

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

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR
SHARED OWNERSHIP AT THE SANDS OF KAHANA**

(A Fractional Ownership Program in the
SANDS OF KAHANA CONDOMINIUM,
a Leasehold Condominium)

THIS DECLARATION is made on the _____ day of _____, 19_____, by FRACTIONAL OWNERSHIP, 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 Sands of Kahana Condominium. Under Hawaii law the developer is considered the "owner" of the apartments because the it has a lease to use them.

This declaration establishes a program for sharing the ownership and use of the apartments described in Exhibit "A" and any other apartments later submitted to this declaration. This program is called the "fractional ownership program" or just the "program." The name of the program is "*Shared Ownership at the Sands of Kahana.*"

To assist the reader, this declaration contains an outline and a table of contents. Key terms are defined in Part 1 and in the glossary of legal terms in section 16.3. Other terms are defined elsewhere in this declaration. To help the reader locate them, an index of all defined terms is attached as Exhibit "B".

OUTLINE

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PART 1.

DEFINITIONS

In addition to the terms defined elsewhere in this declaration, the following terms have the following meanings in this document:

1.1 "CONDOMINIUM" means the Sands of Kahana condominium project. The following terms relate to the condominium:

A. "APARTMENT" means any "apartment" (as defined by the condominium act) in the condominium.

B. "COMMON ELEMENTS" means all parts of the condominium except the apartments. The common elements are described in the condominium act and the condominium declaration. Some common elements, called "*limited common elements*", may be used only by the owners of certain apartments.

C. "APARTMENT LEASE" means the document used to transfer ownership of the individual whole apartments. It actually consists of (i) a deed of the apartment and an undivided interest in the common elements (except the land) and (ii) a lease of an undivided interest in the land on which the condominium is located.

D. "LANDLORD" means the landlord under each apartment lease.

E. "CONDOMINIUM DOCUMENTS" means the condominium declaration, the condominium bylaws, the condominium map, the apartment lease for each vacation unit, and the condominium rules.

1) "CONDOMINIUM DECLARATION" means the "Declaration of Horizontal Property Regime of the Sands of Kahana Condominium" and any changes or additions properly made to it. It established and governs the condominium.

2) "CONDOMINIUM BYLAWS" means the "Bylaws of the Association of Apartment Owners of the Sands of Kahana Condominium" and any changes properly made to them.

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 and any properly made changes or additions to them. The condominium map shows, among other things, the floor plans and elevations of the condominium buildings.

F. "CONDOMINIUM ASSOCIATION" means the Association of Apartment Owners of the Sands of Kahana Condominium. It is an association of all of the owners of apartments in the condominium project acting as a group in accordance with the condominium declaration and bylaws. The condominium association manages the condominium. It is separate from the association of fractional share owners.

1.2 "DEVELOPER" means Fractional Ownership, Inc., a Hawaii corporation. The developer is creating the program. If the developer signs and records a document which expressly transfers some or all of its rights as the developer under this declaration to another person, then that person will become the "developer" to the extent of the rights transferred.

1.3 "FRACTIONAL OWNERSHIP PROGRAM" OR "PROGRAM" means the program created by this declaration and the other program documents.

A. "PROGRAM DOCUMENTS" means this declaration, the articles, the bylaws, and the association rules.

1) **"DECLARATION"** means this document and any changes and additions properly made to it later.

2) **"ARTICLES"** means the Articles of Incorporation of the Association and any later changes properly made to them. The articles established and govern the Association as a corporation. They are on file with the Department of Commerce and Consumer Affairs of the State of Hawaii.

3) **"BYLAWS"** means the bylaws of the Association and any changes properly made to them. The bylaws are attached as Exhibit "C" to this declaration.

4) **"ASSOCIATION RULES"** means the rules adopted by the developer and any changes made to them from time to time by the Association.

B. "ASSOCIATION" means the Sands of Kahana Fractional Share Owners Association, a Hawaii non-profit corporation. Do not confuse it with the "condominium association."

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

2) **"PROGRAM MANAGER"** means the agent hired by the developer or the board to manage the fractional ownership program.

1.4 "VACATION PROPERTY" means the vacation units and the common furnishings

A. "VACATION UNIT" or "UNIT" means an apartment included in the fractional ownership program. Each apartment described in Exhibit "A" and each apartment added to the program by the developer acting under section 14.2 is 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 program. It includes, for example, furniture, appliances, and furnishings (like linens and kitchenware) in the vacation units, as well as equipment (like tools and ladders) and motor vehicles owned or leased by the Association for the benefit of the program. The Association may also buy or lease things like bicycles, snorkeling gear, video tapes, and other recreational property for use by or rent to owners and other occupants. These are also common furnishings.

1.5 "FRACTIONAL SHARE" means an every-year fractional share or an every-other-year fractional share.

A. "EVERY YEAR FRACTIONAL SHARE" means:

1) An undivided one-sixth (1/6th) interest in an apartment lease of a vacation unit. The term undivided interest is defined in the glossary and refers to the idea that the person will be one of the co-owners of that apartment lease. The other co-owners will be the owners of other fractional shares in that vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year.

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

B. "EVERY-OTHER-YEAR FRACTIONAL SHARE" means an even-year fractional share or an odd-year fractional share.

C. "EVEN-YEAR FRACTIONAL SHARE" means:

1) An undivided one-twelfth (1/12th) interest in an apartment lease of a vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year which end in an even number (for example, 2000, 2002, and so on).

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

D. "ODD-YEAR FRACTIONAL SHARE" means:

1) An undivided one-twelfth (1/12th) interest in an apartment lease of a vacation unit;

2) The exclusive right to use and occupy that vacation unit and the common furnishings in it, and to use its limited common elements, if any, during the owner's vacation period in every use year which end in an odd number (for example, 1999, 2001, and so on).

3) During the same use period, the right to use the common elements of the condominium along with the other owners and occupants of apartments; and

4) A membership in the Association.

1.6 "USE PERIOD" means one of the sixty-day periods of time listed in the list of use periods. Each use period begins at check-in time on the check-in date and ends at check-out time on the check-out date.

A. "LIST OF USE PERIODS" means the list of use periods contained (i) in Exhibit "D" which is attached to and a part of this declaration or (ii) in any Declaration of Annexation. See section 14.2.

B. "CHECK-IN DATE" means the first day of a use period as shown on the list of use periods for that unit.

C. "CHECK-IN TIME" means the time after which owners and occupants may check in with the program manager and then occupy their unit. The association rules set the check-in time.

D. "CHECK-OUT DATE" means the last day of a use period as shown on the list of use periods for that unit.

E. "CHECK-OUT TIME" means the time by which owners and occupants must vacate their unit and check out with the program manager. The association rules set the check-out time.

1.7 "VACATION PERIOD" means the use period or use periods during which an owner or other occupant has the right to use his or her vacation unit. The vacation period for each fractional share is stated in the original assignment for that fractional share.

1.8 "SERVICE PERIOD" means a major service period or a minor service period.

A. "MAJOR SERVICE PERIOD" means the five-day period designated as a major service period in the list of use periods.

B. "MINOR SERVICE PERIOD" means the time between use periods (the time between check-out time of one use period and check-in time for the next use period) other than the major service period.

1.9 "USE YEAR" means the one year period starting on the check-in date for the first use period shown in the list of use periods, and ending on the check-out date for the last use period shown in the list of use periods. The use year may be different for different vacation units.

1.10 "OWNER" or "FRACTIONAL SHARE OWNER" means the owner of a fractional share. The following are "owners":

- the owner named in the original assignment of a fractional share and any person to whom that fractional share is later transferred, while he or she owns it.
- 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 retains the right to vote on "matters substantially affecting his security interest" (as provided by the condominium act). If the agreement of sale is canceled, the seller will become the owner again.
- the beneficiary of a land trust if the fractional share is transferred to a trustee under a land trust. The trustee will not be considered the owner.
- the developer with respect to any fractional share not transferred by an original assignment or agreement of sale.

1.11 "OCCUPANT" means an owner or an exchange user while he or she is actually occupying or using his or her vacation unit or any part of the condominium. An owner or exchange user's guest is also an "occupant."

A. "GUEST" means an owner's or an exchange user's family, visitors, employees, servants, tenants, "*licensees*" (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.

B. "EXCHANGE USER" means a person whose use of a vacation unit is arranged through an exchange program.

1) "**EXCHANGE PROGRAM**" means a service which permits owners to trade their use rights in the program for:

- the use rights of other owners in the program, or
- the right to use other property which is not part of the program.

2) "**INTERNAL EXCHANGE PROGRAM**" means an exchange program operated by the Association or by the program manager acting on behalf of the Association.

3) "**EXTERNAL EXCHANGE PROGRAM**" means an exchange program operated by someone other than the Association or by the program manager acting on behalf of the Association.

PART 2. CREATION OF THE Program

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 the fractional ownership program and impose it on the Association and on each vacation unit and anyone who has any rights or interests in it;
- Creates a program for the owners to share the use, enjoyment, management, upkeep and repair of the vacation property and the operation of the fractional ownership program; and
- Intends to increase the value, desirability and enjoyment of each vacation unit and any interest in it.

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

A. The vacation units, and all the developer's rights in them, are subject to the program documents. (In legal terms, the developer is submitting all of its "estate, right, title and interest" to those documents). This means that the vacation units will be owned, used, leased, rented, mortgaged, encumbered, and improved subject to the agreements, limitations, restrictions and other matters contained in the program documents, from now until the fractional ownership program ends;

B. The program documents will be binding on each vacation unit and on anyone (including the developer) who now or later owns it or any fractional share or other interest in it, regardless of how or when he or she obtained the interest, and whether or not he or she ever signed those documents or expressly agreed to obey them. (In legal terms, the program documents are "*covenants running with the land*" and "*equitable servitudes*"); and

C. The program documents are intended to benefit and to bind the developer and anyone else who now or later has any rights or other interests in any fractional share or vacation unit. The developer, each owner and anyone else having rights or interests in the vacation units can enforce the program documents in the manner provided in them.

PART 3. CREATION OF FRACTIONAL SHARES

3.1 ORIGINAL ASSIGNMENT.

A. NATURE OF AN ORIGINAL ASSIGNMENT. The term "*original assignment*" means the recorded Warranty Deed and Assignment of Sublease by which the developer first transfers a fractional share. The original assignment for each fractional share establishes the features of the fractional share and reserves certain special rights in favor of the developer.

B. CONTENT OF ORIGINAL ASSIGNMENT. The original assignment for each fractional share must:

- 1) Assign an identification number to the fractional share.
- 2) State whether the fractional share is an every-year fractional share, an even-year fractional share, or an odd-year fractional share.
- 3) State the vacation period for that fractional share.

C. DOCUMENTS WHICH ARE NOT AN ORIGINAL ASSIGNMENT. A document which transfers the developer's entire remaining interest in a vacation unit is not an original assignment if (i) it says that it is not an original assignment, or (ii) the developer's rights under this declaration as the developer of that vacation unit are transferred with it.

3.2 CREATION OF THE FRACTIONAL SHARES. The developer may issue original assignments for as few as six (6) fractional shares in each vacation unit and as many as twelve (12) fractional shares in that vacation unit. For obvious reasons, there must be one even-year fractional share for each odd-year fractional share in a particular unit, and *vice versa*. So long as this requirement is met, the developer may issue original assignments for any combination of every-year fractional shares and every-other-year fractional shares in any unit. The owner of an every-year fractional share may not divide it into two every-other-year fractional shares. Only the developer may do this.

PART 4. USE RIGHTS AND RULES

4.1 RIGHTS DURING YOUR VACATION PERIOD. During an owner's vacation period, the owner has the exclusive right to occupy and use his or her vacation unit, the common furnishings in it, and its limited common elements. During the same vacation period, the owner has the right to share the use and enjoyment of the common elements of the condominium with the other occupants and owners of condominium apartments in the condominium. These rights are defined, limited and governed by the program documents and the condominium documents.

A. EVERY-YEAR, EVEN-YEAR AND ODD-YEAR USE RIGHTS.

1) EVERY-YEAR FRACTIONAL SHARES. An owner of an every-year fractional share has the right to use his or her vacation unit during his or her vacation period in each use year.

2) EVEN-YEAR FRACTIONAL SHARES. An owner of an even-year fractional share has the right to use his or her vacation unit during his or her vacation period only in use years which end in an even number (for example, 1998, 2000, 2002, and so on).

3) ODD-YEAR FRACTIONAL SHARES. An owner of an odd-year fractional share has the right to use his or her vacation unit during his or her vacation period only in use years which end in an odd number (for example, 1999, 2001, 2003, and so on).

B. GUEST USE. An owner may allow someone else to use his or her vacation unit during the owner's vacation period for the purposes permitted by this declaration. The owner, however, will be fully responsible for his or her guests. See Part 6.

C. CONSECUTIVE USE PERIODS. Anyone entitled to use a vacation unit for two or more use periods in a row will also have the exclusive use of it during any minor service period between those use periods. The Association, however, still must provide maid service during the minor service periods. Anyone entitled to use a unit for two or more use periods separated by a major service period must move out of the unit and stay out of it during the major service period. The program manager, the Association's board, and the owner, however, can agree to re-schedule the major service period to another time in the owner's use period but the owner must then vacate the unit at the agreed time to provide the time and access necessary for the Association to conduct major service and repairs to the unit. Likewise, if an owner's vacation period begins just after or ends just before a major service period, the program manager, the Association and the owner can agree to reschedule the major service period to another time in the owner's vacation period but the owner must then vacate the unit at the agreed time.

D. DELINQUENT OWNERS. An owner is not allowed to use or exchange a vacation unit if the owner has not paid to the Association any standard assessment, special assessment or personal charge due or past due.

4.2 AT OTHER TIMES.

Except for an owner's unit during the owner's vacation period, no owner 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 unit at that time, or (b) 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.

4.3 GENERAL USE RESTRICTIONS AND DUTIES.

A. LIMITS ON OCCUPANTS AND COMMERCIAL USE. 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 4.6 and 4.6B).

B. ANIMALS. Visually impaired persons may keep certified seeing-eye dogs in their vacation unit. Hearing impaired persons may keep certified signal dogs in their vacation unit. Physically impaired persons may keep certified service dogs in their vacation unit. No other pets or other animals of any kind may be allowed or kept in any vacation unit or the condominium.

C. RENTALS. Owners may rent their fractional shares. 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, 2010, or (2) the date the developer sells all fractional shares and any other apartments it owns in the condominium. The developer makes no representation or promise that a rental pool arrangement, as that term is defined in the Securities and Exchange Commission's Securities Act Release No. 33-5347 (17 C.F.R. § 231.5347 (Jan. 18, 1973)) or any other similar arrangement will be transferred to an owner upon the purchase of a fractional share. An owner is only buying a fractional share and the fractional share is not coupled with any rental pool arrangement. Further, the developer makes no representation or warranty that any rental pool arrangement will become available, or as to the potential rental value of the fractional share, or that an owner may expect to make a profit by buying a fractional share.

D. CHANGES TO THE VACATION PROPERTY. No occupant may make or authorize anyone else to make any alterations, 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, alter or replace any part of the common furnishings without first having the written consent of the Association. The Association alone has the right to do those things. However, these restrictions do not reduce or change the duty of every occupant described in the next paragraph.

E. YOUR DUTY OF CARE; MAINTENANCE AND REPAIR. All occupants must keep their vacation 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.

The owners, acting through the Association, will conduct and pay for the costs of normal maintenance and repair of the vacation units, their limited common elements, if any, and the common furnishings. The condominium association maintains the common elements.

F. OBEY THE CONDOMINIUM AND PROGRAM DOCUMENTS. Each owner must obey the condominium documents and the program documents and see that all his or her guests also do so.

4.4 DUTIES AT CHECK-OUT TIME.

A. CHECK-OUT. Except as provided in section 4.1C, occupants must leave their vacation 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 vacation unit all clothing, food, liquor, luggage and other personal effects brought into the vacation unit. Nobody (including the Association, the program 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 program manager may throw away, sell, or give away any abandoned items unless the association rules provide otherwise.

C. UNIT CONDITION. Occupants must leave their vacation 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).

4.5 INTERFERENCE WITH ANOTHER'S USE.

A. SPECIAL DEFINITIONS. The following definitions apply to this section 4.5:

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

2) **"VIOLATOR"** 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 a violator 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 4.5 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. The Association determines fair rental value; its decision is final.

B. WHAT HAPPENS TO A VIOLATOR. A violator:

- 1) may be evicted from the apartment 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 permits); and
- 3) must pay all costs and expenses to the Association and the injured person resulting from the violator'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 vacation unit for each full or partial day the injured person cannot occupy the vacation unit. This amount also is a personal charge.

NOTE: If there is more than one injured person for a single use period, they must share the liquidated damages; the violator does not have to pay each one twice the daily fair rental value. This does not limit, however, the violator's obligation to compensate the injured persons for each use period when more than one use period is affected.

C. THE ASSOCIATION'S DUTIES. The Association must take reasonable steps to evict the violator. It also must find and pay for other lodgings for the injured person; these should be as near in value to injured person's vacation unit as possible. The cost of these lodgings will be charged to the violator as a personal charge. The Association may decide that it has to rent these lodgings for longer than use of the unit is prevented. If so, the violator 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 4.5A. through C. also apply to exchange users.

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

A. USE OF COMMON ELEMENTS. So long as the developer owns any fractional share or apartment, it may use the common elements of the condominium for any purpose permitted by law, free from the restrictions imposed by the program documents. Such use, however, may not unreasonably interfere with the use of the condominium by the other owners and occupants.

B. DEVELOPER'S FRACTIONAL SHARES. The developer has the right to use each unit during any use periods not sold to someone else. The developer may use the vacation units during the unsold use periods for any purpose, no matter what else the program 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 alone is entitled to keep the rent.

C. DEVELOPER'S EASEMENT. The developer, its successors and assigns, and each of their agents, employees, contractors, subcontractors and other authorized persons have an easement to use the rights reserved by the developer in this section. These rights must be used, however, so as to minimize, when reasonably possible, any unreasonable interference with the rights of owners or the Association to use and occupy the vacation units. The terms "easement" is defined in the Glossary (Section 16.3).

D. NAME CHANGE. The developer may change the name of the vacation program at any time. The developer may record any documents which it deems necessary or helpful to change the name.

4.7 SPECIAL RULES ABOUT DEVELOPER RENTALS. Despite subsection 4.6B, if the developer:

- A. is more than sixty (60) days late in making any assessment or subsidy contract payment, and
- B. does not pay it within ten (10) business days after receiving from the Association a written demand for payment,

then the Association will have the right to rent the developer's vacation periods to the general public. The Association must use the rent to pay all overdue assessments or subsidy contract payments owed by the developer until they are paid in full. If the developer has accepted reservations for rental of the vacation units, those reservations will not be disturbed but the Association will have the right

to receive the rental income until the developer's assessments and subsidy contract payments are fully paid. The Association may not rent a vacation period which is subject to an existing confirmed reservation made by an exchange user through an exchange program. The Association, and its agents, employees, contractors, subcontractors and other authorized personnel have an easement for the purpose of conducting rental activities under this section ?.

4.8 RENTALS GOVERNED BY HAWAII LAW. Any rentals of vacation units to members of the general public on a transient basis will be governed by Chapter 486K, Hawaii Revised Statutes.

PART 5.
OWNERSHIP RIGHTS AND RULES

5.1 TRANSFERS OF FRACTIONAL SHARES.

A. PERMITTED TRANSFERS. An owner may transfer his or her fractional share or fractional shares. The owner must, however, transfer all of the owner's rights in the entire fractional share (meaning everything transferred in the original assignment for the fractional share); any attempt to transfer anything less will be void. There are two exceptions:

- 1) A mortgage may include a pledge or transfer of the owner's voting rights to the lender.
- 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.

A person who owns more than one fractional share may treat each one separately. The owner is not required to do with all the owner's fractional shares what he or she does with any one.

B. REQUIREMENTS FOR TRANSFER DOCUMENTS. Every assignment and agreement of sale must state:

- 1) The identification number of the fractional share;
- 2) Whether the fractional share is an every-year fractional share, an even-year fractional share, or an odd-year fractional share; and
- 3) The vacation period for the fractional share.

Failure to include this information will not make the transfer invalid. But the owner will have to pay any added costs to the association which results from failure to include this information.

C. RIGHTS AUTOMATICALLY TRANSFERRED. The transfer of a fractional share automatically transfers to the new owner:

- 1) the interest of the person making the transfer (the "*prior owner*") in all funds held by the Association, and
- 2) the membership of the prior owner in the Association.

This happens whether or not the document transferring the fractional share expressly says so.

No share of any owner in funds held by the Association can be withdrawn or separately transferred. An owner who wants this money must get it from the new owner. The Association will not refund it.

D. NOTICE OF TRANSFERS. Written notice must be given to the Association within ten (10) days after any fractional share is transferred. The notice may be given by either the prior owner or the new owner. The notice must contain:

- the name and address of both the prior owner and the new owner;
- the date of the transfer;

- the fractional share's apartment number; and
- the identification number of the fractional share.

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

- 1) the Association need not recognize the new owner for any purpose;
- 2) the Association 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 Association and program manager may deal exclusively with the prior owner and all notices from the Association to the "owner" will be effective if they are sent to either the new owner or the prior owner (or both).

5.2 RELEASE OF YOUR DUTIES UNDER THIS DECLARATION.

A person's liability as an owner under this declaration ends when:

- he or she no longer owns that fractional share, 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 this declaration up to the time his or her ownership ends and the notice of the transfer is sent.

5.3 MORTGAGES.

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

B. PROHIBITED ACTS. No owner can mortgage or otherwise encumber all or any part of:

- another owner's fractional share,
- the whole vacation unit, or
- the common furnishings.

Any attempt to do so will be void and not effective.

NOTE: "Encumber" is defined in the glossary (section 16.3).

C. ENFORCEMENT OF MORTGAGES. Any mortgage of a fractional share will be subordinate to (will be governed by and will not affect) this declaration. If a mortgage is properly recorded and given in good faith and for value, then no violation of this declaration 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.

5.4 DUTY TO OTHERS.

A. PROTECTING OTHER'S FRACTIONAL SHARES. No owner may cause or permit his or her fractional share 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 fractional share of any other owner, or (2) could interfere with another owner's use or enjoyment of his or her fractional share.

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 fractional share, 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. Those amounts will be a personal charge to the violator.

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

5.5 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 program documents. In case of any conflict, the program documents will control for so long as this declaration stays in effect. "Tenants in common" is defined in the glossary (section 16.3).

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

PART 6. OWNER'S RESPONSIBILITY FOR OTHERS

6.1 CO-OWNERS OF A SINGLE FRACTIONAL SHARE.

If there is more than one owner of a single fractional share, each co-owner is jointly and severally liable to pay all assessments and personal charges. This means that each person may be held responsible to pay the whole amount of the personal charge or assessment, not just part of it or his or her share of it. It does not matter that only one co-owner uses the vacation unit during the vacation period or that personal charges were caused by only one of the co-owners and not the others. For example, when one co-owner damages the furniture or makes a long distance call, each of the co-owners are fully responsible to pay for it, not just the one who did it. "Joint and several liability" is defined in the Glossary.

6.2 OWNER'S RESPONSIBILITY FOR GUESTS.

An owner is personally responsible to see that his or her guests:

- 1) obey the condominium documents and the program documents;
- 2) promptly pay all personal charges incurred during the owner's vacation period (for example, charges for extra maid 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 or the condominium.

6.3 OWNER'S LIABILITY FOR GUESTS.

By permitting his or her guest to come onto the condominium (whether or not the guest is formally 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 of the condominium documents or the program documents by the guest; 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.

6.4 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 vacation unit, the common furnishings, or the condominium. 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.

PART 7. EXCHANGE PROGRAMS

7.1 EXCHANGE PROGRAMS.

A. INTERNAL EXCHANGE. The Association may provide an internal exchange program which permits owners in the program to exchange their vacation periods. The Association may charge fees to those owners who use this service to pay the additional costs and expenses resulting from the internal exchange program. The Association may require the program manager to operate and manage this program.

B. EXTERNAL EXCHANGE. The Association must take reasonable steps to enter into a contract (an "*exchange contract*") with one or more companies (an "*exchange company*") operating an exchange program unless a majority of the owners vote not to do so. The exchange contract must allow (but not require) owners to participate in the external exchange program. The Association may collect and pay any fee required to be paid by the fractional ownership program or the Association under the exchange contract. That cost will be a program expense. The developer will choose the initial exchange company and cause the Association to enter into an exchange contract with the exchange company.

1) COMPLYING WITH THE EXCHANGE CONTRACT. 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 exchange contract. The Association must use its best efforts to comply with any other reasonable requirements of the exchange contract. The developer will repay the Association any fees it incurs if the developer violates the exchange contract.

7.2 PARTICIPATION IN EXCHANGE PROGRAM.

A. OWNERS MAY PARTICIPATE. At the owner's own option and risk, any owner may participate in any exchange program whether or not the exchange program is the one chosen by the Association. Rules and regulations of an external exchange program do not change or suspend the duties of an owner under the program documents. 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 personal charges and assessments charged to the owner under the program documents. An owner who participates in an external exchange program must notify the Association in writing.

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

C. SUSPENSION OF EXCHANGE RIGHTS. A suspension under section 11.3 also suspends the owner's exchange rights. The Association will notify the exchange program of the suspension. Existing confirmed reservations made by an exchange user through an exchange program will not, however, be affected.

7.3 EXCHANGE USER'S DUTIES AND LIABILITIES.

A. DUTIES. An exchange user whose exchange is arranged by an external exchange program:

- must obey the condominium documents and the program documents and see that his or her guests do so;
- will be responsible for (and personally liable for) his or her guests just as if the exchange user was an owner [see section 6.2];
- must promptly pay all personal charges incurred during his or her vacation period (for example, charges for extra maid service or telephone calls);
- must promptly pay all other personal charges arising from or related to his or her use of the vacation property, the common furnishings, or the condominium (for example, legal fees paid to collect personal charges owed by the exchange user or his or her guests);
- will be considered the "owner" of the fractional share for the purposes of section 4.5. Among other things, this means the exchange user will be liable for and must pay all sums charged to him or her under subsection 4.5B just as if he or she were the owner;
- will not have to pay any normal or special assessments, and cannot vote in the Association.

B. LIABILITY OF EXCHANGE USERS AND THEIR GUESTS. Each exchange user and his or her guests are jointly and severally liable to keep all promises and pay all charges described in section 7.3A. This means that the exchange user, his or her guest or both of them may have to pay the whole amount, not just part of it or his or her share of it. It does not matter if there is more than one exchange user or more than one guest; each exchange user and each guest is responsible separately and together with the others.

C. EXCHANGE USERS MAY BE REQUIRED TO SIGN A CONTRACT. An exchange user may be required at check-in (or later) to sign a contract in which the exchange user promises to do the things required in this section 7.3.

7.4 LIABILITY.

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

B. FOR EXCHANGE USERS. The Association, the program manager, the developer and the exchange company (and each of their directors, officers, employees and agents) are not responsible for any act, failure to act or conduct of any exchange user or the exchange user's guest. An owner is not responsible for any act, failure to act or conduct of any exchange user or the exchange user's guest.

PART 8.
THE ASSOCIATION

8.1 THE ASSOCIATION.

The name of the Association is "Sands of Kahana Fractional Share Owners Association" and it is a Hawaii non-profit corporation. 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 corporation 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 program 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.

8.2 ASSOCIATION MEMBERSHIP.

Each owner is a member of the Association and only owners can be members. Membership is part of, and cannot be separated from, an owner's fractional share. A membership can only be transferred as a part of the transfer of the fractional share.

8.3 VOTING RIGHTS OF OWNERS.

Each every-year fractional share has two votes. Each every-other-year fractional share has one vote. An owner who owns more than one every-year fractional share has two votes for each of them. Likewise, an owner who owns more than one every-other-year fractional share has one vote for each of them. If a fractional share 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 vote or votes. If a fractional share is owned by more than one person, the vote or votes for that fractional share may be cast by any of its co-owners, unless another of its co-owners objects in writing.

8.4 BOARD OF DIRECTORS.

The business and affairs of the Association are controlled by its board of directors. All Association powers and duties may be exercised by or under the power of the board, unless the program documents or the law limits that exercise. The first board will consist of persons named in the articles or otherwise appointed by the developer. At its first annual meeting, the members of the Association will elect a new board.

PART 9.
MANAGING THE PROGRAM

9.1 THE ASSOCIATION MANAGES THE PROGRAM.

Administration and management of the vacation property and the fractional ownership program is vested in the Association. Owners participate only through the Association.

9.2 ASSOCIATION DUTIES AND POWERS.

Except as limited by this declaration, the Association has and may use any or all of the following powers, duties and obligations:

- A. The powers, duties and obligations granted to the Association in the program documents.
- B. The powers, duties and obligations of a nonprofit corporation under the laws of the State of Hawaii.
- C. Any other powers necessary or helpful to carry out the functions of the Association under the program documents or that otherwise promotes the general benefit of the owners.

9.3 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 program. The Association may delegate this duty to the program 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 MAID SERVICE. The Association must provide cleaning, maid 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 association rules. In addition to the normal service, the Association may set up a program to provide, for an extra charge, additional cleaning and maid service when asked by an occupant.

D. RIGHT OF ENTRY. Except as provided in section 4.1C, the Association has exclusive possession of each vacation unit during the service periods in order to perform its duties under this declaration. It also has the right to enter any vacation unit at any reasonable time, after giving reasonable notice to anyone in it, to provide cleaning, maid service, maintenance and repair. In addition, the Association has the right and power to enter any vacation unit at any time, whether or not during a service period and whether or not the occupant is present to make emergency repairs or for any other emergency purpose. 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 unit. If the circumstances permit it, the Association must give an occupant reasonable notice before entering.

E. TAXES, ASSESSMENTS, AND RENT. The Association must pay all taxes and assessments, including assessments by the master association, the condominium association and all governmental assessments; provided that the Association may decide whether it should collect and pay amounts which are separately assessed to each owner or whether it should permit the owners to pay those sums directly. The Association must also pay all lease rent and other amounts due under the apartment lease for each vacation unit. The Association will pay these taxes, assessments, and rents 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 end telephone, cable television, and similar services.

H. ASSOCIATION RULES. The Association must 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, including, but not limited to, reasonable check-in and check-out procedures. The developer adopted the initial association rules. The board may revise the association rules from time to time. But if the developer owns or holds mortgages on more than six fractional shares, no change to the association rules will be effective without the developer's written consent. The association rules must be consistent with this declaration and the bylaws.

I. LEGAL AND ACCOUNTING SERVICES. The Association may obtain and pay for any legal and accounting services necessary or helpful to manage the program or the vacation property or to enforce the condominium documents or the program documents. But 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 unless: (1) the board charges and collects a special assessment in an amount equal to the total amount of legal fees which the Association is likely to incur through the trial, (2) a majority of the owners vote to approve the special assessment (not counting the fractional shares and votes of the developer), and (3) at least eighty-five percent (85%) of the owners pay the special assessment before any legal proceedings begin. This rule does not apply to suits against the developer filed solely (x) to collect assessments, personal charges, or subsidy contract payments which are past due or (y) to enforce the program

documents. The \$10,000 ceiling will be increased each year by the rate of inflation in Honolulu, Hawaii, as measured by the Consumer Price Index or a similar index.

J. FINANCIAL STATEMENTS. The Association must prepare and send financial reports to each owner as required by section ? 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 fractional shares in that unit elect to cast the vote for their apartment themselves.

At least 20 days before the annual meeting and 10 days before any special meeting of the condominium association, the board will obtain the agenda and any other information which 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 cast for that apartment voted in their ballot. If no ballots are returned or if there is a tie vote, 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 which were not on the agenda and not reasonably expected to arise.

Except as provided in the first sentence of this subsection 9.3K, 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 fractional share, each owner irrevocably (permanently) gives the board a special power of attorney (see section 16.2) 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. Each year, the Association must compile a list of the names and addresses of each of the owners in the entire Association. The Association will furnish a copy of the list within thirty (30) days after the landlord or any owner asks for it in writing, pays a reasonable fee (to be determined by the Association), and complies with any other requirements of the bylaws. Each person who receives a copy of the list must first agree in writing that: (1) he or she will not make or permit any use of it for commercial or for other purposes not reasonably related to the regular business of the Association and the owner's interest in the Association; or (2) he or she will not give it or a copy of it to anyone else, and (3) he or she will indemnify (pay) the developer and the Association for any losses or damages suffered by either of them if he or she violates (1) or (2).

M. ASSOCIATION REAL PROPERTY. The Association may 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 association rules may regulate when and how the Association's real property may be used, such as when and if the owners and their guests may enter it, when they may use it for parties and other social functions, when and if they may use it to store luggage while waiting to check in or check out, and so on. 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 permitted purposes set forth above. All costs, expenses, and liabilities incurred in connection with the Association's real property will be program 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 Part 12 apply to the Association's real property. The Association's real property is considered to be part of the "common furnishings". The Association must accept title to any real or personal property transferred to it by the developer.

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

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 program manager. The agents must be supervised by the board.

9.4 THE PROGRAM MANAGER.

The Association must hire a program manager. The first program manager will be appointed by the developer and may be the developer or a company related to the developer. If the first program manager must be replaced for any reason, the Association must use its best efforts to hire and maintain a reputable firm as the program manager for the fractional ownership program.

9.5 THE MANAGEMENT CONTRACT.

The program manager must sign a written contract (the "*management contract*") containing the following provisions:

A. PROGRAM MANAGER'S DUTIES. The management contract must require the program manager to perform the duties and obligations of the Association, subject to the direction of the board. It may permit the program 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 decides is proper.

B. TERM. The management contract may provide for an initial term of not more than five years from the starting date. The "*starting date*" is the first date on which an original assignment is recorded. After the first term and each later term ends, the contract will be automatically renewed, unless a written notice canceling the management contract is sent by either party at least 90 days before the next renewal date. The Association may give such notice only if the owners vote to do so as provided in section 9.5C.2).

C. CANCELLATION BY THE ASSOCIATION. The Association must have the right to cancel the management contract without paying a cancellation fee in each of the following situations, in addition to any others permitted by the management contract:

1) The board must have the right to cancel the management contract whenever the program manager violates a material part of it. If the program 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.

2) After the initial term has passed, the Association will not renew the management contract if asked to do so by the vote or written request of a majority of the owners.

D. RESIGNATION. The management contract must provide that the program 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 relating to the management and operation of the vacation property and the fractional ownership program to the board.

E. FEES. The management contract must specifically state the fees to be paid to the program manager for each vacation unit in which fractional shares are sold. 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 program 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 object to the increase in writing within thirty (30) days after the notice is mailed.

F. PROGRAM MANAGER'S INSURANCE. The management contract must require that the program manager obtain errors and omissions insurance naming 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 insurance will be bought only if it is available at a reasonable price. The board will decide what is reasonable, and its decision will be final.

9.6 LIMITS ON CONTRACTS.

Neither the Association nor the program manager may enter into a contract with a person to furnish goods or services for the fractional ownership program for a period longer than one year unless authorized by the vote or written consent of a majority of the owners. 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.
- 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 common furnishings for five (5) years or less with a company which is not related to the developer, directly or indirectly. This includes but is not limited to contracts for the use of laundry room fixtures and equipment, cable and satellite dish television service and equipment, and burglar alarm systems and equipment.
- An exchange contract.
- A subsidy contract. See section 10.8B.

9.7 LEGAL REPRESENTATION OF OWNERS.

A. REPRESENTING THE ASSOCIATION OR OWNERS. By accepting a fractional share, each owner agrees that the president of the Association or, if authorized by the board, the program manager may represent the Association or any two or more owners similarly situated as a class in any proceeding concerning the Association, the condominium association, the condominium, the fractional ownership program, or the vacation property. The president or the program 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 program manager will be supervised by the board in any representation.

B. POWER OF ATTORNEY. By accepting a fractional share, each owner gives a special power of attorney (See section 16.2) to the president of the Association and the program manager, with full power to do anything needed or helpful to represent the owner as provided in section 9.7A.

C. SERVICE OF PROCESS. Process (such as papers for a lawsuit) for the Association may be served on any member of the board.

9.8 MATTERS ARISING UNDER AN APARTMENT LEASE.

The board has the right and the duty to renegotiate the annual rent due under the apartment lease for each vacation unit on behalf of its owners. The board also has the right and the duty to deal with any other matters arising under any apartment lease. The owners give the board a power of attorney to carry out these duties. See section 16.2

9.9 TERMINATION OF THE CONDOMINIUM.

When the apartment leases end, the Board will collect from the landlord any money to be paid to the owners for the buildings or other improvements on the land. The Board will hold it as trustee for the owners. The amount paid for each vacation unit will be kept separate and will be paid to the owners of that vacation unit as follows: The proceeds payable to the owners of a vacation unit must be divided into twelve (12) shares. The owner of an every year fractional share will be paid two shares for his or her fractional share, and the owner of an every-other-year fractional share will be paid one share for his or her fractional share, subject in either case to the rights of the owner's lender and any seller under an agreement of sale.

9.10 LIMITS ON LIABILITY.

A. LIABILITY FOR OWNERS AND GUESTS. The Association, the developer and the program 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 program manager may, but need not, take steps to make the vacation property or the condominium safer than it otherwise might be. The Association, the developer and the program 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 and the program 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 which it is designed or intended to provide.

C. WARRANTIES. Construction of the condominium was completed in 1982. The developer was not the condominium developer. *The developer makes no warranties, express or implied, about the fractional shares, the vacation property, the condominium, or anything installed or contained in any of them. This includes but is not limited to warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. Everything is being sold "as is".* This means, among other things, 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. *Each owner also waives and releases (give up) all claims against the developer over any defects. This includes any claims of negligence. Each owner and the Association also waives and releases (give up) any claims against the developer for any injury to people or property which might be caused by any defect.*

PART 10. ASSESSMENTS AND PERSONAL CHARGES

10.1 DEFINITIONS.

A. "PROGRAM EXPENSES" are the costs incurred by the Association in operating the fractional ownership program and maintaining the vacation property. The program expenses are shared by the owners. Program 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 or replacing the vacation property.
- The cost of buying insurance required or permitted by this declaration.
- Wages, accounting and legal fees, management fees, start-up fees, maid service and cleaning fees, and other necessary expenses actually spent to maintain, repair, manage and operate the vacation property.
- All amounts charged to the vacation units by the condominium association (except amounts separately charged to individual owners). This includes, for example, the expenses of operating the condominium.
- Any amount charged by the condominium association due to an intentional or negligent act by an occupant of a vacation unit. The Association will pay the charge but will then pass on the charge, and any taxes on it, to the responsible person as a personal charge.

- Any taxes or other governmental charges upon or charged to the vacation property or the use of it or 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 program expenses for any prior year.
- Amounts needed to replenish the security deposit account. Money in this savings account is used to pay program expenses when the owners do not pay their personal charges and assessments on time or if the operation of the program is more expensive than the board expected.
- Amounts needed to replenish the rent and tax deposit account. Money in this savings account is used to pay lease rent and property taxes when the owners do not pay their personal charges and assessments on time or if the operation of the program is more expensive than the board expected.
- Amounts needed for the reserve accounts. These are savings accounts of the Association. The money is used to pay for capital improvements. "*Capital improvements*" are things like replacing the carpeting or appliances, other major repairs and remodeling, or replacing the vacation units or common furnishings. (Day to day maintenance and repairs are not capital improvements.)
- Any amounts needed by the board to buy one or more fractional shares in a foreclosure sale.
- Lease rent and other charges under the apartment lease for each vacation unit, including legal fees and costs of collection.

B. "UNIT EXPENSES" means the following program expenses:

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

C. "GENERAL EXPENSES" means all program expenses except the unit expenses.

D. "ONE SHARE" means 1/6th of the sum of the following fractions:

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

In calculating these sums, only vacation units for which assessments have begun will be considered. See section 10.3.

E. "UNIT TYPE" means one of the four different types of units in the program. Although the condominium documents may divide the units differently, for purposes of the program documents:

1) **"ONE BEDROOM UNIT TYPE."** Each unit which is designated as a type 1A, 1B, 1C, or 1E apartments under the condominium declaration will be considered to be a "one-bedroom" unit type.

2) **"ONE BEDROOM DELUXE UNIT TYPE."** Each unit which is designated as a type 2C or 2D apartment under the condominium declaration will be considered to be a "one-bedroom deluxe" unit.

3) **"TWO BEDROOM UNIT TYPE."** Each unit which is designated as a type 2A, 2B, 2E or 2F apartment under the condominium declaration will be considered to be a "two-bedroom" unit type.

4) **"THREE BEDROOM UNIT TYPE."** Each unit which is designated as a type 3A, 3B, 3C, 3D or 3E apartment under the condominium declaration will be considered to be a "three-bedroom" unit type.

F. "FAIR SHARE" means one share (for an every-year fractional share) or one-half of one share (for an every-other-year fractional share) for a vacation unit of the owner's unit type.

G. "FISCAL YEAR" means tax year.

H. "ASSESSMENTS" means standard assessments, special assessments, or both.

10.2 THE BUDGET.

A. ANNUAL BUDGET. At least ninety (90) days before the end of each fiscal year, the program manager will prepare and give to the board an estimate of the program 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 estimated revenue and 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.

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.

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 ten (10) 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 which increases the standard assessment of any fractional share by more than 20% over the standard assessment for the previous year unless a majority of the owners approve the increase by vote or written consent. No vote or written consent is required if (1) the standard assessment for a fractional share would not have exceeded the limit except for an increase in lease rents due under the apartment leases or in taxes or other governmental assessments

(for example real property taxes), or (2) if the funds are needed to pay the cost to comply with requirements of the condominium. The rule limiting increases does not apply to fractional shares not covered by the prior year's budget. This happens when assessments do not start for a unit until after the fiscal year begins as provided in section 10.3. The board must give the owners notice of any increase in the standard assessment at least thirty (30) days in advance.

10.3 WHEN ASSESSMENTS BEGIN.

For any vacation unit, assessments begin on the first day of the month after the first original assignment transferring a fractional share in that vacation unit is recorded. From then on, the owner of each fractional share in that unit, whether it is the developer or someone else, must pay a fair share of the program expenses.

10.4 STANDARD ASSESSMENTS.

The owner of each fractional share will pay a share of the program expenses, called the "*standard assessment*." The standard assessment for each fractional share is set as follows:

A. For units covered by the budget, the standard assessment will be a fair share of the budget.

B. For a unit not covered by the budget (such an apartment added to the program at mid-year), the standard assessment will equal the fair share for a unit of that unit type (as calculated under subsection A., above). This amount will be charged only to the owners of fractional shares whose vacation period has not yet begun as of the date when the first original assignment is recorded in that unit. If an owners vacation period has begun as of date when the first original assignment is recorded in his or her unit, the owner of that fractional share will not have to pay the standard assessment for that fiscal year only.

10.5 SPECIAL ASSESSMENTS.

A. HANDLING SHORTFALLS. If for any reason the standard assessments for the program expenses are, or will be, inadequate to pay all program 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 fractional shares 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 fractional share 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 fractional share in a fiscal year may not exceed 5% of the standard 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 a majority of the owners approve it by a vote or in writing. No vote or written consent is required if (1) the special assessment for a fractional share would not have exceeded the limit except for an increase in lease rents due under the apartment leases or in taxes or other governmental assessments (for example real property taxes), or (2) if the funds are needed to pay the cost to comply with requirements of the condominium.

10.6 THE SECURITY DEPOSIT AND THE RENT AND TAX DEPOSIT.

A. THE SECURITY DEPOSIT. The board may separately budget, establish and maintain a security deposit account. The amount budgeted will be whatever the board decides that it needs to provide financial stability to the fractional ownership program. The amount budgeted, however, must be at least \$150.00 for each fractional share for, which an original assignment or agreement of sale has been recorded. Each owner's security deposit is considered conclusively to be the owner's savings held as security for, and which may be applied by the Association to the payment of, any amounts the owner owes or must pay to the Association.

B. THE RENT AND TAX DEPOSIT. Lease rents are due quarterly in advance and real property taxes are due semi-annually in advance. Assessments, however, may be collected monthly. To assure that collections of assessments do not lag behind payment of lease rents and property taxes, a "*rent and tax deposit*" will be collected from each owner. The board must separately budget, establish and maintain a savings account for payment of lease rents and real property taxes for each unit for which assessments have begun. For each unit the amount budgeted will be equal to three month's lease rent and six month's real property taxes for that unit. One-sixth of the amount budgeted for a unit will be charged to each fractional share in that unit, and the owners of the fractional share will be required to deposit that amount with the Association. Each owner's deposit is considered conclusively to be the owner's savings to be used by the Association to pay lease rents and property taxes due with respect to the owner's unit. Amounts needed to replenish and/or increase the rent and tax deposit are program expenses.

C. INITIAL COLLECTION OF THE SECURITY DEPOSIT AND THE RENT AND TAX DEPOSIT. When a fractional share is first transferred by original assignment or an agreement of sale or when the owner is required to pay his first standard assessment, the owner also must pay to the Association (i) the security deposit, and (ii) the rent and tax deposit. The Association must then refund to the developer a pro-rated amount of the rent and tax deposit. Later transfers of the fractional share, however, will automatically transfer to the new owner the interest of the prior owner in all funds held by the Association as the rent and tax deposit and the security deposit. An owner who wants this money must get it from the new owner. He cannot get it back from the Association.

10.7 PERSONAL CHARGES.

A "*personal charge*" is an expense which results from the act, failure to act, or other conduct of an owner, an exchange user, or either of their guests. Personal charges should not be confused with normal and special assessments. The following expenses, among others, are personal charges:

- the cost of long distance telephone charges, food, beverages, optional maid service and other special services or supplies resulting from or related to the occupancy of the vacation unit during a person's vacation period;
- charges arising from or related to the use of the common furnishings or the amenities of the condominium (for example, rentals of sports supplies or other recreational equipment);
- 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 condominium documents or the program documents;
- the cost to collect any assessments or other personal charges, including court costs and reasonable attorneys' fees; and
- any late charges and interest on overdue payments.

10.8 DUTY TO PAY ASSESSMENTS AND PERSONAL CHARGES.

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

B. THE DEVELOPER'S DUTY TO PAY; SUBSIDY CONTRACT. The developer also promises to pay the assessments and personal charges for each fractional share while the developer is its owner. Instead of doing so, however, the developer may enter into a "*subsidy contract*" with the Association. In a subsidy contract, 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 fractional share and all personal charges charged to the owner. An owner cannot avoid liability for the assessments and personal

charges by not using his or her fractional share or by abandoning it. Even if the owner transfers his or her fractional share 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 1% per month from the due date; and (ii) a late charge in the amount stated in the association rules. 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 no provision is made, then an owner's payments will be applied (in equal shares for each fractional share if the owner owns more than one) first to late charges and interest, then to legal fees, cost and expenses, then to the principal amount of the assessment or personal charge.

10.9 COLLECTING ASSESSMENTS.

A. TIME AND METHOD OF PAYMENT. Assessments and personal charges must be paid to the Association. Standard assessments will be paid monthly in advance unless the board adopts a different payment schedule. Assessments to be paid in installments may not be due more often than monthly.

B. BILLS FOR ASSESSMENTS. The Association or program 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 fractional share. If a single fractional share 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 program manager may join with the condominium association to send out a single bill covering assessments due under the condominium documents and the program documents. Or the Association may permit the condominium association to collect the assessments and turn them over to the Association or program manager.

C. PAYMENT OF PERSONAL CHARGES. Personal charges will be paid as follows:

1) Each occupant must pick up and pay all bills for personal charges which are ready at check-out time. Examples include food or beverage charges, optional maid service, and telephone charges.

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

At any time before or during a vacation period, the Association or the program manager may require an advance payment or deposit from an occupant if they believe it to be appropriate. The Association or program 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 program 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.

10.10 USE OF AMOUNTS COLLECTED. Assessments must be used exclusively to:

- promote the recreation, health, safety and welfare of the owners,
- improve, operate, maintain, repair and replace the vacation property,
- pay amounts due under the condominium documents and the lease rent and other amounts due under the apartment leases for the vacation units, or
- operate and manage the fractional ownership program and to pay any expenses incurred by the Association in performing its duties.

10.11 DEPOSIT AND USE OF FUNDS.

A. MANAGEMENT OF ACCOUNTS . All amounts received by the Association or program manager will be deposited in the general account promptly after it is received. Money received for the security deposit account, the rent and tax deposit account, or any reserve account will be transferred to those accounts promptly. All accounts must be established with a safe and responsible depository in Hawaii (such as a bank, savings and loan association, or trust company). 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 which are fully guaranteed as to principal by an agency of the United States of America. All interest will belong to the Association.

B. THE GENERAL ACCOUNT. The board may spend the money in the general account to pay program expenses as permitted by the program documents. Any extra money in the general account at the end of any fiscal year must be used to pay program 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 SECURITY DEPOSIT ACCOUNT. The board may use the money in the security deposit account to pay any expenses (except expenses for capital improvements) if the Association does not or will not have enough money in the general account to pay these expenses on time. This might be caused, for example, if operating expenses are unexpectedly high or if owners fail to pay their assessments or personal charges on time. Use of the security deposit because owners fail to pay on time does not excuse any owner's duty to pay his or her assessments and personal charges. The Association must require the owners to fully replenish the security deposit whenever any funds in it are spent.

D. THE RENT AND TAX DEPOSIT ACCOUNT. All rent and tax deposits paid by owners will be put in a separate account. The board may use the money in the rent and tax deposit account only to pay lease rents and real property taxes on the unit for which the deposit was collected. As the deposit is spent, part of the standard assessment collected from each owner of a fractional share in that unit will be placed in the rent and tax deposit account to insure that the Association has enough money to pay the lease rent and real property taxes on the next due date. Use of the rent and tax deposit does not excuse any owner's duty to pay his assessments and personal charges.

E. THE RESERVE ACCOUNT. Any part of the standard assessment which 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 the owners of the vacation units.

10.12 FINANCIAL REPORTS. The Association must prepare and send the following statements to each owner:

A. 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.

B. 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 balance sheet showing the assets, liabilities and net worth of the Association at the end of the fiscal year;
- An operating statement for the fiscal year;
- A statement of the net changes in the financial condition of the Association for the fiscal year;
- The name, mailing address and phone number of each board member; and

- Any other information required by the law of any place (for example, another state) where the fractional ownership program is registered for public sale.

The board may arrange for an independent audit of the Association's financial accounts.

PART 11. ENFORCEMENT

11.1 ENFORCING THE PROGRAM DOCUMENTS.

If anyone violates the program documents, the Association (acting through the board) or the program manager (acting on behalf of the Association) have full power and the right to enforce compliance in any manner permitted in this declaration. The enforcement powers contained in this declaration are cumulative (which means they may be used one at a time or all at once). By acquiring a fractional share, each owner promises and agrees that the Association and program manager have all the rights, powers and remedies stated in this declaration.

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

B. ATTORNEYS' FEES AND COSTS. The Association (and the program manager if authorized by the Association) may employ an attorney to enforce the program 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 program manager.

11.2 RIGHT OF ENTRY.

The Association and the program manager have the right and power to enter any vacation unit to:

- stop a violation of any law or the program documents,
- stop any activity which is unauthorized, prohibited, harmful, offensive or potentially dangerous to others or their property rights, or
- protect the property rights and welfare of others.

An owner or occupant cannot sue the Association or program manager for using these rights.

11.3 SUSPENSION OF PRIVILEGES; FINES.

If any owner or the owner's guests violate the program documents, the Association may charge the owner a money penalty and/or suspend the owner's rights under this declaration. For example, the Association may suspend the owner's rights to use a unit during the owner's vacation period, or to participate in any vote under the program documents. The Association may also suspend utility and other services to the owner's vacation unit during the owner's vacation period.

A. HEARING. The board must hold a meeting 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.

B. 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.

C. SUSPENSION OF EXCHANGE PRIVILEGES. If an owner is suspended, the suspension also applies to any exchange rights the owner may have. See section 7.2C.

D. WHEN PRIVILEGES WILL BE RESTORED. If an owner is suspended for failing to pay amounts due under the program 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 the suspension is 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 payment of any fine imposed.

E. THE PROGRAM MANAGER'S ROLE. The board may delegate to the program 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 occupy a unit when the owner has not paid all amounts due.

11.4 ENFORCEMENT BY FILING A LAWSUIT.

The Association, the program manager, or any owner may ask a court to enforce the program 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 remedies. The Association or the program manager may also enforce the liens provided by this declaration and any other lien provided by law and have the right to take the fractional share of any defaulting owner in any lawful manner.

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

11.5 THE ASSOCIATION MAY RENT AN OWNER'S VACATION PERIOD.

The Association may rent the vacation period of an owner (other than the developer) if the owner:

- is more than sixty (60) days late in paying any personal charge or assessment charged to the owner under the program documents, and
- does not make that payment within ten (10) business days after the Association sends a written demand to pay;

The Association will apply the rent money first to pay the cost of arranging the rental and then to pay all overdue assessments (including penalties, late fees and so on) and personal charges owed by the owner. Any excess money may be used by the Association to pay any program 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.) If the owner has rented his or her vacation period, the renter will be permitted to use the vacation period but the Association will have the right to receive the rent until the owner's assessments and personal charges are fully paid. The Association may not rent a vacation period which is subject to an existing confirmed reservation made by an exchange user through an exchange program. The Association, and its agents, employees, contractors, subcontractors and other authorized personnel have an easement for the purpose of conducting rental activities under this section.

11.6 THE ASSOCIATION'S "SECURED LIEN"; FORECLOSURE.

A. LIEN AND FORECLOSURE. The Association has a "*secured lien*" on each fractional share for all amounts charged to it or its owner. The secured lien also covers all money from the sale of the fractional share (in legal terms, all "proceeds"). This means that the fractional share is collateral for the owner's obligations to pay 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 fractional share 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 fractional share, including, for example, the seller's and the buyer's interests under any agreement of sale. The recording of this declaration is notice of the secured lien to each and every person who has any interest in or to any fractional share or vacation unit, now or later.

1) EFFECT ON A NEW OWNER. If a fractional share 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 fractional share 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 fractional share. If so, the fractional share 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 showing all amounts unpaid with respect to the fractional share. Within twenty (20) days after receiving the request, the Association or the program manager must provide the letter. The letter will bind the Association in favor of anyone who relies on it in good faith (except the existing owner of the fractional share). 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 unless the amount is shown in the letter. The Association may charge a reasonable fee for preparing the letter.

2) EFFECT ON MORTGAGES AND OTHER ENCUMBRANCES. No matter what else this declaration says, 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 and intent to foreclose is recorded. Unless the law says otherwise, this rule only applies if the lender has a first mortgage on a fractional share for a loan made in good faith and for value. In all other cases, the liens created by this declaration will be prior to (superior to and controlling over) all mortgages made by an owner and all liens or encumbrances imposed by law upon any fractional share. This will be so whether the notice of lien and intent to foreclose is recorded before or after any such encumbrance. Of course, some liens (such as the lien of real property taxes) are superior to the liens in this declaration because the law makes them so.

3) EFFECT ON AGREEMENTS OF SALE. Since the buyer is considered the owner, only the buyer (and not the seller) under an agreement of sale will be personally liable. The fractional share, 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 fractional share 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 fractional share will be taken from both the buyer and the seller and sold to someone else to pay the overdue amounts. The buyer and seller would get only the money that is left, if any, after all unpaid assessments and personal charges have been fully paid. If this happens after the agreement of sale is canceled, the fractional share 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. Someone who buys a fractional share at a foreclosure sale will not be liable for any assessment or personal charge due before the fractional share is transferred to the buyer. In addition, the fractional share will not be subject to the secured lien for any assessments or personal charges which became due before the fractional share is transferred to the buyer. However, the Association will have a secured lien on the fractional share for all assessments and personal charges which become due after the fractional share is transferred to the buyer at the foreclosure sale.

B. FORECLOSURE AND SALE. The secured lien will be treated as a mortgage with a private power of sale. The Association may foreclose it in any legal way and the defaulting owner's fractional share may be sold at a public auction with or without first obtaining a court order.

1) NOTICE OF DEFAULT. Before the sale, the Association must give a notice to the defaulting owner explaining the violation. The Association must send a copy of the notice to any lender of the defaulting owner which has asked for a copy and furnished its name and address to the Association. The notice must state the date and nature of the violation and the total of any unpaid amounts. It must also include a demand for payment. And it must include any other information required by law such as Chapter 667, H.R.S.

2) NOTICE OF LIEN AND OF INTENT TO FORECLOSE. If the violation is not cured within ten (10) days after delivery of the notice to the owner, then an officer of the Association or program manager will sign and record a notice of lien and of intent to foreclose ("*notice of lien*"). The notice of lien must state

- the name of the defaulting owner,
- the apartment number of the defaulting owner's vacation unit,
- the identification number and vacation period of the defaulting owner's fractional share,
- whether the fractional share is an every-year, an even-year or an odd-year fractional share,
- the amount claimed to be due (after any proper offset),
- that the notice of lien is made by the Association under the terms of the program documents,
- that a secured lien is claimed against the fractional share for the violation and in an amount equal to the net amount due plus interest and the costs of enforcement, including attorneys' fees, and
- that the Association intends to have the fractional share sold in a foreclosure sale.

Each violation will be a separate basis for a notice of lien. A single notice of lien may cover more than one default. A separate notice is not needed for new defaults between the date of the notice of lien and the date of the sale. If all defaults are cured before the foreclosure sale occurs, the officers of the Association are authorized and required to record a document (at the cost of the defaulting owner) canceling any notice of lien recorded by the Association.

3) 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 by following the procedures described in H.R.S. §667-5, or in any other laws which apply. Each owner irrevocably (permanently) gives the board a special power of attorney (see section 16.2) to sell the owner's fractional share using these procedures and to sign and deliver any and all documents needed to complete the sale. This power of attorney includes the right to sign, have notarized, and record an assignment transferring the owner's fractional share to the person who buys it at the foreclosure sale. The defaulting owner gives up (in legal terms, "waives") his or her rights to sue the board or the Association for doing this.

4) PERMITTED BUYERS. The Association or anyone else may bid on and buy the fractional share at the foreclosure sale. The Association may offset the debt against the amount bid at the sale. The board may buy the fractional share of a defaulting owner or accept a transfer of it to the Association from the owner in place of foreclosure. However, the board may not buy and hold a fractional share for more than one year without obtaining the approval by a majority of all votes cast by owners who participate in a vote on the question.

5) 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.

6) BUYER AT FORECLOSURE. Anyone who buys the fractional share at the foreclosure sale will have to obey the program documents just like any other owner.

PART 12. INSURANCE

12.1 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 part. The board need not buy insurance required by this part if coverage cannot be obtained. The board also is not required to buy insurance if the board decides that such coverage is not affordable except for (i) liability insurance required by section ? and (ii) motor vehicle insurance required by section ?. The cost of insurance will be a program expense. Each policy may be separate or one or more commercial package policies may be obtained.

B. SOURCE OF INSURANCE. The board may obtain insurance directly for the Association, or have the condominium association buy it, or join with the condominium association to buy it.

C. QUALIFIED INSURANCE COMPANIES. All insurance must be bought from companies licensed to do business in Hawaii with a financial rating of Class VI or better according to Best's Insurance Report, unless the insurance cannot be obtained from such a company.

D. ADDED INSURANCE. The board has the right and power to increase coverages or obtain better terms than those stated in this Part whenever the board deems it necessary or in the best interests of the Association. The board may also buy additional kinds of insurance whether or not described in this Part.

E. REDUCTION IN INSURANCE. The board also has the right and power to decide to reduce insurance coverage or obtain less beneficial terms if it decides that the coverages or terms are too expensive. The board may also eliminate certain coverages or terms if it is advised that they cannot reasonably be obtained. The board may accept such deductibles and uninsured retentions as it chooses in its business judgment. Any amounts paid on account of any deductible and uninsured retention will be program expenses; provided that if the 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 13.1B.

F. YEARLY REVIEW OF COVERAGE. The board must review the insurance program at least yearly. The program 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 program manager will be liable either unless they were grossly negligent or guilty of intentional misconduct.

H. INSPECTION AND COPYING. Copies of every policy of insurance bought by the board will be available for inspection by any owner (or buyer having a contract to buy a fractional share) at the office of the program manager. If asked to do so, the board will furnish to a lender a copy of any policy which includes a mortgagee clause. The lender must pay a reasonable fee for the copy.

12.2 PROPERTY INSURANCE.

The board must buy a policy of property insurance. The insurance bought is called the "*policy*" in this section 12.2. The policy must cover those risks generally covered by a special form policy. A "special form policy" commonly insures against the following 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.

A. REQUIRED COVERAGE. The policy must, if possible, provide coverage for one hundred percent (100%) of the full insurable replacement cost, without deducting for depreciation, of each vacation unit and its common furnishings. The insured under the policy will be the Association, by the board, as trustee for each owner in proportion to the owner's undivided interest in his or her unit. The policy should contain the following endorsements:

- 1) An agreed amount endorsement. This protects owners from co-insurance clauses which reduce benefits if the Association fails to buy enough insurance; and
- 2) 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.

B. REQUIRED AND PROHIBITED PROVISIONS. Unless the board decides the cost is unreasonably high (and its decision will be final), the policy:

1) Must not limit or prohibit any owner from buying other insurance. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance;

2) Must not relieve the insurance company from liability because of:

(a) increased hazard on any part of the condominium, whether or not within the control or knowledge of the Association, the board, the program manager, the condominium association, the landlord, any occupant, or any other apartment owner; or

(b) any breach of warranty or condition caused by the Association, the board, the program manager, the condominium association, the landlord, any occupant, or any other apartment owner; or

(c) any act or neglect of any of those persons;

3) 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 first gives sixty (60) days' written notice of the cancellation or change. The notice must be sent to:

(a) the board, the landlord, and the program manager, and

(b) if the insurance company will agree to do it, every owner and every lender having a first mortgage on a fractional share if the lender has asked for such notice from the insurance company;

4) 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;

5) Must provide that the insurance company gives up any right of subrogation against the Association, the board, the program manager, the developer, the landlord, the owners and their guests ("*Subrogation*" is the right of the insurance company to try to recover its costs from the person who caused the loss);

6) 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; and

7) Must contain a standard "*mortgagee clause*" which provides that:

(a) Any lender whose name has been furnished to the board is also protected;

(b) Any act or neglect of the Association, the board, the landlord, or any occupant will not release the insurance company from its duties to the lender;

(c) The insurance company gives up:

(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),

(3) any right to contribution from the lender, and

(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 program manager, the developer, the

landlord, 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); and

(d) Any reference to a lender in the policy includes all lenders for any fractional share, in their order of priority, whether or not named in the policy.

12.3 LIABILITY INSURANCE.

The board must buy and keep in effect a comprehensive policy of liability insurance (here in this section 12.3 called the "*policy*"). It must insure each owner, the board, the Association, the developer, , the landlord, and the program manager (and each of their directors, officers, employees, and agents) against claims for personal injury, bodily injury, death and property damage arising out of the condition of vacation property or activities in or construction work on any vacation unit or the common elements.

A. REQUIRED COVERAGE. The policy must be under a commercial general liability form. 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.

B. REQUIRED AND PROHIBITED PROVISIONS. Unless the board decides the cost is unreasonably high (and its decision will be final), the policy:

1) Must not relieve the insurance company from liability because of any act or neglect of the program manager, the developer, the board, the landlord, or any occupant; and

2) 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 sixty (60) days in advance. The notice must be sent to:

(a) the board and the program manager and

(b) if the insurance company will agree to do it, each owner and every lender having a first mortgage on a fractional share if that lender has asked for such notice from the insurance company;

3) Must provide that the insurance company gives up any right of subrogation against the board, the Association, the condominium association, the program manager, the developer, the landlord, the owners and their guests; and

4) 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.

5) 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.

6) Must provide that no act or omission by an owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by any other person.

12.4 MOTOR VEHICLES.

The board must buy and maintain a commercial automobile liability policy of insurance (here in this section 12.4 called the "*policy*") if the Association owns or leases any motor vehicles. It must insure each owner, the Association, the developer, and the program manager (and each of their directors, officers, employees, and agents) against 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.

A. REQUIRED COVERAGE. The policy limits may not be less than \$2,000,000 for bodily injury or death and \$200,000 for property damage arising out of a single accident or occurrence.

B. REQUIRED PROVISIONS. Unless the board decides the cost is unreasonably high (and its decision will be final), the policy must:

(a) provide that the insurance company gives up any right of subrogation against each owner, the Association, the developer, and the program manager (and each of their directors, officers, employees, and agents);

(b) contain a severability of interest provision.

12.5 DIRECTORS AND OFFICERS INSURANCE.

The board must buy and maintain a policy insuring each person to the extent allowed by law 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 (here in this section 12.5 called the "*policy*"). The policy must also cover anyone who serves, at the request of the Association, as a director, officer, employee or agent of another company.

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, payments of judgments, fines and settlements. The board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

12.6 FIDELITY BONDS.

A "*fidelity bond*" covers the loss of money in the care or custody of the Association or program manager. The Association must obtain adequate fidelity bonds covering all directors, officers, agents, and employees of the Association or the program manager handling funds belonging to or administered by the Association or program manager. The fidelity bonds must name the Association as the obligee (the person protected and who gets paid in case of loss) and, if the insurance company will agree to it, the landlord must be named as an additional obligee. Instead of a bond, the Association may buy fidelity insurance. 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 bonds must also:

- Provide that they may not be canceled or substantially changed without at least thirty (30) days' advance written notice to the Association and the program manager; and
- Cover anyone who serves without pay (for example, a volunteer or a non-salaried employee) and waive (give up) any defense based on excluding such persons from the definition of the term "employee" or similar terms.

12.7 OTHER INSURANCE.

The Association will buy all other insurance coverage required by law. This includes, 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.

PART 13. DAMAGE, DESTRUCTION, AND CONDEMNATION

13.1 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 immediately must repair the damage and replace anything which 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. "*Condemnation*" refers to a government authority (such as city or county) taking property. "*Proceeds*" in this case means any money paid by the government authority for taking the property. "*Proceeds*" also means any money paid by an

insurance company for a loss. 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.

B. LIABILITY OF OWNERS AND OCCUPANTS FOR DAMAGES. If an owner or an owner's guest intentionally or negligently damages or destroys anything, 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 anything, that person must repay the Association for all expenses related to repairing or replacing it; the owner of the fractional share, however, will not be 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 13.1B does not apply to damage or destruction which the board decides is the result of ordinary wear and tear.

C. NO CLAIM FOR LOSSES PAID FOR BY INSURANCE. Despite what section 13.1B 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 program manager, the landlord, or 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 bought by him or any of them.

13.2 EXCESS INSURANCE OR CONDEMNATION PROCEEDS.

Any excess proceeds payable to the owners of a vacation unit must be divided into twelve (12) shares. The owner of an every year fractional share will be paid two shares for his or her fractional share, and the owner of an every-other-year fractional share will be paid one share for his or her fractional share, subject in either case to the rights of the owner's lender and any seller under an agreement of sale. "*Excess proceeds*" are proceeds:

- from dissolving or terminating (winding up) the condominium or the fractional ownership program for any reason;
- remaining after paying the cost of repairs and replacements;
- paid on account of a vacation unit which 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 declaration; 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).

PART 14. ADDING AND REMOVING APARTMENTS

14.1 ADDING APARTMENTS TO THE PROGRAM.

The developer may add more apartments to the fractional ownership program without the consent of any owner. The developer may do this at any time. Only the developer may add apartments to the fractional ownership program. The developer is not committing itself to add any more apartments to the fractional ownership program. Owners who buy a fractional share may enjoy certain advantages from having units added but will have no legal right to insist that units be added.

14.2 HOW APARTMENTS ARE ADDED.

The developer may add apartments to the program by recording a "*Declaration of Annexation.*" It must contain the following:

- A legal description of the apartment and the name of its record owner;

- A statement submitting the apartment to this declaration. This declaration must be identified by title and recording data; and
- The unit type for the apartment.

The Declaration of Annexation may also contain any other provisions which the developer may consider appropriate.

14.3 ADDED APARTMENTS ARE GOVERNED BY THE PROGRAM DOCUMENTS.

The program documents will govern the ownership, use and transfer of any apartment added to the fractional ownership program. Any added apartment will be considered a vacation unit. Any mortgage or agreement of sale or other money encumbrances (but not including the apartment lease) on the apartment on the date it is added must be subordinated to this declaration and to the lien rights given to the Association by this declaration. This rule will apply unless arrangements are made so that when the developer transfers the fractional shares in that apartment, the fractional shares are released from the encumbrances and liens, or other arrangements are made to pay them off.

14.4 APARTMENTS MAY BE REMOVED FROM THE PROGRAM.

A. THE DEVELOPER'S RIGHTS. If the developer owns all fractional shares in a vacation unit, it may remove that unit from the fractional ownership program. To do so, the developer must sign and record a document titled "*Declaration of Removal*." It must contain:

- a legal description of the apartment being removed from the program; and
- a statement that the apartment is no longer subject to this declaration.

After the Declaration of Removal is recorded, the apartment described in it will no longer be a vacation unit nor part of the fractional ownership program.

B. THE OWNERS' RIGHTS. If the owners of fractional shares representing at least eighty percent (80%) of the undivided interest in a particular vacation unit decide to do so and their lenders consent, they may remove that unit from the operation of this declaration and the fractional ownership program. To do so they must record a document titled "*Declaration of Removal*." It must contain:

- a legal description of the apartment being removed;
- an affidavit of the owners saying that they own fractional shares representing at least eighty percent (80%) of the undivided interest in that vacation unit and they desire to remove that apartment from the fractional ownership program;
- A letter from the Association, acting under section 11.6A.1)(a), showing that all assessments and personal charges relating to that unit have been paid; and
- the written consent of each such owner's lenders.

After the Declaration of Removal is recorded, the apartment described in it will no longer be a vacation unit nor part of the fractional ownership program.

C. DAMAGED OR CONDEMNED UNITS. The Association, through the board, may remove a unit from the program if that unit is destroyed and a decision is made not to rebuild it, or if a unit is condemned or is to be transferred under threat of condemnation. The board may remove a unit even if all assessments and personal charges with respect to that unit have not been paid. To remove the unit, any two officers or directors of the Association must sign a document titled "*Declaration of Removal*." It must contain:

- a legal description of the apartment being removed; and
- an affidavit stating that the unit was destroyed and is not being rebuilt or that the unit was condemned or is being transferred under threat of condemnation.

After the Declaration of Removal is recorded, the apartment will no longer be a vacation unit nor part of the fractional ownership program. But (a) the owners of fractional shares in that unit will remain personally liable for all assessments and personal charges owed by them, and (b) the Association's secured lien will remain on any money received from the sale of the unit, until all assessments and personal charges (including interest, late fees, and attorneys' fees) are paid in full.

PART 15.
REVISING, TERMINATING, AND
INTERPRETING THIS DECLARATION

15.1 AMENDMENTS.

A. OWNERS'S RIGHTS. This declaration may be "*amended*" (changed) by the affirmative vote of a majority of the owners. The vote must be taken at a regular or special meeting of the Association called and held in accordance with the bylaws. There is an exception to this rule: Some parts of the program documents require the approval of more than a majority of owners before taking certain actions (a "*super-majority*"). Such a provision cannot be amended except by approval of owners casting votes equal to or exceeding the same super-majority required to take action under that provision. No amendment will take effect until certified 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 fractional share, the developer may change this declaration at any time:

- 1) And for any purpose before any original assignment is recorded; or
- 2) 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 the program to permit the sale of fractional shares there; or
- 3) To satisfy requests for changes made to the developer by any institutional lender 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.

An amendment made by the developer under this section B. will take effect when it is signed by the developer and recorded.

C. ADDITIONAL APPROVALS REQUIRED. No amendment will change an owner's undivided interest in a vacation unit or the voting rights for the owner's fractional share unless the amendment is signed by that owner and the owner's lenders (if any). No amendment may take away the right of any owner to exclusively occupy his or her vacation unit, and to use and enjoy the common elements and all the other rights which go with his or her vacation unit during his or her vacation period unless it is signed by the owner and the owner's lender (if any). No amendment may change the rights and privileges of the developer unless the developer signs it.

D. BINDING EFFECT. Any amendment which complies with these provisions will be binding on every owner and every fractional share.

15.2 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 withdrawn from the declaration under section 14.4 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; or
- the apartment leases for the vacation units end, and the owners have not extended the lease or acquired the apartments in fee simple.

When this declaration terminates, (a) the owners of fractional shares 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 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.

15.3 THE RULE AGAINST PERPETUITIES.

If any part of this declaration violates the "*rule against perpetuities*" 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 Edward M. Kennedy of Massachusetts, Robert F. Kennedy of New York, George M. Bush of Texas, and Benjamin J. Cayetano of Hawaii.

15.4 EFFECT OF INVALID PROVISIONS.

If any part of this declaration or the application of it in any situation is held invalid, illegal or unenforceable, the rest of the declaration and the application of that part of this declaration in any other situation will not be affected.

15.5 INTERPRETING THIS DECLARATION.

The captions in this declaration are for convenience only. They may not be used to interpret this declaration. In this declaration the singular includes the plural and the masculine includes the feminine and neuter.

PART 16. MISCELLANEOUS PROVISIONS AND GLOSSARY OF LEGAL TERMS

16.1 NOTICES.

A. NOTICE TO OWNERS. When this declaration requires that notice be given to an owner, it must be in writing and will be considered properly sent and received when delivered in person or four (4) days after it is put in the United States Mail, postage prepaid, addressed to the owner at the last address the owner gave to the Association for delivery of notices. If an owner did not give the Association an address, the notice will be sent to his or her last known address. If the owner has no known address, the notice will be addressed to his or her vacation unit. If more than one person is the "owner" of a fractional share, notice to all owners of that fractional share may be given by providing notice to any one of them.

B. NOTICE TO THE DEVELOPER, ASSOCIATION OR PROGRAM MANAGER. Notice to the developer, the Association or the program manager must be delivered in person or mailed to the address given for each of them by written notice to all owners.

C. CHANGE OF ADDRESS. The addresses for purposes of this section 16.1 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.

16.2 SPECIAL POWER OF ATTORNEY.

A. NATURE OF POWER OF ATTORNEY. Whenever this declaration provides that an owner gives a "power of attorney" or appoints someone as "attorney-in-fact", the following rules apply: The power of attorney appointment is permanent (or, in legal terms,

is coupled with an interest, is irrevocable and will not be affected by the death or disability of the owner). Each owner gives the power of attorney whether or not it expressly says so in the assignment or whatever document transferred the fractional share to him or her. 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 this declaration; this includes, however, the power to do anything else necessary or useful to accomplish the stated or intended goal. Close questions must be resolved in favor of giving, not denying, the attorney-in-fact the power to act.

B. CONFIRMING THE POWER OF ATTORNEY. If asked by the developer or the Association, each owner must promptly deliver a signed and notarized special power of attorney in the form attached as Exhibit "E." If an owner mortgages or otherwise transfers any interest in his or her fractional share to anyone other than the developer, the person receiving the transfer (the "transferee") must also promptly deliver a signed and notarized special power of attorney in the form attached as Exhibit "E." In this paragraph, "promptly" means within 21 calendar days after the developer or the Association sends a request for it to the owner or transferee by registered or certified mail at the last address which the developer or the Association has for the owner or the transferee, whether or not the owner or the transferee accepts the envelope containing the request. If the owner or the transferee fail to keep this promise, then in addition to paying all losses, damages, costs and expenses, including legal fees, which the developer or the Association pays or incurs, the developer or the Association may take the Property back free of the interests of the owner and any transferee (but subject to the interest of anyone who has delivered to the developer or the Association a signed and notarized special power of attorney in the required form.

16.3 GLOSSARY OF LEGAL TERMS.

A. "AGREEMENT OF SALE" means a recorded contract which binds the seller to sell and the buyer to buy a fractional share and under which the seller keeps the title to the fractional share as collateral for payment of the sales price. The buyer, however, is considered the owner of the fractional share and can use the 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.

B. "ASSIGNMENT" means any document used to transfer ownership of a fractional share.

C. "ATTACHMENT" refers to the act or process of seizing property under a court order.

D. "CONDOMINIUM ACT" means the Hawaii Condominium Property Act, Chapter 514A, Hawaii Revised Statutes.

E. "EASEMENT" means any right to use property possessed by someone else.

F. "ENCUMBER" refers to putting a legal claim or "encumbrance" on property.

G. "ENCUMBRANCE" means a right or interest in property held by someone other than the owner of that property.

H. "INCUR" means to pay or to become obligated to pay, or both.

I. "JOINT AND SEVERAL LIABILITY" means that two or more people are each fully responsible to keep a promise or to pay a sum of money. This means that each person may be required to pay the whole amount due, not just part of it or his or her share of it.

J. "LAND TRUST" means a land title holding trust created under the Land Trust Act and under which the trust beneficiary has substantially all powers of possession and control of the fractional share.

K. "LAND TRUST ACT" means the "Land Trust Act" contained in Chapter 558, Hawaii Revised Statutes, as it may be revised from time to time, or in any substitute or successor statute (any replacement of the law).

L. "LENDER" means anyone who has a mortgage on a fractional share.

M. "LIEN" means a claim against property. For example, a mortgage on a fractional share is a claim on the fractional share as collateral for the payment of money.

N. "MAJORITY OF OWNERS" means owners holding more than fifty percent of the total number of votes for all fractional shares in the program.

O. "MORTGAGE" when used as a noun means any recorded document by which an owner's fractional share becomes collateral for the repayment of a loan. Usually, if the loan isn't repaid, the fractional share will be sold and the money will be used to repay the loan. When used as a verb, "mortgage" refers to putting up a fractional share as collateral for a loan.

P. "PERSON" means one or more or a combination of real people, partnerships, limited liability companies, limited liability partnerships, trusts, corporations or other companies. 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. "RECORDED" AND "RECORDING" and similar terms refer to and mean recorded in the Bureau of Conveyances of the State of Hawaii.

R. "TENANTS IN COMMON" means 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 ownership share. The owner may also leave it to someone else in his or her will.

S. "TRANSFER" means any way one person may receive a fractional share from another, including for example a voluntary sale, an involuntary sale (such as a foreclosure sale), an inheritance or a gift.

T. "UNDIVIDED INTEREST" refers to the ownership of property by two or more persons as tenants in common. Each person owns a share in the property, sometimes called an "ownership share". For example, if two people 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 fractional share owns a one-sixth (1/6th) undivided interest in the vacation unit as tenants in common with the other owners of fractional shares in that unit. An owner of an every-other-year fractional share owns a one-twelfth (1/12th) undivided interest in a vacation unit as tenants in common with the other owners of fractional shares in that unit.

The developer signed this declaration on _____, 19____.

FRACTIONAL OWNERSHIP, INC.

By _____
Its

Exhibit "B"

Agreement of sale	37	General Expenses	20
Amended	35	Guest	4
Anyone	38	Incur	37
Apartment	1	Injunction	26
Apartment Lease	1	Injured Person	7
Articles	1	Insured	17
Assessments	20	Internal Exchange Program	4
Association	2	Interval	2
Association Rules	2	Interval Owner	3
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Board	2	Land Trust	37
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Bylaws	2	Landlord	1
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Check-In Day	3	Licensees	4
Check-In Time	3	Lien	38
Check-Out Day	3	Limited Common Elements	1
Check-Out Time	3	Liquidated damages	7
Common Elements	1	List of Use Periods	3
Common Furnishings	2	Invitees	4
Condemnation	33	Major Service Period	3
Condominium	1	Management Contract	16
Condominium Association	1	Minor Service Period	3
Condominium Bylaws	1	Mortgage	38
Condominium Declaration	1	Mortgagee clause	30
Condominium Documents	1	Nobody	38
Condominium Map	1	Notice of Lien	28
Condominium Rules	1	Occupant	4
Covenants Running With The Land	4	Odd-Year Interval	3
Declaration	1	Offender	7
Declaration of Annexation	34	One Share	20
Declaration of Removal	34	Owner	3
Deed	37	Partition	11
Developer	1	Person	38
Easement	37	Personal Charge	22
Encumber	37	Plan	1
Encumbrance	37	Plan Expenses	19
Equitable Servitudes	4	Plan Manager	2
Even-Year Interval	2	Policy	29, 31, 32
Every-Other-Year Interval	2	Prior Owner	9
Every-Year Interval	2	Proceeds	33
Excess proceeds	33	Program Documents	1
Exchange Contract	12	Recorded and Recording	38
Exchange Program	4	Rental Pool	6
Exchange User	4	Rule Against Perpetuities	36
External Exchange Program	4	Secured lien	27
Fair rental value	7	Service Period	3
Fair Share	20	Severability of interest	31, 32
Fidelity bond	32	Somebody	38
First Deed	5	Someone	38
Fiscal year	20	Special power of attorney	37
Foreclose	27	Standard assessment	21

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Subrogation	30
Subsidy Contract	23
Super-majority	35
Transfer	38
Undivided interest	2
Unit	2
Unit Expenses	20
Use Period	3
Use Year	3
Vacation Ownership Plan	1
Vacation Period	3
Vacation Property	2
Vacation Unit	2
Violator	10
Waives	7