

Federal Deposit Insurance  
Corporation  
Division of Supervision and Consumer Protection  
550 17<sup>th</sup> Street, NW  
Washington DC 20429  
877-275-3342  
[www.fdic.gov/consumers/loans/prevention/toolkit.html](http://www.fdic.gov/consumers/loans/prevention/toolkit.html)

### **VA-Guaranteed Loans**

Department of Veterans Affairs  
Consumer Affairs Service  
810 Vermont Avenue, NW  
Washington DC 20420  
800-827-1000  
[www.va.gov](http://www.va.gov)

### **Rural Housing Loan Programs**

Department of Agriculture  
Rural Development/Rural Housing Services  
Mail Stop MC-0701  
1400 Independence Avenue, SW  
Washington DC 20250  
202-720-4581  
[www.rurdev.usda.gov](http://www.rurdev.usda.gov)

### **Home Ownership and Equity Protection Act of 1994 (HOEPA)**

Federal Trade Commission  
Consumer Response Center  
600 Pennsylvania Avenue, N.W.  
Washington DC 20580  
877-382-4357  
[www.ftc.gov](http://www.ftc.gov)

## GLOSSARY of TERMS

**Appraiser:** one who is trained and educated in the methods of determining the value of property (appraised value). You will pay a fee for an appraisal report containing an opinion as to the value of your property and the reasoning leading to this opinion.

**Credit report fee:** this fee covers the cost of a credit report which shows your credit history. The lender uses the information in a credit report to assess your credit worthiness.

**Default:** the inability to pay monthly mortgage payments in a timely manner or to otherwise meet the mortgage terms.

**Delinquency:** failure of a borrower to make timely mortgage payments under a loan agreement.

**Down Payment:** the portion of a home's purchase price that is paid in cash and is not part of the mortgage loan.

**Earnest Money Deposit:** money you will put down to show that you are serious about purchasing the home. It often becomes part of the down payment if the offer is accepted, is returned if the offer is rejected, or may be forfeited if you do not follow through with the deal.

**Escrow Account:** an impound account in which a portion of your monthly mortgage payment is deposited to cover annual charges for homeowner's insurance, mortgage insurance (if applicable), and property taxes.

**Escrow Agent:** a person or entity holding documents and funds in a transfer of real property, acting for both parties pursuant to instructions. Typically the agent is a person (often an attorney), escrow company or title company, depending on local practices.

**Flood Certification Fee:** a fee for the assessment of your property to determine if it is located in a flood prone area.

**Foreclosure:** a legal process in which mortgaged property is sold to pay the loan of the defaulting borrowers.

**Good Faith Estimate (GFE):** an estimate of the settlement charges you are likely to incur; it also contains other information about the loan.

**Government Recording and Transfer Charges:** fees for legally recording your deed and mortgage. These fees may be paid by you or by the seller depending upon the terms of the sales agreement.

**Home Inspection:** an inspection of the mechanical, electrical, and structural aspects of your home. You will pay a fee for this inspection, and the inspector will provide you a written report evaluating the condition of the home.

**Homeowner's Insurance or Home Hazard Insurance:** an insurance policy that protects your home and your possessions inside from serious loss, such as theft or fire. This insurance is usually required by all lenders to protect their investment and must be obtained before closing on your loan.

**HUD-1 Settlement Statement:** a statement that itemizes the services provided to you and the fees charged for those services. This form is filled out by the person who will conduct the settlement. You can ask to see your settlement statement at least one day prior to your settlement.

**Interest:** a fee charged by the lender for the use of its money.

**Interest rate:** the charge by the lender for borrowing money expressed as a percentage.

**Lender Inspection Fees:** this charge covers inspections, often of newly constructed housing, made by employees of your lender or by an outside inspector.

**Loan to value (LTV) ratio:** a percentage calculated by dividing the amount to be borrowed by the price or appraised value of the home to be purchased (whichever is less). The loan to value ratio is used to qualify borrowers for a mortgage, and the higher the LTV, the tighter the qualification guidelines for certain mortgage programs become. Low loan to value ratios are considered below 80%, and carry lower rates since borrowers are lower risk.

**Mortgage:** the transfer of an interest in property to a lender as a security for a debt. This interest may be transferred with a Deed of Trust in some states.

**Origination Fee:** a fee charged to the borrower by the loan originator for making a mortgage loan.

**Origination Services:** any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, and the underwriting and funding of loan, and the processing and administrative services required to perform these functions.

**Payment Shock:** a scenario in which monthly mortgage payments on an adjustable rate mortgage (ARM) rise so high that the borrower may not be able to afford the payments.

**PITI: Principal, Interest, Taxes and Insurance:** the four elements of a monthly mortgage payment; payments of principal and interest go directly towards repaying the loan while the portion that covers taxes and insurance goes into an escrow account to cover the fees when they are due.

**Pest Inspection:** an inspection for termites or other pest infestations of your home. This inspection is frequently required by your lender.

**Point(s):** amount of money paid to reduce the interest rate on a loan. A point is usually equal to 1% of the loan amount.

**Pre-paid items:** lenders often require the prepayment of items such as insurance premiums for private mortgage insurance, homeowner's insurance, and real estate taxes.

**Prepayment Penalty:** a fee charged if the mortgage loan is paid before the scheduled due date.

**Private Mortgage Insurance (PMI):** insurance that protects your lender if you default on your loan. With conventional loans, mortgage insurance is usually required if you do not make a down payment of at least 20% of your home's appraised value. Your lender may require payment of your first year's mortgage insurance premium or a lump sum premium that covers the life of the loan in advance at settlement. The same insurance protection on an FHA loan is called Mortgage Insurance Premium (MIP).

**Recording and Transfer Charges:** these charges include fees paid to the local government for filing official records of a real-estate transaction.

**Sales Agreement:** the contract signed by a buyer and the seller stating the terms and conditions under which a property will be sold. It may also be called an "Agreement of Sale" or "Purchase Contract."

**Settlement:** the time at which the property is formally sold and transferred from the seller to the buyer. It is at this time that the borrower takes on the loan obligation, pays all closing costs and receives title from the seller.

**Settlement/Closing Agent:** in some states, a settlement agent, or closing agent, handles the real estate transaction when you buy or sell a home. It may also be an attorney or a title agent. He or she oversees all legal documents, fee payments, and other details of transferring the property to ensure that the conditions of the contract have been met and appropriate real estate taxes have been paid.

**Settlement Costs/Closing Costs:** the customary costs above and beyond the sales price of the property that must be paid to cover the transfer of ownership at closing; these costs generally vary by geographic location and are typically detailed to the borrower at the time the GFE is given.

**Survey Fee:** a fee for obtaining a drawing of your property showing the location of the lot, any structures, and any encroachments. The survey fee is usually paid by the borrower.

**Title Service Fees:** title service fees include charges for title search and title insurance if required. This fee also includes the services of a title or settlement agent.

**Title Insurance:** insurance that protects your lender against any title dispute that may arise over your property. Through a title search, the lender verifies who the actual property-owners are and whether the property is free of liens. The title search company then issues title insurance which protects the title of the property against any unpaid mortgages and judgments. In case a claim is made against the property, the title insurance provides legal protection and pays for court fees and related costs. You may also purchase Owner's title insurance which protects you as the homeowner.

**Tax certificate:** official proof of payment of taxes due provided at the time of transfer of property title by the state or local government.

**Tax Service Fee:** this fee covers the cost of your lender engaging a third party to monitor and handle the payment of your property tax bills. This is done to ensure that your tax payments are made on time and to prevent tax liens from occurring.

**Tolerance Category:** the maximum amount by which the charges for a category or categories of settlement cost may exceed the amount of the estimate for such category or categories on a good faith estimate. When the originator selects and identifies the provider of services, these charges may only increase 10% in the aggregate. If the borrower selects a provider that is not on the written list provided by the loan originator, the lender is not subject to any tolerance restrictions for that service.

## Types of Mortgage Loan Products

**Adjustable Rate Mortgage (ARM):** a mortgage loan or Deed of Trust which allows the lender to periodically adjust the interest rate in accordance with a specified index.

**Balloon Mortgage:** a balloon payment is due on a mortgage that usually offers a low monthly payment for an initial period of time. After that period of time elapses, the balance must be paid by the borrower or the amount must be refinanced. The large sum payable at the end of the loan term is called the "balloon payment."

**Construction Loan:** a short-term, interim loan for financing the cost of construction; the lender advances funds to the builder at periodic interval as work progresses.

**Conventional Loan:** a private sector loan which is not guaranteed or insured by the U.S. government.

**Fixed-Rate Mortgage:** a mortgage with an interest rate that does not change over the life of the loan, and as a result, monthly payments for principal and interest do not change.

**Hybrid Arms:** these loans are a mix or a hybrid of a fixed-rate period and an adjustable-rate period. For example, a 3/1 ARM will have a fixed interest rate for the first three years and then will adjust annually until the loan is paid off. The first number tells you how long the fixed interest-rate period will be and the second number tells you how often it will adjust after the initial period.

**Interest Only ARMs:** an interest-only (I-O) ARM payment plan allows you to pay only the interest for a specific number of years, typically between 3 and 10 years. This allows you to have smaller payments for a period of time. After that, your monthly payments will increase, even if the interest rate stays the same, because you must start paying back the principal as well as the interest each month.

**A. Settlement Statement (HUD-1)****B. Type of Loan**

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

**J. Summary of Borrower's Transaction****100. Gross Amount Due from Borrower**

101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	

**Adjustment for items paid by seller in advance**

106. City/town taxes	to	
107. County taxes	to	
108. Assessments	to	
109.		
110.		
111.		
112.		

**120. Gross Amount Due from Borrower****200. Amount Paid by or in Behalf of Borrower**

201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	

**Adjustments for items unpaid by seller**

210. City/town taxes	to	
211. County taxes	to	
212. Assessments	to	
213.		
214.		
215.		
216.		
217.		
218.		
219.		

**220. Total Paid by/for Borrower****300. Cash at Settlement from/to Borrower**

301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

**K. Summary of Seller's Transaction****400. Gross Amount Due to Seller**

401. Contract sales price	
402. Personal property	
403.	
404.	
405.	

**Adjustment for items paid by seller in advance**

406. City/town taxes	to	
407. County taxes	to	
408. Assessments	to	
409.		
410.		
411.		
412.		

**420. Gross Amount Due to Seller****500. Reductions in Amount Due to seller**

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	

**Adjustments for items unpaid by seller**

510. City/town taxes	to	
511. County taxes	to	
512. Assessments	to	
513.		
514.		
515.		
516.		
517.		
518.		
519.		

**520. Total Reduction Amount Due Seller****600. Cash at Settlement to/from Seller**

601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	( )
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

**L. Settlement Charges**

<b>700. Total Real Estate Broker Fees</b>					
Division of commission (line 700) as follows :					
701. \$	to			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
702. \$	to				
703. Commission paid at settlement					
704.					
<b>800. Items Payable in Connection with Loan</b>					
801. Our origination charge	\$	(from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)			
803. Your adjusted origination charges		(from GFE #A)			
804. Appraisal fee to		(from GFE #3)			
805. Credit report to		(from GFE #3)			
806. Tax service to		(from GFE #3)			
807. Flood certification to		(from GFE #3)			
808.					
809.					
810.					
811.					
<b>900. Items Required by Lender to be Paid in Advance</b>					
901. Daily interest charges from	to	@ \$	/day	(from GFE #10)	
902. Mortgage insurance premium for	months to			(from GFE #3)	
903. Homeowner's insurance for	years to			(from GFE #11)	
904.					
<b>1000. Reserves Deposited with Lender</b>					
1001. Initial deposit for your escrow account				(from GFE #9)	
1002. Homeowner's insurance	months @ \$	per month	\$		
1003. Mortgage insurance	months @ \$	per month	\$		
1004. Property Taxes	months @ \$	per month	\$		
1005.	months @ \$	per month	\$		
1006.	months @ \$	per month	\$		
1007. Aggregate Adjustment			-\$		
<b>1100. Title Charges</b>					
1101. Title services and lender's title insurance				(from GFE #4)	
1102. Settlement or closing fee	\$				
1103. Owner's title insurance				(from GFE #5)	
1104. Lender's title insurance	\$				
1105. Lender's title policy limit \$					
1106. Owner's title policy limit \$					
1107. Agent's portion of the total title insurance premium to	\$				
1108. Underwriter's portion of the total title insurance premium to	\$				
1109.					
1110.					
1111.					
<b>1200. Government Recording and Transfer Charges</b>					
1201. Government recording charges				(from GFE #7)	
1202. Deed \$	Mortgage \$	Release \$			
1203. Transfer taxes				(from GFE #8)	
1204. City/County tax/stamps	Deed \$	Mortgage \$			
1205. State tax/stamps	Deed \$	Mortgage \$			
1206.					
<b>1300. Additional Settlement Charges</b>					
1301. Required services that you can shop for				(from GFE #6)	
1302.	\$				
1303.	\$				
1304.					
1305.					
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>					

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>			
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	# 1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	<b>Total</b>		
<b>Increase between GFE and HUD-1 Charges</b>		\$	or %

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	# 1001		
Daily interest charges \$ /day	# 901		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms	
Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ includes <input type="checkbox"/> Principal <input type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % . Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than % .
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$ . The maximum it can ever rise to is \$ .
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You have an additional monthly escrow payment of \$ that results in a total initial monthly amount owed of \$ . This includes principal, interest, any mortgage insurance and any items checked below: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Property taxes  <input type="checkbox"/> Flood insurance             </div> <div> <input type="checkbox"/> Homeowner's insurance  <input type="checkbox"/> </div> </div>

**Note:** If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

## **THE DO LIST**

- Shop for your loan.
- Interview real estate agents, mortgage brokers, lenders and other settlement service providers to find the best professionals for your loan and settlement needs.
- Be sure to read and understand everything before you sign anything.
- Accurately report your debts.
- Be honest about all sources of funds you will use to purchase your home.
- Be upfront about any credit problems you have or have had in the past.
- Be wary of unsolicited loan or refinance offers that you receive in the mail or through e-mail.
- Always pay your mortgage payment on time, even if you are having a dispute with your loan servicer.
- If you are having problems paying your mortgage, contact your loan servicer immediately.

## **THE DON'T LIST**

- Do not sign blank documents.
- Do not overstate your income.
- Do not overstate your length of employment.
- Do not overstate your assets.
- Do not change your income tax returns.
- Do not list fake co-borrowers on your loan application.
- Do not provide false documentation or permit someone to provide false documents about you.



FPO for Bar Code



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