

# Sands of Kahana Fractional Share Purchase Agreement

In this agreement, "seller" means Fractional Ownership, Inc., a Hawaii corporation. Its address is 10 Hoohui Road, Suite 110, Lahaina, Hawaii 96761. "Escrow agent" means Old Republic Title and Escrow of Hawaii, Inc. Its address is 10 Hoohui Road, Suite 210, Lahaina, Hawaii 96761. "You", "your" and "buyer" mean each of these people, individually and together:

**PRINT ALL INFORMATION:**

1. \_\_\_\_\_  
Name in full - No initials

\_\_\_\_\_ Spouse's Name in full - No initials

\_\_\_\_\_ Social Security or Federal Tax I. D. No.

Will spouse be on title: \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_ Street Address

\_\_\_\_\_ City, State & Zip

\_\_\_\_\_ Business Phone \_\_\_\_\_ Home Phone

2. \_\_\_\_\_  
Name in full - No initials

\_\_\_\_\_ Spouse's Name in full - No initials

\_\_\_\_\_ Social Security or Federal Tax I. D. No.

Will spouse be on title: \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_\_\_ Street Address

\_\_\_\_\_ City, State & Zip

\_\_\_\_\_ Business Phone \_\_\_\_\_ Home Phone

**Your Fractional Shares:** You agree to buy \_\_\_\_\_ fractional shares ("your fractional share(s)" in apartment no. \_\_\_\_\_ ("your unit") in the Sands of Kahana Condominium (the "condominium") for the use of these use periods (your "vacation period(s)"):

- Fall (\_\_\_\_\_ to \_\_\_\_\_)
- Holiday (\_\_\_\_\_ to \_\_\_\_\_)
- Winter (\_\_\_\_\_ to \_\_\_\_\_)
- Spring (\_\_\_\_\_ to \_\_\_\_\_)
- Early Summer (\_\_\_\_\_ to \_\_\_\_\_)
- Late Summer (\_\_\_\_\_ to \_\_\_\_\_)

You will have the right to use your unit during your vacation period(s):

- Every year (an Every-Year Fractional Share).
- In years which end in an odd number such as 1999, 2001 and so on (an Odd-Year Fractional Share).
- In years which end in an even number such as 1998, 2000 and so on (an Even-Year Fractional Share).

The condominium is located at 4299 Honoapiilani Road, Lahaina, Maui, Hawaii (Tax Map Key No. 2-4-3-10-2). Your duty to pay association fees will begin on the closing date. Your use rights will begin in \_\_\_\_\_.

**Title:** The type of legal ownership picked by the buyer is:

- Severalty (only one person)
- Tenants by the Entirety (husband and wife with "survivorship")
- Joint Tenants (two or more people with "survivorship")
- Tenants in Common (no "survivorship")
  - with Buyer No. 1 having \_\_\_\_\_ %
  - and Buyer No. 2 having \_\_\_\_\_ %
- Other (state): \_\_\_\_\_

"Survivorship" means that if one of the buyers dies, his or her share automatically goes to those who survive.

**Purchase Charge:**

Purchase Price (U.S. funds)	\$ _____
Additional Charges	
1. Security Deposit	
@ \$500 per fractional share:	\$ _____
2. First Quarter's Association Fees	
@ \$ _____ per fractional share:	\$ _____
3. Closing Costs	\$ <u>900.00</u>
<b>TOTAL:</b>	<b>\$ _____</b>

**Payment Schedule:**

Initial Deposit received	_____ \$ _____
Additional Deposit	
(due _____)	\$ _____
Cash Balance (due at closing)	\$ _____

**AGENCY DISCLOSURE(S):**

Sullivan Properties, Inc., ("Broker") and all real estate agents employed by or associated with it represent only the seller. By signing below, seller and buyer confirm that written and oral disclosure that Broker represents only the seller was provided before they signed this contract.

\_\_\_\_\_ ("Cooperating Broker") and all real estate agents employed by or associated with it represent only the buyer. By signing below, seller and buyer confirm that written and oral disclosure that Cooperating Broker represents only the buyer was provided before they signed this contract.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initials

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initial

**You have received the following documents:**

- ✓ Owner's Handbook (including Escrow Agreement and Leasehold Disclosure).
- ✓ Buyer's Acknowledgment.
- ✓ Warranty Deed and Assignment of Sublease.
- ✓ Materials from Resort Condominiums International, LLC.

\_\_\_\_\_  
Buyer's Initials

By signing below, (1) you offer to buy your fractional share(s) from the seller on the terms contained in the contract documents; (2) you agree that the contract documents will be binding on you if the seller also signs this document; (3) you understand that the back of this page is also part of the contract.

FRACTIONAL OWNERSHIP, INC.

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

\_\_\_\_\_  
"Buyer"

Date accepted and signed by seller: \_\_\_\_\_

\_\_\_\_\_  
"Buyer"

Buyer's Initial Deposit was received on \_\_\_\_\_

By: \_\_\_\_\_  
(Name of Sales Person)

\_\_\_\_\_  
"Buyer"

Brokerage Firm: \_\_\_\_\_

\_\_\_\_\_  
"Buyer"

NOTE: This contract is effective only if seller or its authorized agent signs it. The Sales people cannot sign for seller.

Buyer signed this contract on \_\_\_\_\_

**1. WHAT IS A FRACTIONAL SHARE?** Generally, a fractional share is (i) an ownership share of an apartment in The Sands of Kahana condominium under an apartment deed and sublease; and (ii) the right to use that apartment, its furnishings, and the amenities of the condominium for about a sixty-day period called a "use period"; and (iii) a membership in the Sands of Kahana Fractional Share Owner's Association (the "Association").

**2. Our Basic Agreement.** By signing this contract, seller agrees to sell to you your fractional share(s), buy a policy of title insurance for you, and buy you a one-year subscription to the exchange program operated by Resort Condominiums International, Inc.; and you agree to buy your fractional share(s) and to obey the contract documents.

**3. The Contract Documents.** The "contract documents" are (i) this document, (ii) the escrow agreement, (iii) your "Buyer's Acknowledgment," and (iv) any changes to them. Changes must be in writing and signed by the person whose duties change. Although the escrow agreement is a separate document, when you sign this document you also adopt the escrow agreement, just as if you had signed it yourself. Read it with care since *the escrow agreement contains many definitions and other important information.*

**4. Our Entire Agreement.** The contract documents contain the complete agreement between you and the seller. It does not matter what you are told or shown, or what you may tell or show the salespeople. *Things not written in the contract documents are not part of our agreement, even if someone tells you otherwise.*

**5. What Should You Read?** The "Owner's Handbook" contains the escrow agreement, the condominium documents and the program documents. The condominium documents created and govern the condominium. The program documents created and govern the fractional ownership program. These documents describe the rights, limits and duties of everyone who owns a fractional share. Seller recommends that you read the Owner's Handbook carefully. By signing this contract, you accept and approve those documents, including among other things, (i) the seller's special rights under them, and (ii) the limits and duties which they impose on you.

**6. Changes to the Documents.** The condominium association can vote to change the condominium documents and the Association can vote to change the program documents. Also, seller has the right to change the program documents to comply with the laws and regulations of any place or the requirements of any governmental agency in connection with the registration of the program to permit the sale of fractional shares there. Seller may also change them if asked to do so by its lenders or title company. You accept the rights of the Association, the condominium association, and the seller to make such changes. You must keep all your promises in the contract documents even if the condominium documents or the program documents are changed after you sign your contract.

**7. Warranties.** The seller will give you a full and complete warranty of title in your Warranty Deed and Assignment of Sublease. *Other than that, the seller makes no warranties, express or implied, about your fractional share(s), your apartment, the condominium, or anything installed or contained in them. This includes but isn't limited to warranties of merchantability, habitability, workmanlike construction, fitness for a particular use or sufficiency of design. Everything is being sold "as is" and with all defects, visible and hidden.* This means, among other things, that seller does not have to correct or fix any defect regardless of what causes it or when it is discovered. You also give up (or, in legal terms, "release") all claims against the seller for defects or negligence. This means that the seller will not be liable for any injury or damage to people or things as a result of any defect. The condominium consists of fully built and existing buildings and was completed in 1982. The seller did not develop the condominium. In view of Hawaii's mild climate, no materials were included in the condominium mainly for insulation purposes.

**8. Credit; Financing.** Seller is authorized to check your credit and will approve or disapprove it within 30 days after receiving the credit report. You agree that the seller's decision on this will be final. Seller has no duty to obtain a loan for you. But if you are borrowing money to pay for your fractional share, then you must pay all costs and expenses charged by that lender and you must see that your lender is ready to close by the closing date.

**9. Escrow.** If seller accepts this contract, it will send your Initial Deposit to the escrow agent. You must send all additional payments directly to the escrow agent. By signing this document, you and seller are instructing the escrow agent: (i) to close the sale when the closing conditions are met; (ii) until then, to deposit all funds in an interest bearing account and pay the interest to seller as provided by Section 449-16.5, HRS; and (iii) to hold and release your funds as provided by the escrow agreement.

**10. Closing.** "Closing" refers to the time when your purchase is completed and your fractional share is transferred to you by recording a Warranty Deed and Assignment of Sublease from seller. Seller must choose the day for the closing. That date is called the "closing date" and it must occur within thirty (30) days after the "closing conditions" (as defined in section 5.2 of the escrow agreement) are met. Seller (but not you) can postpone the closing for up to 120 days. Seller must tell the escrow agent when the closing date will be at least ten (10) days before that date. Neither the seller nor the escrow agent need to tell you when the closing date will be. But if the escrow agent needs more money or documents from you to close the sale, it will tell you in writing or by telephone within three (3) days after seller sets the closing date. You must deliver all of the money and documents needed to close the sale within seven (7) days after the escrow agent asks for it. All payments made before closing except your Initial Deposit must be made in cash, or by a bank certified check or wire transfer, and must be made payable only to the escrow agent.

**11. Closing Costs.** Seller will pay all closing costs beyond \$900 (but not your loan fees and costs) except as expressly provided otherwise in the contract documents.

**12. Title Policy.** The seller will buy a policy of title insurance which insures that you have title to your fractional share subject only to (a) the "permitted encumbrances" listed in the escrow agreement, and (b) anything else which does not make title unmarketable.

**13. Risk of Loss.** Risk of loss will pass from the seller to you when your Warranty Deed and Assignment of Sublease is recorded.

**14. Default.** You will be in default if (a) you do not pay, or (b) you do not pay on time, or (c) you do not keep any other promise. Seller has no duty to notify or warn you about your default or possible default, either before or after it happens.

**15. What Happens if You Default.** If you default, seller may (a) cancel this contract, or (b) enforce this contract, or (c) do anything else permitted by law or this contract. If seller decides to cancel, seller may keep the all amounts paid by you to compensate (pay) seller for your default. This is not to penalize you. Instead, our agreement and intent is to agree on the amount of seller's damages now because it is very difficult, expensive and impractical to figure out the damages seller will suffer if you default. You instruct the escrow agent to release your funds to the seller if seller cancels. You cannot change this instruction, and you give up your right and power to do so.

If you fail to make any payment due under this contract on time, you must pay a late charge of one percent (1%) per month based on the amount due but not paid. You must pay this until you have paid the full amount due and all late charges or until this contract is canceled, whichever is first.

**16. Seller's Other Rights to Cancel.** In addition to its other rights to cancel, seller may cancel this contract before the closing if (1) more than one year after seller signs this contract, the closing has not yet occurred; or (2) one or more of the buyers under this contract dies; or (3) the Apartment or an important part of the common elements is condemned or sold under threat of condemnation or is destroyed or materially damaged and not repaired before the closing date; or (4) seller or your lender does not give its unqualified approval of your credit report or loan application; or (5) you or the salespeople fail or refuse, when asked by seller, to confirm in writing that they acted properly and didn't do certain things which might violate securities laws, consumer protection or credit laws, fair housing laws, or Hawaii real estate laws; or (6) less than 5 fractional shares in your unit are sold within one (1) year after the first contract to buy a fractional share in your unit is signed. If seller cancels under this paragraph, the escrow agent will refund your money to you without interest.

**17. Your Promises Relating to Various Laws.** Things you say or do with respect to your fractional share(s) could make problems for seller under certain federal or state laws or regulations called "securities laws". For instance, your activities in renting or reselling your fractional share(s) could result in or worsen an actual or possible violation of the securities laws or a claim (by seller, you, or someone else) that the securities laws were violated. You promise that if seller tells you something you are doing may violate or worsen a possible violation of those laws or regulations, you will stop doing it. If you don't, seller could be damaged in ways that will be uncertain in nature and amount and/or difficult and expensive to determine. So you agree that seller can get a court order requiring you to stop. Seller may also seek any other remedy (use any other rights seller has against you) for those violations.

**18. Extent of the Program.** Only some of the apartments in the condominium are part of the fractional ownership program. Seller has the right to add apartments to or remove them from the fractional ownership program without asking you. Whether seller adds or removes apartments, you still must keep all of your promises under the contract documents.

**19. Seller's Buy-Back Option.** If fewer than all fractional shares in the Apartment are sold and closed within one year after your closing, seller has the right, but no obligation, to buy back your fractional shares by refunding your money. The terms and conditions for this appear in your Warranty Deed and Assignment of Sublease.

**20. Time is of the Essence.** You agree to keep your promises on time. If no time is stated for you to perform, you must perform as soon as possible. Doing it later violates this contract.

**21. More Than One Buyer.** If more than one person signs as the buyer, each is fully obligated to keep all of the promises in this contract. The seller may enforce its rights against any one of you separately or against some or all of you together. This means that any one of you may be required to pay the full amount owed. In legal terms, each of you is "jointly and severally" liable to perform this contract.

**22. Parts of This Contract Will Stay in Effect After the Closing.** Parts of the contract documents are about things that will occur or may occur after the closing. These parts will "survive" the closing. This means that even after your Warranty Deed and Assignment of Sublease is recorded, you will still have to keep the promises you made in those parts. For example, sections 6. (changes to documents), 7. (warranties), 17. (securities and consumer laws), and 19 (seller's buy-back option) will continue to be binding on you.

**23. Hawaii Law; No Jury Trial; Legal Fees.** Any lawsuit or legal proceeding relating to the contract documents or the program must be filed and heard only in a federal or state court located in Hawaii and the laws of Hawaii will be applied. You promise to do nothing to deprive the Hawaii courts of jurisdiction or venue. This means that the lawsuit or proceedings will take place in Hawaii and you will not try to have them moved elsewhere. The seller and you give up any right to a jury trial and agree that a judge will decide any dispute. The winner is entitled to collect its costs and expenses, including attorneys' fees, from the other parties.

**24. Transfer of This Contract.** You may not transfer this contract without first getting the written consent of the seller. The seller does not have to consent, whether or not it is reasonable to do so. Even if the seller consents, you will remain liable on this contract unless the seller expressly releases you from liability in writing.

**25. Other.** Notices must be given as stated in section 7.3 of the escrow agreement. If any part of this contract is not valid, that part may be ignored. The rest will stay in effect just as if that part was never included in this contract.