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AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR THE KIHEI AKAHI VACATION PLAN
(A Resort Vacation Plan Located in the
Kihei Akahi, A Fee Simple Condominium Project)

This is an amended declaration for the Kihei Akahi Vacation Plan. It is made pursuant to Section 13.1(a) of the original Declaration of Covenants, Conditions and Restrictions for the Kihei Akahi Vacation Plan dated May 11, 1984, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 17873, at Page 284, which allowed the Kihei Akahi Vacation Plan Declaration to be amended by the affirmative vote of a majority of the timeshare interest holders at a regular or special meeting of the Association called and held in accordance with the By-Laws. This document supersedes that document dated June 10, 1999 and recorded on June 25, 1999 in said Bureau as Document No. 99-102582.

To make this document easy to read and understand, it includes an outline of the contents, an index to the contents, definitions of terms having special meanings, a glossary of legal terms and a section on background information. The outline lists the parts of this document in the order they appear; it is intended to give the reader a

general guide to the contents of this document. The index lists certain captions and subheadings used in this declaration with page numbers. The section on background information provides a general description of this resort vacation plan and is intended to help the reader understand and use this document.

Part 1 defines words used often in this declaration and which have special meaning. In order to make the words easier to understand, they are arranged by subject and not alphabetically. Because of the importance of these words in this declaration, the definitions should be read completely before going on the other parts of the declaration. Those words are underlined and enclosed in quotation marks like this: "_____". A glossary of legal terms is in section 14.2 and it gives definitions for terms which may not be clear to people who are not lawyers.

OUTLINE

- PART 1: Definitions
- PART 2: Adoption Of The Vacation Plan Documents
- PART 3: Reservation And Use Rights and Duties
- PART 4: Ownership Rights And Restrictions
- PART 5: The Association
- PART 6: Management Of The Plan
- PART 7: Exchange Programs
- PART 8: Assessments And Personal Charges
- PART 9: Timeshare Interest Holder's
Responsibility for Others
- PART 10: Enforcement
- PART 11: Addition And Withdrawal of Apartments
- PART 12: Damage, Destruction, Insurance And
Condemnation
- PART 13: Revising, Terminating And Interpreting
This Declaration
- PART 14: Miscellaneous Provisions And Glossary Of
Legal Terms

An Important Note: An effort has been made to appropriately divide and caption this document by its various sections to help people understand and use it. However, the captions obviously cannot and do not completely explain everything discussed in each section. Readers are cautioned to read the entire Declaration carefully and not just the outline or index or just part of this Declaration.

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EXHIBIT "C": REVISED BY-LAWS OF THE KIHEI TIMESHARE
OWNERS ASSOCIATION

BACKGROUND INFORMATION
WHICH MAY BE HELPFUL IN UNDERSTANDING AND
USING THIS DECLARATION

On May 15, 1984, the developer, United Resorts International (URI), filed a Declaration of Covenants, Conditions and Restrictions for The Kihei Akahi Vacation Plan which established a timeshare resort vacation plan at the Kihei Condominium Project (the Declaration). Under the declaration, a nonprofit corporation made up of interval owners including the developer called the Kihei V.I.P. Owners Association was responsible for managing and administering the resort vacation plan.

On November 7, 1986, the Department of Commerce and Consumer Affairs for the State of Hawaii filed a Decree of Dissolution involuntarily dissolving the Kihei V.I.P. Owners Association pursuant to Chapter 416 of the Hawaii Revised Statutes. In order to continue the operation of the resort vacation plan, a new association called the Kihei Timeshare Owners Association (KTOA) was formed to take over all of the duties and responsibilities assigned to the dissolved owners association under the Declaration.

On September 27, 1988, URI, by and through Thomas R. Grimmatt, its court-appointed trustee, entered into a settlement agreement under which it agreed, among other things, to relinquish all of its rights as the "developer" of the Kihei Akahi Vacation Plan as described in the Declaration, including all of its rights in the eleven vacation apartments described in the Declaration, and any voting rights it possessed in the Kihei V.I.P. Owners Association, but not including its right to collect any monies that might be owed to it under the timeshare notes, mortgages and purchase contracts it issued. URI further agreed to amend the Declaration to designate the Kihei Timeshare Owners Association as the "Timeshare Owners Association" as specified in the Declaration, in place of the Kihei V.I.P. Owners Association, and to release all rights to the \$30,000 bond/monies it had on deposit with the State of Hawaii, as required by Chapter 514E of the Hawaii Revised Statutes.

This amended declaration is filed so that URI can implement all of the promises it made in the above-described settlement agreement.

Some of the significant features of this amended Declaration are:

1. All of the developer's interest in the vacation apartments described herein, along with its duties and

responsibilities under the vacation plan, are transferred to the Association.

2. All timeshare interest holders including interval owners and Right to Use are members of the timeshare owners association and have equal voting rights.

3. The Kihei Timeshare Owners Association (KTOA) has replaced the Kihei V.I.P. Owners Association as the recognized "Association" under the plan.

4. "Vacation-Plus" units have been suspended at this time.

Although many documents are used to operate a resort vacation plan, this document – the declaration – is one of the most important. It describes the basic rights and duties of the timeshare owners association, the timeshare manager, and of people who buy timeshare interests.

PART 1 DEFINITIONS

In addition to the definitions contained in section 13.2 (the Glossary) and the other definitions contained in this declaration, the following terms will have the following meanings when they are used in this document:

1.1 "Project" means the Kihei Akahi condominium project. It was created and is governed by the condominium declaration.

(a) "Condominium Declaration" means the "Declaration of Horizontal Property Regime of Kihei Akahi" which includes the "By-Laws of the Association of Apartment Owners (AOAO) of Kihei Akahi" attached to it; and any changes to it. It is the document that established and governs the project. The condominium declaration should not be confused with this document.

(b) "Common Elements" means the parts of the project designated in the condominium declaration as common elements. Generally, all parts of the project except the apartments are common elements. Some of the common elements are called "limited common elements" and may only be used by the owners of certain apartments.

(c) "Apartment" means any "apartment" (as that term is defined by the Hawaii condominium law) in the project.

(d) "Apartment Type" means one of the different types of apartments in the resort vacation plan. For

purposes of this resort vacation plan, the apartments are divided into two groups as follows:

- (1) "Basic One-Bedroom" means a type 4 apartment.
- (2) "Basic Two-Bedroom" means a type 2 or type 3 apartment.

(e) "Condominium Documents" means the condominium declaration, as amended and restated, the By-Laws of the Association of Apartment Owners of Kihei Akahi, as amended and restated, and any rules and regulations of the condominium association as any of those documents may be changed from time to time.

1.2 "Plan" or "Resort Vacation Plan" means the resort vacation plan existing under this declaration and the other vacation plan documents.

(a) "Vacation Plan Documents" means this declaration, the articles, the by-laws, and the association rules.

(b) "Declaration" means this document and any changes made to it later. The declaration can only be changed in the manner provided in Part 13 of this document. This declaration establishes a framework for the resort vacation plan and rules and regulations for the operation and management of it. Be careful not to confuse this declaration with the "condominium declaration" discussed above.

(c) "Association" or "KTOA" means the Kihei Timeshare Owners Association, a Hawaii non-profit corporation. All owners and Vacation License/RTU holders are members of the Association. It should not be confused with the "condominium association" which is the Association of Apartment Owners of the condominium project.

(d) "Articles" means the Articles of Incorporation of the Association as it may be changed from time to time. The Articles is the document by which the State of Hawaii officially recognizes the Association as a non-profit corporation. The Articles establishes certain rights and duties of members relating to the management of the Association.

(e) "By-Laws" means the By-Laws of the Association as they may be changed now and then. The By-Laws are the rules by which the Association governs itself. The By-Laws also establish the rights and duties of the members in the management of the Association as a corporation. The By-Laws also establish more rules and regulations governing owners and license holders. They should not be

confused with the Association rules, which establish rights and duties of the members for the use of the vacation apartments.

(f) "Association Rules" means the rules and regulations adopted by the Association and any changes made to them from time to time by the Association under section 6.2(g) of this declaration. The association rules establish rights and duties of the owners and license holders with respect to the reservation and use of the vacation apartments, among other things.

(g) "Board" means the Board of Directors of the Association.

(h) "Plan Manager or Responsible Management Employee (RME)" means the agent hired by the Board, as provided in section 6.3, who manages the resort vacation plan under the supervision of the Board.

1.3 "Vacation apartment" means the apartments in the resort vacation plan. Each apartment described in Exhibit "A" is a vacation apartment.

1.4 "Common Furnishings" means all furniture, furnishings (things like linens and kitchen ware), appliances, equipment, and all similar things (called "personal property" in legal terms) owned or leased by the Association for use by the timeshare interest holders during their vacation weeks.

1.5 "Interval" means:

(1) an undivided one-fifty-first (1/51) interest in a vacation apartment. An interval gives the right to use a vacation apartment for one week per year. The terms "undivided interest" means that the person will be one of the co-owners of that apartment. The other co-owners will be the owners of other intervals in that apartment.

(2) the exclusive right to use and occupy that vacation apartment or another vacation apartment of the same type and the common furnishings in it during the owner's vacation week as provided in this declaration; and

(3) during the same vacation week, the right to use the common elements of the project together with all the other residents of the Kihei Akahi condominium project.

1.6 "Owner". The following persons are "owners";

(1) The owner named in each original deed of an interval and all later owners of that interval, while they own it.

(2) the buyer of an interval under a recorded agreement of sale. While the agreement of sale is in effect only the buyer (and not the seller) will be considered the owner. If the agreement of sale is cancelled, the seller will again be considered the owner.

(3) the beneficiary of a land trust if the interval is transferred to a trustee under a land trust. The trustee will not be considered the owner.

(a) "Original Deed" means the recorded interval Warranty Deed by which the developer first transfers the developer's entire remaining interest in a vacation apartment if that document expressly says that it is not an original deed within the meaning of this declaration and that it transfers the developer's rights as the developer under this declaration. A deed in trust is considered an original deed if (but only if) the interval ownership is transferred.

(b) "Deed" means any document used to transfer ownership of an interval. (This should not be confused with the "original deed"; only certain deeds are "original deeds". A Vacation License/Right to Use is not a deed, nor is any document used to transfer a Vacation License/RTU a deed.

(c) "Agreement of Sale" means a contract which can be recorded and which binds the seller to sell and the buyer to buy an interval.

1.7 "Vacation License/RTU" means a Kihei Akahi Agreement for a Vacation License/Right to Use. It is an agreement under which the original developer sold certain rights to a buyer (only about 23 of these agreements still exist). The buyers' Vacation License/RTU rights are governed by the terms of the Vacation Plan, plus any rules and regulations adopted by the Association ("KTOA"). It is not a deed and title status (interval ownership), so in two instances it is treated differently in the Vacation Plan Documents. A Vacation License/RTU cannot be foreclosed but can be taken back by the Association without foreclosure for non payment after three months of delinquency by the holder of a Vacation License/RTU. In addition, since a Vacation License/RTU is not owned, it cannot be mortgaged by the vacation licensee.

1.8 "Visitor" means an owner's, license holder's or an exchange user's family, guests, employees, servants, tenants, "licensees" (persons permitted in the vacation apartment) and "invitees" (persons invited in). Neither a "right to use" holder nor an exchange user is considered an owner's visitor.

1.9 "Exchange User" means a person who occupies a vacation apartment through an exchange of occupancy rights under an exchange program.

(a) "Exchange Program" means a service provided by an independent organization or someone else which permits owners to exchange their right to use a vacation apartment during their vacation weeks:

(i) with the owners or holders of occupancy rights for the use of time periods in other time share plans, or

(ii) with the owners of other property that is not included in a time share plan.

1.10 "Occupant" means an exchange user, "right to use" holder or owner while he is actually occupying or using a vacation apartment or any part of the project. An owner, "right to use" holder or exchange user's visitor is also an "occupant".

1.11 "Person" means one or more or a combination of real people, partnerships, trusts, corporations or other companies.

1.12 "Transfer" means all of the methods by which one person may receive a deed and title from another, including for example, a voluntary sale, an involuntary sale (such as a foreclosure sale), an inheritance or a gift.

1.13 "Time Share Interest" means the right to a use of owned week(s) annually as owner or as Vacation License/RTU holder for the week.

1.14 "Time Share Interest Holder" means the person or group of persons holding an interval ownership.

1.15 "Use Week" The use week begins at check-in time on the check in date and ends at check-out time on the check out date.

1.16 "Check-In Time" and "Check-Out Time" mean the times defined as such in the association rules.

1.17 "Vacation Week" means a use week reserved (in accordance with the Vacation Plan Documents) by an owner or vacation license holder for the use of a vacation apartment.

1.18 "Service Period" means:

(1) the period between check-out time in the morning and check-in time later that day, (the time between use weeks), and

(2) one use week in each vacation apartment designated or reserved by the Association as a service period. Each year, the Association will pick

one use week in each vacation apartment to be the service period for that apartment.

PART 2

Chapter 2 ADOPTION OF THE VACATION PLAN DOCUMENTS

2.1 Purpose Of This Part

Certain requirements must be met in order to make a resort vacation plan effective and binding on the vacation apartment and people who have any rights or interests in those apartments. This part satisfies those requirements and makes the vacation apartments subject to the provisions of this declaration and the other vacation plan documents.

2.2 The Resort Vacation Plan.

This declaration provides a firm framework for the timeshare interest holders to share in the use, enjoyment, management, upkeep and repair of the vacation apartments. The plan also includes provisions for the transfer of interests in the vacation apartments and for the payment of taxes, insurance premiums and other expenses relating to those apartments of the resort vacation plan. The plan also provides for the continued use of the vacation apartments by the holders of vacation licenses, subject to such changes as circumstances require. The plan is intended to increase the value, desirability and enjoyment of each of the vacation apartments and any interest in them.

2.3 The Vacation Apartments Are Governed By the Vacation Plan Documents.

The Association here and now declares that:

(a) The vacation apartments are subject to the provisions of the vacation plan documents, as amended. This means that those apartments are owned, used, leased, rented, mortgaged, encumbered, occupied and improved subject to the agreements, limitations, restrictions and other matters contained in those documents;

(b) The provisions of the "Vacation Plan Documents" are adopted as the rules and regulations governing the operation and managements of the resort vacation plan. The "Vacation Plan Documents" also apply to the holders of a "Vacation License/RTU", except as noted in the definition of Vacation License/RTU, above.

(c) All of the provisions contained in the vacation plan documents are "covenants running with the land". That means those documents will be binding on anyone who

has a Vacation License/RTU or an interval ownership now or in the future, regardless of the way the interest was conveyed or transferred to him;

(d) All of those documents are also "equitable servitudes" which means that they apply to the vacation apartments and the common furnishings and to anyone who has any rights or other interests in any vacation apartment or the common furnishings or any vacation license now or in the future; and

(e) The provisions of the vacation plan documents are for the benefit of and binding on all present and future owners or intervals and anyone else who has any rights or other interests in any vacation apartment or the common furnishings, and the holders of vacation licenses.

2.4 The Vacation Plan Documents Are Binding on You And Anyone Else Who Has Any Interest In Or Uses The Vacation Apartments.

An important practical effect of making the apartments subject to the vacation plan documents is that anyone who owns an interval or uses a vacation apartment must abide by those documents whether or not that person ever signed them or expressly agreed to abide by them. Holders of "Vacation Licenses/RTUs" may be exempt from certain requirements of the "Vacation Plan Documents" if these requirements are directly inconsistent with the specific contractual rights found in the Vacation License/RTU. Another important effect is that anyone who has any interest in a vacation apartment or Vacation License/RTU is required to abide by the Vacation Plan Documents regardless of how or when he got it. Also, the Association or any owner or anyone else having any rights or other interests in the vacation apartments or common furnishings can enforce the Vacation Plan Documents as provided in those documents.

PART 3

RESERVATION AND USE RIGHTS AND DUTIES

3.1 Your Reservation and Use Rights.

(a) The Year is divided into 52 weeks, 51 use weeks and 1 maintenance week.

Each owner has the right to reserve one use week during each use year for each interval he owns. In the case of an interval owned by the Association and subject to a vacation license, the holder, not the Association, may use the

Association's reservation and use rights as provided in the vacation license.

If more than one person owns the same interval or vacation license, they may still reserve only one use week per year. To make the reservation, the owner or vacation license holder must comply with the rules for making reservations contained in the association rules then in effect.

This is a floating unit, floating use week plan, and therefore, reservations will be made on a first-come, first-served basis according to the priorities set forth in the Association rules. Therefore, although an owner will own an interest in a specific apartment, he is not guaranteed that he can reserve and use such apartment during a specific use week. Instead, the on-line reservation system will assign such owner a use week as available on a first come, first use, so long as it is the same apartment type as the owner's apartment. An owner will not be permitted to reserve or use a vacation apartment while he is behind in paying any amounts owed to the Association. The rules in this paragraph also apply to Vacation License/RTU holders.

(b) Your Rights During Your Vacation Week. The use week reserved by an owner or license holder is called his "vacation week".

During the vacation week, each owner or vacation license holder will have:

- (i) the exclusive right to occupy and use the vacation apartment assigned to him and its common furnishings, and
- (ii) the nonexclusive right to use and enjoy the common elements along with all other residents at the Kihei Akahi condominium project.

If any occupant is entitled to use a specific vacation apartment for two or more use weeks in a row, he will be entitled to the exclusive use of that vacation apartment during the service period between his vacation weeks. The Association will still provide maid service during that service period **or another appropriate time by agreement with the cleaning service provider.** unless asked not to do so by that owner or vacation license holder or his guest.

2. Any and all other references in the Declaration to the plan being a fixed unit or fixed week plan shall hereafter be of no further force or effect.

3.2 You Must Stay Off The Project During Periods Other Than Your Vacation Week.

Except during his vacation week, no owner or license holder/RTU may use or occupy a vacation apartment or the common elements or the common furnishings unless he is:

(a) expressly authorized by the person entitled to use that apartment at that time, or

(b) acting on behalf of the Association.

3.3 You May Permit Others To Use The Apartment During Your Vacation Week, But You Will Be Responsible For Them.

Any owner or vacation license holder may permit other persons to use his vacation apartment (during his vacation week) for the purposes permitted by this declaration. That owner or license holder, however, will be fully responsible for his visitors as provided in Part 9.

3.4 General Use Restrictions And Duties.

(a) Limits On Number Of Occupants, Commercial Use, And pets.

The number of people allowed in any vacation Apartment 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 apartment or on the common elements (this does not apply to or limit the Association's rights under section 3.8). No pets or other animals of any kind may be permitted or kept in any vacation apartment or the project, except as required under the Americans with Disabilities Act, the Federal Fair Housing Amendments Act of 1988 or Chapter 515 of the Hawaii Revised Statutes.

(b) You May Not Change The Apartment Or Its Common Furnishings.

No owner or vacation license holder may make or authorize anyone else to make any alterations, additions, or repairs to any vacation apartment or its common furnishings unless it is necessary to prevent damage or injury to persons or property in an emergency. No owner or vacation license holder may paint, refinish or redecorate any vacation apartment or remove, alter or replace any part of the common furnishings without first receiving 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 below in section (d).

(c) You Must Take Care Of The Apartment, The Common Furnishings And The Project, But The Association Is Responsible For Normal Maintenance And Repair.

Every occupant must keep the vacation apartment and its common furnishings neat and in good condition during his vacation week and must take good care of all property subject to his use.

The owners and vacation license holders will be responsible, through the Association, for the cost of normal maintenance, repair and upkeep of the vacation apartments, any limited common elements that go with the vacation apartments, and the common furnishings, in accordance with the provisions of the condominium documents and vacation plan documents. Note: The condominium association maintains the common elements; of course, owners and vacation license holders share in paying the cost of that maintenance when they pay, their yearly unit maintenance fee.

(d) Everyone Must Abide By The Condominium And Vacation Plan Documents.

Each owner, vacation license holder and exchange user must abide by the provisions of the condominium documents and the vacation plan documents and see that all his visitors also do so, All of the use restrictions contained in the condominium documents apply to the vacation apartments.

3.5 Your Duties At The End Of Your Vacation Week.

(a) You Must Leave By Check-Out Time.

Every occupant must leave the vacation apartment by check-out time on the last day of his vacation week(s).

(b) You Must Remove Your Personal Belonging Or You Will Lose Them.

At the end of his vacation week(s), every occupant must remove from the vacation apartment all clothing, food, liquor, luggage and other personal effects brought into the vacation apartment. No one (including the Association, the Plan Manager/RME and any later occupants of a vacation apartment) will be liable or responsible in any manner whatsoever for any personal effects left in a vacation apartment at the end of a use week. All personal effects left in any vacation apartment at the end of a use week will be considered abandoned. Abandoned items may be thrown away, sold, or given away if the Plan Manager/RME decides to do so, unless otherwise provided in the Association rules.

(c) The Apartment Must Be Neat And In Good condition.

Each occupant of a vacation apartment must leave the vacation apartment and the 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, not a negligent act).

3.6 What Happens If Someone Fails To Leave Or Interferes With Another's Use.

(a) Special Definitions. The following definitions apply to this section 3.6;

(1) "Injured person" means any person who is entitled to occupy a vacation apartment but cannot do so because of the acts (or failure to act) of a disobedient person. There may be several injured persons. For instance, an apartment may be damaged so that it cannot be used for many use weeks. In that case, each person who had the right to use the apartment during those use weeks would be an "injured person".

(2) "Disobedient person" means anyone who:

(i) uses or occupies a vacation apartment during another's vacation week without permission or during a service period (including failure to leave at check-out time), or

(ii) intentionally or negligently prevents an injured person from using or occupying a vacation apartment.

NOTE Anyone who damages a vacation apartment or its common furnishings so that as a practical matter it is unusable or "uninhabitable" during the following use weeks will be considered a disobedient person.

(3) "Liquidated damages" are damages agreed to in advance when actual damages would be difficult to measure. Actual damages caused by the acts (or failure to act) of a disobedient person may be uncertain in nature and amount. They may also be difficult, expensive and time-consuming to determine. Therefore, to avoid all the problems in determining actual damages, each occupant, owner and license holder agrees that the measure of liquidated damages in this section 3.6 will be fair compensation to anyone who is an injured person.

(4) "Fair rental value" means the value of an apartment based on the cost of renting similar lodgings in the project or in the vicinity of the project

on a daily basis. The Association will determine the fair rental value, and its decision will be final.

(b) What Happens To A Disobedient Person.

A disobedient person:

(1) will be subject to immediate eviction from the vacation apartment, and

(2) "waives" (gives up his right to) any notice required by law with respect to any legal proceedings commenced in connection with his eviction (to the extent that Hawaii law permits this), and

(3) must repay the Association and the injured person for all costs and expenses incurred as a result of his conduct. This amount will be a personal charge. This includes but is not limited to costs of renting another place for the injured person to stay, travel costs, court costs and reasonable attorneys' fees in any legal proceedings to evict him or to collect those costs and expenses, and

(4) must pay liquidated damages to the injured person equal to three times the daily fair rental value of the vacation apartment for each day or part of a day during which the disobedient person prevents the injured person from using the vacation apartment.

NOTE: If there is more than one injured person for a specific apartment and use week, they will have to split the liquidated damages between themselves; the disobedient person does not have to pay each one three times the daily fair rental value.

(c) The Association's Duties.

The Association will take any reasonable steps needed to evict the disobedient person from the vacation apartment. It will also obtain and pay for another place for the injured person to stay during the period that use of the apartment is prevented. The place the Association finds for the injured person should be as near in value to his vacation apartment as possible. The cost of the place for the injured person to stay will be charged to the disobedient person as a personal charge. The Association may decide that in order to obtain another place it must rent it for longer than the actual time during which the use is prevented. If this happens, the disobedient person still must repay the Association for the whole cost of the entire period as a personal charge. The Association's decision on this will be final.

3.7 The Association's Use Rights

In legal terms, these rights are called an "easement" These rights must, however, be used so as to minimize, when reasonably possible, any interference with the rights of owner, license holders and/or the Association to use and occupy the vacation apartments. In no case may these rights be used in a way that prevents an owner or license holder from using his assigned vacation apartment during the vacation week reserved by him.

3.8 The Association's Use Rights For Renting Any Unreserved Use Weeks.

(a) The Association May Rent Out Any Unreserved Use Weeks And Keep The Rent.

The Association may rent out, with board approval, any vacation apartment during any unreserved use weeks and retain the rent generated by the rental. If approved, priority will be given to other owners/Vacation License/RTU holders or their guests.

(b) Easement For Rental.

The Association and its agent(s) (Plan Manager or RME), have an easement for the purpose of conducting rental activities under this section 3.8.

PART 4

OWNERSHIP RIGHTS AND RESTRICTIONS

4.1 Transferring An Interval Or Vacation License/RTU.

(a) Transfers.

(1) Intervals. An owner may transfer his interval or intervals. If he owns more than one interval, he may treat each one separately. He is not required to do with all his intervals what he does with any one.

(2) Vacation Licenses/RTUs. Vacation License/RTU holders are subject to various requirements for and restrictions on transfers. Vacation License/RTU holders should confirm those requirements and restrictions with the Association.

(b) Your Rights Automatically Go With It.

An owner or vacation license/RTU holder who transfers his interest in the Vacation Apartments must convey his entire interest. The transfer of any interval will also automatically transfer to the new owner all the rights and obligations under the Vacation Plan Documents, including but not limited to:

(1) the interest of the prior owner in all funds and property held by the Association, and

(2) the membership of the prior owner in the Association.

The transfer of a vacation license/RTU will also automatically transfer to the new holder the interest of the prior license holder in all funds and property held by the Association.

These things are transferred whether or not the document transferring the interval or vacation license/RTU expressly says so.

No share of any owner or vacation license holder in funds held by the Association can be withdrawn or separately transferred. If the transferring owner or Vacation License/RTU holder wants to get his money back, he must get it back from the owner or Vacation License/RTU holder, not the Association.

(c) You May Not Transfer Less Than All Of The Interval.

No owner may transfer any less than everything transferred in the original deed of the interval of sale, he may not transfer less than the buyer's entire interest under the agreement of sale.

Another exception applies to Vacation Licenses/RTUs. Even though they do not own the interval (or any other interest in a vacation apartment), Vacation License/RTU holders have the reservation and use rights and certain other rights as spelled out in the Vacation Plan Documents. The Vacation License/RTU holder keeps legal access to the interval plus all rights that go with it. The licensor may transfer the title to the interval to a trustee instead of holding the title itself.

Vacation License/RTU holders may not transfer less than all their rights under their Vacation License/RTU. This means, among other things, that the new owner won't be able to reserve or use a vacation apartment while the Vacation License/RTU is in effect and the Vacation License/RTU holder is entitled, under the Vacation

License/RTU, to exercise reservation and use rights. The exception for Vacation License/RTU holders contained in this paragraph applies only to Vacation Licenses/RTUs issued before November 18, 1988. No **new** Vacation Licenses/RTUs may be issued after that date. After the adoption of the 2008 Revised Documents all subsequent vacation License/ RTU transfers or sales must be converted to Fee Simple

(d) You Or the New Owner Or Vacation License/RTU Holder Must Notify The Plan Manager/RME When You Transfer Your Interval.

The plan manager must be notified in writing within five (5) days after the transfer of any interval. The notice may be given by either the new owner or the present owner. The notice must be given under any circumstances where the interval will have a new owner. This would include, for example, a transfer of a buyer's interest under an agreement of sale or a transfer of a beneficial interest under a land trust. The notice must be in whatever form, if any, the Plan Manager or RME requires and it must state:

(1) the name and address of both the former owner and the new owner and the date on which the transfer took place;

(2) the apartment number of the vacation apartment in which the interval is being transferred; and

(3) the use period of the interval being transferred; and

(4) the ID number of the interval being transferred.

NOTE: Each interval will be given an ID number in the original deed or agreement of sale.

Unless and until the notice is given,

(i) the Association is not required to recognize the new owner for any purpose,

(ii) any action taken by the present owner as an owner may be recognized by the Association, and

(iii) all communications required or permitted to be sent by the Association to the owner may be sent to either the new owner or the former owner.

(e) The Use Period And ID Number Must Be Identified In The Document Transferring The Interval

Anyone who transfers an interval must correctly state in the document transferring the interval the use period and ID number identified in his original deed or agreement of sale; provided this information shall be for administrative purposes only, since all intervals are floating.

4.2 When Transfer Will Release You From Your Duties Under This Declaration.

Each timeshare interest holder will be fully released from liability on the promises contained in this declaration relating to each timeshare interest when:

(a) he no longer owns that interval or Vacation License/RTU, and

(b) he or the new owner gives notice of that fact to the Plan Manager or RME, and

(c) he has paid all sums and performed all his other duties under this declaration and he pays all personal charges charged to him up to the time his ownership ends and notice of the transfer of his interval or vacation license is received by the Association. The fact that an owner has been released from liability on the promises contained in this declaration does not mean that he is released from any liability he has under a note or mortgage or agreement of sale.

A Vacation License/RTU holder will be released if he surrenders or transfers by sale quit claim or gift quit claim his Vacation License/RTU and he pays all personal charges charged to him. To surrender his Vacation License/RTU, the Vacation License/RTU holder must notify the Association unless the Association takes back the Vacation License/RTU after due process, by notification to the holder that past due charges are delinquent more than three (3) months.

4.3 Mortgaging Your Interval.

(a) You May Mortgage Your Interval.

An owner may mortgage his interval or intervals. If he owns more than one interval, he may treat each one separately.

(b) Restrictions On Your Right To Mortgage Or Encumber Your Interval Or Vacation License/RTU.

No Owner may mortgage or encumber anything less than the entire interest described in the original deed for the interval. An owner who is buying his interval under an agreement of sale may not mortgage or encumber less than the buyer's entire interest under the agreement of sale. No owner has the right of power to mortgage or encumber anything less than the whole interval. Any attempt to do so will not be effective; it will be void. A vacation license holder may not pledge, mortgage or otherwise encumber his vacation license. Any attempt to do so will not be effective; it will be void.

NOTE: The term "encumber" is defined in the glossary (section 14.2).

(c) You Can Mortgage Or Encumber Only Your Interval.

No owner or Vacation License/RTU holder can mortgage or otherwise encumber:

- (1) the interval or Vacation License/RTU of any other person,
- (2) the whole vacation apartment,
- (3) the common furnishings in the vacation apartment, or
- (4) any part of the vacation apartment or its common furnishings (except his interval)

No owner or Vacation License/RTU holder has the right or power to do this. Any attempt to do so will be void and not effective.

(d) The Declaration Governs Any Mortgage.

Any mortgage of an interval will be subordinate to (will be governed by and will not affect) this declaration. Any assignment of a Vacation License/RTU for security will also be a subordinate to this declaration.

(e) Good Faith Mortgages Given For Value Will Be Enforceable.

If a mortgage on an interval is properly recorded and given in good faith and for value, the lien of that mortgage (the claim on the interval as collateral) will not be invalid because of:

- (1) a violation of this declaration by the owner of that interval, or

(2) the enforcement of any secured lien according to the provisions of this declaration.

This does not guarantee, however, that the lender having that mortgage will be fully paid or paid first.

4.4 Protection of Vacation Licenses/RTUs And Intervals From Liens Or Claims.

(a) You Must Protect Others From Claims Against You. The Association Or Any Other Timeshare Interest Holder May Step In To Do So.

No owner or Vacation License/RTU holder may cause or permit his interval or Vacation License/RTU, the vacation apartment or its common furnishings to be subject to any claim or lien which could result in:

- (1) the sale of any vacation apartment, or
- (2) the sale of any common furnishings, or
- (3) the sale of any interval owned by someone else,
- (4) the sale or cancellation of any Vacation License/RTU held by someone else, or
- (5) any interference in the use or enjoyment by any other owner or Vacation License/RTU holder of his interval or Vacation License/RTU.

If any such sale or interference is threatened or if legal proceedings (which could result in such a sale or interference) are started because of any lien or claim against an owner or his interval or Vacation License/RTU holder or his Vacation License/RTU, then any other owner or the Association may (but is not required to) pay or compromise the lien or claim without checking on the proper amount or validity of it. In that case, the defaulting owner or Vacation License/RTU holder must immediately repay the owner or the Association the total expenses incurred, including all reasonable attorneys' fees and related costs. Those amounts will be a personal charge.

The foregoing provisions do not limit or otherwise change the rights that an owner of an interval or a Vacation License/RTU has under the Vacation License/RTU to cancel or suspend the license holder's rights.

(b) You Must Protect Funds Held By The Association.

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

4.5 Co-Ownership Rights And Partition.

This declaration governs all rights with respect to the ownership, possession, use, management, and disposition of the intervals, Vacation Licenses/RTUs and the vacation apartments including co-ownership rights. Co-Ownership is ownership of a timeshare interest in a vacation apartment by two or more persons together. Examples of co-ownership rights include the right to use and manage property together.

(a) Your Rights As A Co-Owner Are Restricted By This Declaration.

All rights which an owner might otherwise have as a co-owner are permanently subordinated to (made subject to and restricted by) this declaration. This will last for so long as this declaration stays in effect.

(b) You Cannot Ask A Court To Divide Up Your Interval Or The Vacation Apartment.

"Partition" is the right of co-owners to ask a court to divide co-owned property into separate parts for each co-owner. If the property cannot legally be split up, a court may order the property sold and divide the money from the sale among the co-owners. No person who now or later has any rights or interests in or claim on any interval or any vacation apartment or its common furnishings may ask for or obtain partition of an interval or a vacation apartment or its common furnishings. When this declaration expires or ends, however, any owner may ask a court to sell his vacation apartment and divide the money in equal shares for each interval in that apartment.

(c) A Court May Order An Interval Sold And The Proceeds Divided.

An interval may not, under this declaration, be split into separate parts because this would violate the rule against transferring less than a whole interval. If, however, any interval is owned by two or more persons

together, any of them may ask a court to sell their interval and divide the proceeds between them.

PART 5 THE ASSOCIATION

5.1 The Association – A Non-Profit Corporation.

The Association is also called the "Kihei Timeshare Owners Association" (KTOA). It is a Hawaii non-profit corporation. The Association has all of the rights and powers of a Hawaii non-profit corporation, except as limited by this declaration.

5.2 All Timeshare Interest Holders Are Members Of The Association.

Each timeshare interest holder is a member of the Association.

5.3 Membership Is Part Of Each Timeshare Interest.

The Association membership is part of and cannot be separated from the timeshare interest. Membership in the Association can only be transferred as a part of the transfer of the timeshare interest.

5.4 Your Voting Rights As A Timeshare Interest Holder.

Each timeshare interest holder will have one vote. If a person has more than one timeshare interest, he has one vote for each of them. If a timeshare interest is owned by more than one person, they will have to agree among themselves on how to vote. The Association will not be responsible for settling disputes among co-owners as to voting. If they cannot agree, they will be treated as if they decided to abstain (not vote). If a timeshare interest is owned by more than one person, the vote for that interest may be cast by any of its co-owners, unless another of its co-owners objects.

5.5 Selection Of The Board.

At the annual meeting, the members of the Association will elect new Board members as required under the By-Laws.

5.6 Power Of The Board.

All Association powers and duties may be exercised by or under the power of the Board, unless the law limits that exercise. The business and affairs of the Association are controlled by the Board.

PART 6

MANAGEMENT OF THE PLAN

6.1 The Association Manages The Plan.

Administration and management of the resort vacation plan, including the vacation apartments and the common furnishings, is vested in the Association, subject to the requirements of the law for a plan manager. Owners and license holders may not participate in the management or administration of the resort vacation plan directly, only indirectly through the Association.

The association, through the Board, may hire a plan manager for the resort vacation plan who meets the requirements of Chapter 514E, Hawaii Revised Statutes and the Hawaii Administrative Rules, Title 16, Chapter 106 (As Amended) for Time Sharing. The Board shall ensure that any corporate plan manager hired by the Association designates a responsible managing employee (RME) who also meets the requirements of the law and rules.

Alternatively, to the extent permitted by the law, the rules, and the policies of the Hawaii Department of Commerce & Consumer Affairs ("DCCA") the Association, through the Board, may act as plan manager for the resort vacation plan. If the association acts as plan manager, the Board shall either designate an association employee as RME or, as an alternative, shall appoint an officer or officers of the association to serve in the role and perform the duties of the RME on behalf of the association as plan manager. The Board shall ensure that any RME, or an officer serving as an RME, is located in the State.

The duties, responsibilities and obligations of the: (i) plan manager or (ii) the association, if it is acting as the plan manager, shall include, but not be limited to those stated in the law and rules, including rule 16-106-12, HAR, as well as in the vacation plan documents. In addition, the plan manager, or the association if it is acting as plan manager, shall ensure that: (i) the RME of the plan manager; or (ii) the RME or designated officer or officers of the association, fulfills the responsibilities of the RME as stated in the law and rules, including rule 16-106-5, HAR, as well as in the vacation plan documents.

6.2 The Association Has The Duty And The Power To Do All The Things It Must Do Under This Declaration.

The Association has the duty and power to do all things that it is required to do under this declaration. In addition, the Association is expressly authorized and required to do all of the following on behalf of the timeshare interest holders:

(a) Repair And Maintenance.

The Association must repair and maintain the vacation apartments and the common furnishings. This duty includes buying, leasing, or replacing

common furnishings. The Association may buy any materials and furnishings and obtain any labor or services which it decides are needed or helpful to maintain the vacation apartments and the common furnishings in good condition. If the Association does not have enough money set aside for those purposes, it may charge a special assessment. The Association does not have to make any repairs or replacement or to buy anything until it has enough money to pay for it.

(b) Cleaning And Maid Service.

The Association must provide cleaning, maid service, maintenance and repairs upon the departure of each occupant of a vacation apartment at the end of his vacation week (or more frequently if the Board decides to do so), during service periods and at any other times provided for in the association rules so that the vacation apartment stays neat and in good condition.

(c) The Association's Rights To Enter Vacation Apartments.

Except as provided in section 3.1 with respect to consecutive use periods, the Association has exclusive possession of each vacation apartment during the service periods designated for that vacation apartment in order to perform its duties under this declaration. It also has the right to enter any vacation apartment at any other reasonable time, after giving reasonable notice to any occupants who may be present, for the purpose of cleaning, maid service, maintenance and repair. In addition, the Association has the right and power to enter any vacation apartment, at any time, whether or not during a service period or whether or not the occupant is present, for the purpose of:

(1) making emergency repairs in that apartment,

(2) abating any nuisance (stopping any activity which is harmful or offensive to others) or any dangerous, unauthorized, prohibited or illegal activity or condition in the vacation apartment,

(3) protecting property rights and welfare of others, including but not limited to the prevention of personal injury or damage to the apartment, the common furnishings, another apartment, or the common elements, or

(4) for any other emergency purpose.

The right of entry will be used so as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment by the occupant of the vacation apartment. The occupant of the vacation apartment will be given reasonable notice before entry if the circumstances permit it.

(d) Taxes And Assessments.

The Association must pay all taxes and assessments (not separately charged to each interval by the assessing authority), including assessments by the condominium association and governmental assessments. It will pay taxes, assessments and the other amounts due as the agent of the owners. This does not change or reduce a license holder's duty under his vacation license to pay the licensor applicable room taxes, sales taxes or any other taxes customarily paid by hotel guests or holders of use privileges in time share plans in the State of Hawaii.

(e) Liens Or Claims

The Association may, but is not required to, pay, compromise or contest liens or claims affecting the vacation apartments or common furnishings.

(f) Utilities.

The Association must obtain and pay for water, electricity, sewage and garbage disposal, and any other necessary utility services for each vacation apartment. The Association will decide whether to obtain or end telephone, cable television, and similar services.

(g) Association Rules.

The Association must adopt, publish and enforce fair and reasonable rules and regulations relating to the use of the vacation apartments, including, but not limited to reasonable reservation and check-in and check-out procedures. The Association has already adopted the initial Association rules. The association rules must be consistent with the provisions of this declaration and the By-Laws. The Association may revise the Association rules from time to time.

(h) Legal And Accounting Services.

The Association must obtain and pay for any legal and accounting services which are required.

(i) Financial Statements.

The Association must have the following statements for the vacation apartments prepared and sent to each owner:

(1) The Budget.

A budget of plan expenses for the resort vacation plan for each "fiscal year" (tax year). The budget must be sent to the owners at least 60 days before the start of each fiscal year and comply with Section 514E-10.3 of the Hawaii Revised Statutes, as amended.

(2) The Annual Report.

An annual report must be sent to each owner within 120 days after the end of each fiscal year. It must include:

(i) A balance sheet (a document showing the assets, liabilities and net worth of the Association) as of the end of the fiscal year;

(ii) An operating statement for the fiscal year;

(iii) A statement of the net changes in the financial condition of the Association for the fiscal year; and

(iv) Any other information required by the law of any place (for example, another state) where the resort vacation plan is registered for public sale.

The annual report must be prepared by an independent accountant as required and noted below.

(j) Unless The Timeshare Interest Holders Decide Differently, The Kihei Timeshare Owner's Association May Vote For Each of the Eleven Vacation Apartments In the Kihei Akahi Condominium Association that Comprises KTOA.

The Association may vote on behalf of each vacation apartment in the condominium association unless the timeshare interest holders elect, by a vote or the written consent of the holders a majority of the

timeshare interests in a vacation apartment, to exercise the vote for that apartment themselves.

The Board, through its representative, may vote for that vacation apartment in the manner it considers to be in the best interest of the owners.

If, because of circumstances beyond its control, the Association does not have time to send out ballots, the Board, through its representative, may vote on behalf of each vacation apartment as it decides is in the best interests of its owners. This would apply, for example, to matters properly before the condominium association which were not specifically described on the agenda and not reasonably expected to arise.

Except as provided in the first sentence of this subsection (j), each owner will be considered to have authorized the Association to act for him at any meeting of the condominium association. For this purpose, by accepting the conveyance of the interval, each owner irrevocably (permanently) appoints the Board as his proxy (representative) to represent him or to appoint a representative for him at all meetings of the condominium association. No further authorization or proxy is or will be needed to authorize the Board or its delegate to act for that owner at any meeting 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 representative to cast the vote of the vacation apartments at any meeting of the condominium association or to carry out its other duties under this declaration.

(k) Insurance.

The Association must buy and at all time keep in effect the insurance required under Part 12.

(l) The Association May Do Anything Necessary Or Helpful To Run The Vacation Apartment.

The Association may do all other things or acts which it considers to be necessary, desirable or helpful to run the resort vacation plan or to maintain, repair, preserve or protect the vacation apartments and their common furnishings or to carry out its assigned duties as the licensor under the vacation

licenses. Of course, the Association may not exceed the limitations contained in Hawaii law.

(m) The Association May Delegate Its Power And Duties To The Plan Manager/RME And Others.

The Association may delegate its power and duties under this declaration to one or more agents, including among others, a plan manager or RME. The agents will be under the supervision of the Board.

6.3 The Association Must Hire A Plan Manager/RME To Run The Resort Vacation Plan.

Unless the board decides to act as Plan Manager, the Association has the duty to use its best efforts to hire and maintain a reputable firm as the Plan Manager/RME for the vacation apartments and the resort vacation plan

6.4 The Management Contract

If the Board votes to hire a Plan Manager or RME, the Plan Manager or RME must sign a written contract (the "management contract"). The management contract must contain the following provisions:

(a) Must Authorize And Require The Plan Manager/RME To Perform The Duties Of The Association.

The management contract must authorize and require the Plan Manager/RME to perform all of the duties of the Association, "subject to the direction of the Board". The management contract must provide, however, that the Plan Manager/RME, with the approval of the Board, may delegate its power and duties to one or more sub-agents for any period and upon any terms it decides is proper.

Shall Be For One Year With Renewals Each Year Unless Cancelled.

The Management contract may provide for an initial term of one year with written renewals each year after the end of the first term unless a written notice canceling the management contract is sent by either party at least 90 days before the renewal date.

(b) Must Be Subject To Cancellation Or Non-Renewal By the Association.

The Association must have the right to cancel the management contract without having to pay a cancellation fee. The Board must have the right to cancel the management contract whenever the Plan Manager/RME has violated a material part of it and fails to cure the violation

after receiving written notice. If the Plan Manager/RME disputes the cancellation, the matter will be determined by arbitration in accordance with the rules of Dispute Prevention and Resolution of Honolulu, and the Board or a Board approved representative member will represent the Association in the arbitration.

(c) Must Provide That The Plan Manager/RME Can Resign Only If He Gives Notice And Returns Records To The Association. The management contract must provide that the Plan Manager/RME can resign only if:

(1) it gives written notice to the Association at least ninety (90) days in advance; and

(2) on or before the effective date of its resignation it turns over all books and records relating to the management and operation of the vacation apartments and the resort vacation plan to the Association and the Association has acknowledged that it has received them.

(3) Management Fees The management contract must specifically state the management fees to be paid to the Plan Manager/RME.

(d) May Require The Plan Manager/RME To Obtain Errors And Omissions Insurance.

The management contract may provide that the Plan Manager/RME will obtain liability insurance naming the Association as agent for each of the owners as an insured. An "insured" is a person who is protected by the insurance and who is paid if there is a loss. 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.

6.5 Limitations On Contracts For More Than One Year

The Plan Manager/RME shall not enter into a contract with a person to furnish goods or services for the resort vacation plan for a period longer than one year unless specifically in writing authorized by the Board.

6.6 The Association And The Plan Manager/RME Are Not Responsible For Actions By The Owners or Vacation License/RTU Holders.

The Association, the Plan Manager, and RME (including all their directors, officers and agents), cannot be held responsible for the acts, failure to act, conduct or breach of contractual

obligation of any owner, Vacation License/RTU holder, exchange user, their visitors or any other user of any vacation apartment.

6.7 The President Or The Plan Manager or RME May Represent You Or The Association: Service Of Process May Be Made On The Board.

(a) The President Of The Association Or The Plan Manager or RME Will Represent The Association Or Timeshare Interest Holders Situated As A Class In Any Proceeding.

Each timeshare interest holder agrees that the President of the Association or the Plan Manager/RME may represent the Association or any two or more timeshare interest holders similarly situated as a class in any proceeding concerning the Association, the condominium association, the vacation apartments or the common elements. The President or the Plan Manager/RME may begin, defend, intervene in, prosecute or settle any such proceedings. This does not, however, limit the rights of any owner or license holder to appear, sue, or be sued separately or to decide to not participate. The President or the Plan Manager/RME are subject to the direction of the Board in any situation.

(b) You Give A Power Of Attorney To The President And The Plan Manager/RME To Act For You In Any Proceeding.

Each timeshare interest holder gives a power of attorney to and appoints the President of the Association and the Plan Manager/RME as his attorney-in-fact with full power to do anything which is needed or helpful to represent him as provided in section 6.7(a). That power is coupled with an interest, is irrevocable and will not be affected by any disability of the timeshare interest holder. (That means the power of attorney appointment is permanent.) Each timeshare interest holder will be bound by this section whether or not it expressly says so in the deed or whatever document transferred his interval to him.

(c) Service Of Process For The Association May Be Made On Members Of The Board.

Process (such as papers for a lawsuit) for the Association may be served on any member of the Board.

6.8 Self-Management By the Association If the Association, through the Board, decides to act as plan manager, the Board may delegate its power and duties to one or more sub-agents for any period and upon any terms it decides are proper, provided the requirements of section 6.1 above, are met.

PART 7

EXCHANGE PROGRAMS

7.1 The Association May Arrange For An Exchange Program

The Association has the power and the authority (but not a duty) to use the reasonable efforts to enter into a contract (the "exchange contract") with one or more organizations providing or operating an exchange program ("exchange company"). The exchange contract must permit (but not require) owners and license holders to participate in the exchange program. The Association may collect and/or pay any fee required to be paid by the resort vacation plan or the Association under the exchange contract. That cost will be a plan expense.

7.2 Complying With The Exchange Contract.

The Association must, at all times, repair and keep the vacation apartments 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 contained in the exchange contract.

7.3 The Association And The Plan Manager/RME May Not Be Held Responsible For Actions By An Exchange Company.

The Association and the Plan Manager/RME (including all their directors, officers, employees and agents) will not be responsible for the acts, failure to act or conduct of any exchange company or for the breach by an exchange company of any of its duties under an exchange contract with the Association or under any subscription agreement or other contract with an owner or Vacation License/RTU holder.

7.4 Participation In Exchange Program.

(a) Owners And License Holders May Participate.

At his own option and risk, any owner or Vacation License/RTU holder may participate in any exchange program whether or not the exchange program is the one picked by the Association. Any rules and regulations of the exchange program will not change or suspend the duties of the owner or Vacation License/RTU holder under the Vacation Plan Documents. Any amounts charged to the owner or Vacation License/RTU holder by the exchange company or relating to the exchange program will not

change or reduce the owner's or Vacation License/RTU holder's personal duty to pay all personal charges and assessments charged to him under the Vacation Plan Documents. Any owner or Vacation License/RTU holder participating in an exchange program must notify the Association in writing.

(b) Duty To Pay Charges Resulting From An Exchange.

If an owner or Vacation License/RTU holder participating in an exchange program exchanges his vacation week in this plan for use elsewhere, he must pay all amounts reasonably charged to him at the other timeshare project.

(c) A Suspension Will Take Away Your Right To Exchange Unless An Exchange User Has Confirmed Reservations.

If an owner or Vacation License/RTU holder participating in an exchange program is suspended under section 10.3, the suspension also applies to any exchange rights the owner or Vacation License/RTU holder may have. The Association must notify that exchange program of the suspension. Existing confirmed reservations made by an exchange user through the owner's or license holder's exchange program will not, however, be affected by any suspension.

7.5 An Exchange User's Duties.

(a) What An Exchange User Must Do Himself

If a person occupying a vacation apartment is an exchange user, then:

(1) he must abide by the condominium and the vacation plan documents and see that his visitors do so;

(2) he will be responsible for (and personally liable for) his visitors just as if he were an owner or a license holder;

(3) he must promptly pay all personal charges incurred during his vacation week (for example, charges for extra maid services or telephone calls made or received);

(4) he must promptly pay all other personal charges arising from or related to his use of the vacation apartments, the common furnishings or the project (for example, legal fees paid to force him or

his visitors to leave after the vacation week ends or to collect personal charges charged to him or his visitors);

(5) he will be considered the timeshare interest holder for the purposes of section 3.6. Among other things, this means he will be liable for and must pay all sums charged to him under subsections 3.6(b)(3) and 3.6(b)(4);

(6) he will not be liable for or have to pay any regular or special assessment;

(7) he will not be considered a member of the Association and will not have the right to vote in the Association.

(b) Exchange Users And Their Visitors Are Liable Separately And Together.

Each exchange user and his visitors are jointly and severally liable to pay all personal charges and all other charges arising from or related to the exchange user's or his visitor's use of the vacation apartment, the common furnishings, or the project. This means that either the exchange user or his visitor or both may be held responsible to pay the whole amount, not just part of it or his share of it. It does not matter if there is more than one exchange user or more than one visitor; each exchange user and each visitor is responsible separately and together with the others.

7.6 The Association, The Plan Manager/RME, And The Exchange Company May Not Be Held Responsible For Actions By Exchange Users.

The Association, and the Plan Manager/RME, and the exchange company (including all their directors, officers, employees and agents) may not be held responsible for the acts, failure to act or conduct of any of the exchange users or their visitors or for the breach of any of the duties of any of the exchange users or their visitors.

PART 8

ASSESSMENTS AND PERSONAL CHARGES

8.1 Plan Expenses": The Cost Of Running The Resort Vacation Plan.

The costs of owning, maintaining, repairing, improving and operating the vacation apartments and the resort vacation plan are called the "plan expenses". The plan expenses will be shared

by the owners and license holders. The share charged to an interval or vacation license is called an "assessment". The portion of this Part on assessments basically explains how the Association divides the plan expenses among the timeshare interest holders.

Plan expenses may include among other things, any or all of the following:

(a) The cost of providing utility services to the vacation apartments, including, for example, water, electricity, garbage disposal, telephone and cable television.

(b) The cost of repairing, rebuilding or replacing any vacation apartment or its common furnishings.

(c) The cost of buying insurance required or permitted under this declaration.

(d) Wages, accounting and legal fees, management fees, start-up fees, maid service and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred for the vacation apartments or resort vacation plan.

(e) All common expenses and assessments charges to the vacation apartments by the condominium association. Generally, "common expenses" are the expenses of operating a condominium project; they are shared among the apartments in the manner described in the condominium declaration. If any amount is charged by the condominium association due to an intentional or negligent act by an occupant of a vacation apartment, that amount will be a plan expense and the association must pay it. But, the Association is entitled to be reimbursed by the responsible person and the amount owed will be passed on to that person as a personal charge.

(f) Any taxes or other governmental charges upon or charged to any vacation apartment, its common interest in the common elements, its common furnishings or any other interests of the timeshare interest holders (except taxes which are separately charged to the individual owners). Examples of this type of expense include real property taxes, hotel or bed taxes or any governmental charges imposed in place of a hotel or bed tax.

(g) Any liability for loss or damage in connection with the vacation apartments or their use.

(h) The assessments, personal charges, and any other amounts of money owned by any owner or Vacation License/RTU holder to the Association (to the extent the

Board decides that because of the costs of collection or for any other reasons those amounts have become (uncollectible). This includes but is not limited to any amounts charged to a Vacation License/RTU and not paid before the license is cancelled or surrendered.

(i) Amounts needed to make up any shortfall in funds to pay the plan expenses for any prior year.

(j) Amounts needed for the capital improvements accounts. The capital improvements accounts are basically accounts of the Association to be used for capital improvements. "Capital improvements" are things such as replacing the carpeting or appliances, other major repairs and remodeling, or the replacement of the vacation apartments or common furnishings. (Capital improvements are not day to day maintenance or repair.)

(k) Any amounts needed by the Board to buy an interval in a foreclosure sale.

(l) Any amounts charged by the Board to buy an interval in a foreclosure sale.

8.2 Budgeting For Plan Expenses.

(a) Each Year, The Board Must Prepare A Budget.

At least ninety (90) days before the start of each fiscal year, the Plan Manager/RME or the Treasurer of the Association will prepare (in accordance with generally accepted accounting principles and Section 514E-10.3, HRS) and give to the Board an estimate of the plan expenses for the following year. The estimate will cover the plan expenses for all apartments paying assessments or expected to be paying assessments by the start of the fiscal year. Upon reviewing and approval by the Board, this estimate (with any charges the Board makes will become the "budget" for that year. The budget must specifically identify the apartments it covers.

(b) The Budget Must Set Aside Funds For The Capital Improvements Savings Accounts.

When it reviews and approves the budget, the Board must consider what specific capital improvements may be needed during the next ten (10) years. The Board will then estimate: (i) the cost for each capital improvements; and (ii) the amount of money that should be set aside each year to save up enough to pay for the capital improvements by the time it is needed. The Board must include this amount in the budget.

8.3 When Assessments Begin For Each Vacation Apartment.

The assessments will begin for each vacation apartment on the date an original deed or agreement of sales transferring the first interval in that vacation apartment is recorded.

8.4 Determining Each Owner's and License Holder's Share Of Plan Expenses: Regular Assessments.

The owner of each interval will pay a share of the plan expenses. In the case of intervals originally owned by the developer and transferred to the Association which are subject to a Vacation License/RTU, the Vacation License/RTU holder (not the Association as owner of the underlying interval) will pay the share of plan expenses while the Vacation License/RTU is in effect. The share for each interval (or Vacation License/RTU) is called the "regular assessment". The regular annual assessment will be determined as follows:

(a) Intervals In Basic Apartments.

Divide the plan expenses for each apartment by the product of 51 (representing the 52 use weeks in each year minus the one use week set aside as a service period) times twelve (representing the twelve months over which maintenance fees are to be spent (payable)—delete payable) times the number of vacation apartments in the plan for which assessments have begun under section 8.3.

(b) Vacation Licenses/RTUs In Basic Apartments.

Vacation License/RTU holders shall pay the assessment required by the terms of their Vacation License/RTU. Under their Vacation Licenses/RTUs the holders are obligated to pay the annual expenses of owning, maintaining, repairing, improving and operating the resort. In essence, this means that the Vacation License/RTU holders must pay the same assessments imposed on the owners of intervals in basic apartments. Those assessments will be paid to the Association or the Plan Manager/RME as directed by the Board. The Board shall calculate the regular assessment due from Vacation License/RTU holders under their Vacation Licenses/RTUs. In doing so, the Board will include all of the items contained in the budget. The Board must also take into account the fact that this declaration makes provision to set aside one week per year in each vacation apartment as a service period for maintenance and repair of the apartment and its common furnishings. As a result, the regular annual assessment for Vacation Licenses/RTUs shall be the same as the assessment for intervals in basic apartments determined as provided in section 8.4(a) above.

8.5 What The Board Can Do If The Association Needs More Money; Special Assessments.

(a) If A Shortfall Exists, The Board May Add It To Next Year's Budget Or Charge A Special Assessment.

If for any reason the regular assessments for the plan expenses are, or will be, inadequate to pay on time all expenses of the Association, the Board will immediately determine the estimated amount of the inadequacy or shortfall. The Board then has two choices. It may (i) include an amount sufficient to make up the shortfall in the budget plan expenses for the next year, or (ii) charge a special assessment.

(b) A Shortfall Of Money Needed To Repair Damage Or Destruction.

If the costs to repair damage or destruction to a vacation apartment or to repair or replace the common furnishings in it cannot be fully paid by using available insurance proceeds and the money from the capital improvement 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 intervals regardless of where or how the damage occurred or whether the Association is entitled to be repaid by an occupant.

(c) How A Special Assessment Will Be Charged.

In order to charge a special assessment, the Board must prepare a supplementary budget showing the amount of the shortfall and send a copy to each owner and Vacation License/RTU holder. The Board will charge to each interval or Vacation License/RTU a share of the total shortfall shown on the supplementary budget calculated in the same manner as regular assessment are determined under section 8.4(a), and (b).

8.6 The Contingency Account.

The Board may separately budget, establish and maintain a contingency account.

8.7 Personal Charges.

A "personal charge" is any expense resulting from the act or failure to act by any owner, Vacation License/RTU holder, visitor or exchange user. Personal charges should not be confused with regular and special assessments. The following expenses, among others, are considered personal charges:

(a) the cost of long distance telephone charges, and other special services or supplies resulting from the occupancy of the vacation apartment during that person's vacation week;

(b) the cost to repair any damage to the vacation apartment or to repair or replace any common furnishings in it because of loss or damage occurring during that person's vacation week which is not caused by ordinary wear and tear or by unavoidable casualty or accident;

(c) expenses to any other timeshare interest holder or the Association due to any intentional or

(d) negligent act of that person;

(e) expenses resulting from any intentional or negligent violation of any provisions of the condominium or vacation plan documents by that person;

(f) the cost to collect any assessments or other personal charges from that person, including court costs and reasonable attorneys' fees; and

(g) any late charges and interest on overdue payments.

8.8 How Assessments And Personal Charges Will Be Collected.

(a) You Will Pay Your Assessments And Personal Charges To The Association.

Payments of all assessments and personal charges must be made to the Association. It will act as the agent of all timeshare interest holders. The Association will send payments on behalf of each timeshare interest holder to the persons entitled to receive them. The Association may delegate this duty to the Plan Manager/RME.

(b) You Pay Your Assessments As The Board Decides.

The Board will pick the due date for assessments and will decide whether they must be paid in one lump sum or in installments. The Board may require that assessments be paid in monthly, quarterly, semi-annual, annual or other periodic installments and may require that they be paid in advance.

(c) A Bill For The Assessment Will Be Mailed To You or e-mailed to your e-mail address if each owner individually agrees to this form of announcement of the billing.

The assessments will be charged by mailing or e-mailing to each owner or Vacation License/RTU holder, at the address shown on the records of the Association, a bill stating the amount of the assessment for his interval or Vacation License/RTU and the due date. If there is more than one owner of a single interval, the bill may be sent to any of its co-owners. The same rule applies to Vacation License/RTU. Regardless of 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.

(d) How You Will Pay Personal Charges.

Personal Charges will be paid as follows:

1. A bill for any personal charge which is ready at check-out time must be paid at that time.

2. Personal charges which are not billed and paid at check-out time must be paid within fifteen (15) days after a bill for the personal charges is received.

3. At any time before or during any person's occupancy, the Association or the Plan Manager or RME may require an advance payment or security deposit from any occupant if they believe it to be appropriate. The Association or Plan Manager/RME may (but are not required to) use these funds to pay any personal charges of that person. The Association may keep the money or any unspent part of it until all charges relating to that person's occupancy have been paid. Neither the Association nor the Plan Manager/RME will be liable for not asking for or not keeping advance payments or security deposits. The request or failure to request and keep them does not excuse any occupant from his duty to pay his personal charges.

8.9 How Payments Collected By The Association Will Be Held And Used.

(a) Assessments May Be Used Only For Certain Limited Purposes.

Assessments must be used exclusively for the following purposes:

(1) to promote the recreation, health, safety and welfare of the timeshare interest holders,

(2) for the ownership, improvement, operation, maintenance, repair and replacement of the vacation apartments and common furnishings,

(3) to pay common expenses and other amounts due under the condominium documents, or

(4) to pay for the operation and administration of the resort vacation plan and to repay the Association for expenses it incurs in performing its duties as set forth in this declaration.

(b) Deposit And Use Of Funds.

(1) In The General Account.

All payments received by the Association or the Plan Manager/RME will be placed in a general insured account in a safe and responsible bank located in the State of Hawaii. Funds put in general accounts may be used by the Association only for the purposes for which those funds were collected. Any extra money in the general account at the end of any year must be used to pay plan expenses of the resort vacation plan in the following year. At the annual meeting each year, the Association must adopt a resolution requiring this.

(2) The Contingency Account.

At the discretion of the Board, a contingency account may be instituted.

(3) The Capital Improvement Account.

Any part of the regular assessment which is intended for a capital improvement account will be transferred to a separate insured account with a safe and responsible depository (such as a bank promptly after the Association receives the payment. The money set aside for the capital improvement account may be put in a savings or checking account. It may also be invested in Treasury Bills or Certificates of Deposit or other obligation of any 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.

The Board will authorize payments from the capital improvement savings account as needed. The money in this account may be used only to pay for capital improvements. The assessment for this account will be considered conclusively to be savings of the owners and license holders held for their benefit to pay for capital improvements.

8.10 You Are Obligated To Pay Your Assessments And Personal Charges.

(a) You Have Promised to Pay Your Assessments and Personal Charges.

By accepting the conveyance of an interval, each owner promises to pay all assessments for his interval and all personal charges charged to him. Likewise, each Vacation License/RTU holder has promised, in his Vacation License/RTU, to pay all assessments and personal charges charged to him. Each owner and Vacation License/RTU holder makes this promise despite whether the document transferring his interval or Vacation License/RTU to him expressly says so. While a Vacation License/RTU is in effect, the Association may only require the Vacation License/RTU holder (not the owner) to pay the assessments and personal charges for the interval.

(b) You Are Personally Obligated To Pay the Assessments And Personal Charges. Exception For Trusts.

Each owner and Vacation License/RTU holder is personally obligated to pay on time all assessments charged to his interval and all personal charges charged to him. In the case of intervals subject to a Vacation License/RTU, the Association may only hold the Vacation License/RTU holder (and not the owner) personally obligated to pay on time all assessments charged to his Vacation License/RTU and all personal charges charged to the Vacation License/RTU holder. An owner or Vacation License/RTU holder cannot avoid liability for the assessments and personal charges by not using his interval or by abandoning it. Even if an owner (or Vacation License/RTU holder) transfers his interval (or Vacation License/RTU) to another, he is still personally obligated to pay all assessments and personal charges due before the transfer is effective. This includes all costs or collection, including attorney's fees.

If, however, a Vacation License/RTU holder surrenders his Vacation License/RTU as permitted in it, the Vacation License/RTU holder will not be obligated to pay assessments or personal charges (except personal charges incurred before the Vacation License/RTU is surrendered). When that happens, the owner of the interval covered by the Vacation License/RTU surrendered will start being personally obligated to pay all assessments and personal charges charged after the surrender takes place (but not for the assessments and personal charges due before the surrender occurs).

If title to any interval is transferred to a trustee under a land trust or a master trustee under a master trust, the

trust estate and the beneficiary will be liable for and must pay all assessments and personal charges against that interval or the owner of it. If the interval is subject to a Vacation License/RTU, the Vacation License/RTU holder (not the beneficiary) will be liable for and must pay all the assessments and personal charges. Either way, no claim for payment of assessments or personal charges will be made against the trustee personally.

(c) You Must Pay A Late Charge And Interest On Any Overdue Payments.

All sums which are due under this declaration will be subject to a late service fee and a subsequent percentage late charge at a rate determined from time to time by the Board (but never higher than allowed by law) if not paid within ten (10) days of the due date and interest will be charged a rate set by the Board or if the Board fails to set a rate then at 1% per month from that due date or such other maximum rate of interest per annum then allowed by Chapter 478, Hawaii Revised Statutes, or any successor or substitute law. If those sums are advanced or paid by the Plan Manager/RME or the Association or any other timeshare interest holder pursuant to this declaration, the person who did not pay will still be subject to the same late charge and interest starting ten (10) days after repayment is requested.

(d) If You Are Behind In Paying Your Assessments, The Association May Rent Out Your Vacation Week.

If an owner or Vacation License/RTU holder:

(1) is more than sixty (60) days late in paying any assessment charged to him under the Vacation Plan Documents, and

(2) does not make that payment within ten (10) business days after the Association sends a written demand to pay,

then in addition to any other rights it has, and unless the Association rents out the vacation week (as permitted under paragraph 3.8), the Association will have the right to rent the timeshare interest holder's vacation week and use the rent money first to pay the cost of arranging the rental and then to pay all overdue assessments (including penalties, late charges and so forth) owed by the timeshare interest holder. Any excess funds may be used by the Association for payment of any plan expenses and will not be credited to or for the account of the defaulting owner or Vacation License/RTU holder. (The intent here is to be sure the defaulting owner or Vacation License/RTU holder doesn't profit by his wrongdoing.)

8.11 Assessments And Personal Charges Become A "Secured Lien" On The Interval. The Secured Lien May Be Foreclosed And The Interval Sold.

(a) The Interval May Be Foreclosed On And Sold To Pay Assessments And Personal Charges.

In order to protect against owners and Vacation License/RTU holders who don't pay, assessments and personal charges automatically become a "secured lien" upon the interval against which the assessment or personal charge is made. This means that the owner's interval is put up as collateral to make sure he or his Vacation License/RTU holder pays his assessments and personal charges. If payment is not made, the secured lien may be "foreclosed" by power of sale, for fee simple owners which means that the interval will be sold and the money from the sale will be used to pay the debt. In the case of intervals covered by a Vacation License/RTU, the interval will not be cancelled (foreclosed) deleted if (i) the Vacation License/RTU holder surrenders the Vacation License; or (ii) the owner, KTOA, cancels the Vacation License/RTU holder's Vacation License/RTU, in either case, within ninety (90) days after the owner is notified that the Vacation License/RTU holder has not paid. All intervals are subject to the secured lien. (This includes any interval which is held in trust despite any transfer of the beneficial interest under the trust.)

(b) A New Owner Is Not Personally Liable For Assessments And Personal Charges Due Before He Becomes The Owner. But There Will Be A Secured Lien On His Interval For Those Assessments And Personal Charges Which must be paid by the seller directly or through escrow prior to the escrow closing and the new owner being accepted by KTOA.

If the interval is transferred, the new owner is not personally responsible to pay assessments and personal charges charged to the previous owner and due before the date the transfer took place. However, the interval will still be subject to the secured lien for all the unpaid assessments and personal charges of the previous owner. Consequently, the secured lien on the interval still could be foreclosed. If that happens, the interval would be taken away from the new owner and sold to pay the overdue amounts. The new owner would get only the money that is left (if any is left) after all unpaid assessments and personal charges have been fully paid. Vacation License/RTU weeks must also have a current clear balance before they are accepted for transfer by KTOA.

(1) How A New Owner Can Protect Himself Against This Lien.

A new owner, whether a Vacation License/RTU holder or a purchaser in a fee simple sale via escrow, can protect himself from foreclosure for assessments and personal charges due before he became the owner of the interval by asking the Association for a letter showing any past due assessments and personal charges.

(2) An Interval Bought At A Foreclosure Sale Is Not subject To This Lien.

If someone buys an interval at a foreclosure sale, the buyer is not liable for any assessment or personal charge due before the sale is completed. In addition, the interval will not be subject to the secured lien for any assessments and personal charges which became due before the interval was transferred to the buyer. However, there will be a secured lien on the interval for all amounts which become due under this declaration after the date that the interval is transferred to the buyer at the foreclosure sale.

(3) What Happens If A Vacation License/RTU Is Cancelled Or Surrendered.

If a Vacation License/RTU holder fails to pay assessments and personal charges and the Vacation License/RTU is cancelled or surrendered, the cancellation or surrender is treated like a foreclosure sale. As a result, the owner is not liable for any assessment or personal charge due before the cancellation or surrender occurs. Instead, KTOA will take the interval back and sell it to recover the past due charges, and, if there are any excess proceeds, retain those proceeds as well.

(c) How The Rules Apply To 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. Nevertheless, there will be a secured lien on the interval covered by the agreement of sale for all unpaid assessments and personal charges for which the buyer is personally liable. The secured lien will remain on the interval even if the agreement of sale is later cancelled and the seller again becomes the "owner" of it. Consequently, the secured lien for unpaid assessments and personal charges which became due when the buyer was considered the owner may be foreclosed at any time, before or after the agreement of sale is cancelled.

If that happens before the agreement of sale is cancelled, the interval would be taken away 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 is left) after all unpaid assessments and personal charges have been fully paid. If that happens after the agreement of sale is cancelled, the interval would still be taken from the seller and sold. In either case, the Association will retain any money that is left after the unpaid assessments and personal charges have been fully paid.

(d) Certain Rights Of A Lender Will Not Be Affected By The Secured Lien.

Despite any other provisions of this declaration, the liens created by this declaration will be subordinate to (subject to and will not affect) the rights or remedies of any lender who has a first mortgage on an interval or a security interest in a vacation license (or the proceeds of either) for a loan made in good faith and for value, if the mortgage or financing statement is recorded before a notice of lien is recorded as provided in Part 10.

(e) The Association Will Provide A Letter Showing All Unpaid Amounts Due On Your Interval Or Vacation License/RTU.

Since an interval may be sold to pay overdue assessments or personal charges of a previous owner, persons who want to buy or lend against an interval should know if there are any unpaid assessments or personal charges. Any owner, lender, potential lender or potential buyer of an interval or vacation license may ask the Association for a letter showing all amounts unpaid with respect to that interval or a vacation license. Within twenty (20) days after receiving the request, the Association must provide the letter. The Association may have the Plan Manager/RME do this. That letter will be binding upon the Association in favor of any person (other than the owner or the vacation license holder/RTU) who relies on it in good faith. Consequently, after the transfer or mortgage is made the Association may not foreclose on a secured lien for any assessments or personal charges due prior to the date of the letter unless the assessment or personal charge is disclosed in the letter. The Association may charge a reasonable fee for preparing that letter.

PART 9

TIMESHARE INTEREST HOLDER'S RESPONSIBILITY
FOR OTHERS

9.1 You Are Liable Separately And Together With Your Co-Owners Or Holders.

If there is more than one owner of a single interval, each co-owner is jointly and severally liable to pay all assessments and personal charges. Likewise, if there is more than one vacation license holder of a single vacation license, each of them is jointly and severally liable to pay all assessments and personal charges. "Joint and several liability" means that each person may be held responsible to pay the whole amount of the personal charge or assessments, not just part of it or his share of it. It does not matter that only one person uses the vacation apartment during the vacation week or that personal charges were caused by only one of the persons and not the others. For example, when one person damages the furniture or makes or receives a long distance call, he and each of his co-owners or holders are responsible separately and together to pay for it.

9.2 As A Timeshare Interest Holder, You Are Personally Responsible For Your Visitors, But Not For Exchange Users.

(a) An owner or license holder is personally responsible to see that his visitors:

(1) abide by the condominium and the vacation plan documents;

(2) promptly pay all personal charges incurred during his vacation week (for example, charges for telephone calls made or received);

(3) promptly pay all other personal charges arising from or related to his visitor's use of the vacation apartments, the common furnishings or the project (for example, legal fees paid to force his visitor to leave after the vacation week ends).

(b) A timeshare interest holder is not personally responsible for the acts of an exchange user using that timeshare interest holder's vacation week through an exchange program.

(c) The Association, as owner of an interval subject to a vacation license/RTU, is not responsible in any way for the acts of the vacation license holder/RTU.

9.3 You Must Pay For Your Visitor's Acts Or Failure To Act.

By permitting his visitor to come onto the project (despite whether the visitor is expressly invited), the owner or license holder agrees that he will be fully responsible for:

(a) any loss, damage or destruction caused by the act or failure to act of his visitor;

(b) any violation of the condominium or vacation plan documents by his visitor; and

(c) any personal charges incurred by his visitor.

The owner or license holder/RTU will be responsible for the acts (or failure to act) of his visitors just as if they were his own acts or failure to act. If his visitors do not pay all amounts charged to them, the owner or license/RTU holder must pay those amounts. The owner or license/RTU holder must also pay all costs of trying to collect any amounts charged to his visitor, including court costs and reasonable attorneys' fees. And, the owner or license holder/RTU must pay all other amounts charged to him as a result of his visitors. Once again, KTOA is not responsible for the acts or failure to act of an exchange user, guest, fee simple owner or license holder/RTU or their visitors.

9.4 A Timeshare Interest Holder And His Visitors Are Liable Separately And Together.

Each owner or Vacation License/RTU holder and his visitors are jointly and severally liable to pay all personal charges and all other charges arising from or related to the visitor's use of the vacation apartment, the common furnishings, or the project. This means that either the owner or Vacation License/RTU holder, or his visitor, or both may be held responsible to pay the whole amount, not just part of it or his share of it. It does not matter if there is more than one owner or Vacation License/RTU holder or more than one visitor; each of them is responsible both separately and together with the others.

9.5 The Amount Owed By You As A Timeshare Interest Holder Because Of Your Visitors Is A Personal Charge.

Each owner or Vacation License/RTU holder is personally obligated to pay the amounts charged to him under this Part. Those amounts will be charged to the owner or Vacation License/RTU holder as a personal charge. Consequently, the owner's interval will have a secured lien on it. In the case of an interval subject to a Vacation License/RTU, (the owner) KTOA will not be personally obligated to pay amounts charged to the Vacation License/RTU holder. But the owner's interval will have a secured lien on it.

PART 10

ENFORCEMENT

10.1 Who May Enforce The Condominium Documents Or The Vacation Plan Documents.

If anyone violates any of the provisions of the condominium documents or the Vacation Plan Documents, the Plan Manager/RME or the Association (acting through the Board) have full power and the right to enforce compliance in any manner permitted in this declaration. All enforcement powers contained in this declaration will be cumulative (they may be used one at a time or all at once). By acquiring an interval or Vacation License/RTU, each owner or Vacation License/RTU holder has promised and agreed that the Association has all of the rights, powers and remedies contained in this declaration. By accepting a Vacation License/RTU, each Vacation License/RTU holder has also agreed that any supplemental rights, powers and remedies contained in this declaration to the fullest extent that the provisions of this declaration may be adopted under the Vacation Licenses/RTUs as rules and regulations for the operation and management of the program or as changes required by the circumstances.

(a) Other Violations Of The Condominium Or Right to Use Plan Documents Or A Lack Of Enforcement Will Not Affect The Right To Enforce.

A violation of the condominium or Vacation Plan Documents by anyone will not relieve anyone else from his duty to continue to comply with the condominium documents and the Vacation Plan Documents. The failure to enforce any provision of the Vacation Plan Documents will not be a waiver of the provision or restrict the right to enforce it later.

(b) You Will Have To Pay Attorneys' Fees And Costs If You Violate The Vacation Plan Documents Or The Condominium Documents.

The Plan Manager or RME, the Association or the condominium association may employ an attorney to enforce the provisions of the condominium documents or the vacation plan documents against any occupant. If that happens, the person violating the condominium documents or vacation plan documents must pay, in addition to any other amounts due, all reasonable attorneys' fees and costs incurred by the person who hired the attorney.

10.2 The Association And The Plan Manager/RME May Enter Your Apartment To Stop Any Violations Or To Protect Others.

The Association and the Plan Manager/RME have the right and power to enter any vacation apartment (i) to stop a violation of any law or the condominium documents or vacation plan documents, or (ii) to stop any activity which is unauthorized,

prohibited, harmful, offensive or potentially dangerous to others or their property rights, or (iii) to protect the property rights and welfare of others.

10.3 The Association May Take Away Your Privileges In The Plan And Fine You For Violations.

If any owner or Vacation License/RTU holder or his visitors violate the condominium documents or vacation plan documents, (including but not limited to the failure of the timeshare interest holder to pay any assessments or personal charge on time) the Association (KTOA) may charge him a money penalty and/or suspend (take away) his rights under this declaration. Rights which may be suspended include, among others, the owner's or vacation license holder's (and his visitors) right to occupy the vacation apartment during his vacation week and the timeshare interest holder's right to participate in any vote or other decision provided for in this declaration. The Association, KTOA, may also: (i) suspend utility and other services to the owner's or Vacation License/RTU holder's assigned vacation apartment during his assigned vacation week(s); (ii) may fine or suspend the rights of the owner or Vacation License/RTU holder; or (iii) exercise any other rights provided in this declaration against them.

(a) You Will Have A Chance To Present Your Case To The Board Unless You Don't Pay Your Assessments Or Personal Charges.

The Board must hold a meeting and give the owner or Vacation License/RTU holder a chance to present his case before it fines him or suspends his privileges and services unless the suspension is because of the owner's or Vacation License/RTU holder's failure to pay any assessment or personal charges on time. Written notice of the meeting must be sent to the owner or Vacation License/RTU holder at least 15 days in advance. The notice must state the purpose of the meeting and the reason for the proposed fine or suspension. A quorum of the Board as defined in the By-laws must be present and the meeting must be held properly as provided in the By-laws. The owner or Vacation License/RTU holder is entitled to appear and to explain why the penalty should not be imposed. (The Board will decide whether the owner's or Vacation License/RTU holder's defense will be oral or written.) The decision whether to suspend privileges or services or to fine the owner or Vacation License/RTU holder will be made by a majority of the Board members present at the meeting.

(b) The Fine Or Suspension Will Be Effective When You Are Sent Written Notice.

Written notice of any action taken by the Board and the reasons for it must be sent to the owner or Vacation License/RTU holder. The disciplinary action will take effect on the date that the notice is sent.

(c) A Suspension Will Take Away Your Right To Exchange.

If an owner or Vacation License/RTU holder participating in an exchange program is suspended, the suspension also applies to any exchange rights the owner or Vacation License/RTU holder may have. See section 7.4(c).

(d) When Your Privileges Will Be Restored.

If an owner or Vacation License/RTU holder is suspended for failing to pay amounts due under this declaration, the suspended privileges and services will be restored automatically thirty (30) days after the owner or Vacation License/RTU holder 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 automatically restored at the end of the period stated in the suspension notice and after payment of any fine imposed.

(e) The Board May Give The Plan Manager or RME The Power To Carry Out The Fines Or Suspensions It Imposes.

The Board may give the Plan Manager/RME the power and authority to carry out any disciplinary actions imposed by the Board, including the right to suspend, without a hearing, an owner's or Vacation License/RTU holder's right to occupy his apartment and to exercise his other rights and privileges during the period of time that he is behind in paying amounts due under this declaration.

10.4 The Condominium (AOAO) Documents Or The Vacation Plan Documents May Be Enforced By Filing A Lawsuit.

The Association, the Plan Manager/RME or any timeshare interest holder may ask a court to enforce the condominium (AOAO) documents or the Vacation Plan Documents and ask for any appropriate relief. For example, the appropriate relief could be damages or the specific enforcement of the provisions of those remedies. The Association or the Plan Manager/RME shall have the right to take the interval of any defaulting owner (or to cancel the Vacation License/RTU of any Vacation License/RTU holder) in any lawful manner.

(a) A Violation Will Be Considered A Nuisance.

Every violation of any provision of the condominium (AOAO) documents or the vacation plan documents will be considered a nuisance. The Association, the Plan Manager or any affected timeshare interest holder may seek an "injunction" (an order to stop the owner or Vacation License/RTU holder from doing something or to force him to do something) or any other appropriate relief to end the nuisance.

10.5 Your Interval Is Subject To A Secured Lien.

(a) The Secured Lien Works Like A Mortgage.

The Association and affected owners have a secured lien on each interval as security (collateral) for the prompt payment of all assessments and personal charges and the performance by each owner of his duties under the condominium documents and the vacation plan documents. The secured lien is like a mortgage with a private power of sale. This means that the interval may be sold at a public auction with or without obtaining a court order. The secured lien will cover all interests on an interval, 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 may have or acquire any interest in or to any interval or vacation license/RTU.

(b) The Secured Lien May Be Foreclosed And Your Interval Sold.

The secured lien on an interval owned in fee simple may be foreclosed in any lawful manner (by the Association or by the affected owners, as provided in this Part) and the defaulting owner's interval may be sold.

(1) Giving Notice Of Default.

Before the sale, the foreclosing person must give a notice to the defaulting owner explaining the violation. A copy must also be sent to the lender of the defaulting owner if the lender has asked for a copy and furnished its name and address to the Association. If the interval of the defaulting owner is subject to a Vacation License/RTU, the Vacation License/RTU holder must also be given a copy of the notice. The notice must state the date and nature of the violation and must demand that the default be cured. If the owner's default is that he or the holder of a Vacation License/RTU covering his interval failed to pay money, the notice must also state the total of any unpaid amounts.

(2) Recording A Notice Of Lien And Or Intent To Foreclose.

If the violation is not cured within ten (10) days after delivery of the notice (to the owner), then a notice of lien and of intent to foreclose on fee simple owner's interval ("notice of lien") will be recorded. The notice of lien must be signed by KTOA and must state:

(I) the name of the defaulting owner,

(II) the apartment number of the defaulting person's vacation apartment,

(III) the use period and ID number of the defaulting person's interval,

(IV) the amount claimed to be due (after allowing for any proper offset) or the nature of any other violation,

(V) that the notice of lien is made by the foreclosing person under the terms of this declaration and the attached By-Laws,

(VI) that a secured lien is claimed against that interval for the violation and in an amount equal to the net amount due plus interest and the costs of enforcement, including attorneys' fees, and

(VII) that KTOA intends to have the interval sold in a foreclosure sale.

Each violation will be a separate basis for a notice of lien. But, a single notice of lien may cover more than one violation, and may include violations between the date of the notice of lien and the date of the sale. If any violation is cured before the foreclosure sale occurs, the officers of the Association are authorized to record a document (at the cost of the defaulting person) canceling any notice of lien recorded by the Association.

(3) Anyone May Buy The Interval.

The Association or anyone else may bid on and buy the interval at the foreclosure sale. The Association may offset the debt against the amount bid at the sale. The Board may buy the interval of a defaulting owner or accept a deed from the owner in place of foreclosure.

(4) The Buyer Will Be Subject To The Vacation Plan And Condominium (AOAO) Documents.

The person who buys the interval at the foreclosure sale will have to abide by the condominium (AOAO) documents and the vacation plan documents just like any other owner. Of course, the buyer will have to pay any assessments and personal charges which become due after the interval is transferred to him.

(5) You Must Pay Any Amounts Still Owing After The Sale.

The foreclosure sale may not produce enough money to pay all amounts due from the defaulting owner. If this happens, the defaulting owner remains personally liable for the difference, and the Association can still sue him to collect this unpaid amount.

(c) Some Mortgages And Other Encumbrances Are Subject To The Secured Lien.

Other than the exception described in subsection 8.11, 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 legal process upon any owner or any interval or Vacation License/RTU. The liens created by this declaration will be superior and controlling whether the notice of lien 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.

PART 11

[RESERVED.]

PART 12

DAMAGE, DESTRUCTION, INSURANCE AND CONDEMNATION

12.1 When The Association Must Repair A Damaged Or Destroyed Apartment Or Its Common Furnishings.

The provisions of the condominium documents will control as to all matters covered in them relating to damage or destruction to a vacation apartment or the common elements. However, subject to those documents, if a vacation apartment or its common furnishings are damaged or destroyed (other than by

ordinary wear and tear) the Association will immediately have that damage repaired and will replace anything which cannot be repaired. Damages caused by normal wear and tear, however, don't have to be repaired or replaced right away so long as the damaged item 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 condominium association and the Association (KTOA) 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 instance 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 may also use any money in a capital improvement account which is set aside for the type of repairs needed for or for replacement of items which must be replaced. The damage may not be covered by insurance, or the available proceeds or applicable capital improvement account may not be enough to pay the total cost of repairing or replacing the damaged property. If that happens, the Association may charge a special assessment to obtain the money needed to pay the cost of the repair or replacement.

(b) Although The Association Will Pay The Cost Of Repairing Damage Caused By Any Person, That Person Must Repay The Association.

If the damage or destruction was caused intentionally or negligently by any owner or Vacation License/RTU holder, or his visitor, that person must repay the Association for all expenses incurred in connection with the repair or replacement. That amount will be a personal charge. If the damage or destruction was caused intentionally or negligently by an exchange use or his visitor or by a Vacation License/RTU holder or his visitor, that person must repay the Association and will not be responsible to repay the condominium association. The Board will decide what things should be repaired or replaced as a result of any damages or destruction. The Board's decision will be binding on any person responsible for repayment. This section (b) does not apply to damage or destruction which (k) the Board decides is the result of ordinary wear and tear.

(c) There Is No Claim For Losses Paid For By Insurance.

Despite what section (b) says, the Board, and the owners of an apartment will have no claim or cause of action against any occupant for damage or destruction to the extent the loss is paid for by insurance. An occupant will have no claim or cause of action for any damage or destruction of his own property against the condominium association or the Association, the Board, the Plan Manager, or any other owner or Vacation License/RTU holder to the extent the loss is covered by insurance bought by him or any of them.

12.2 How Excess Insurance Or Condemnation Proceeds Will Be Distributed. Any excess insurance or condemnation proceeds must be divided into equal shares for each interval. Each owner and Vacation License/RTU holder will be paid the share for his interval, subject to the rights of his lender. Excess insurance or condemnation proceeds are proceeds which result from:

(a) dissolving or terminating (winding up) the project or the resort vacation plan for any reason,

(b) any extra insurance or condemnation proceeds left over after paying the cost of repairs and replacements,

(c) any insurance or condemnation proceeds available if a vacation apartment is destroyed and is not rebuilt, repaired or replaced. 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 (AOAO) declaration.

12.3 The Board Must Buy Fire Or All Risk Insurance.

The Board must buy a policy of all risk insurance. If that is not available, the Board must buy a policy of fire insurance with an extended coverage endorsement. If available at a reasonable cost, the policy must provide insurance against loss or damage by vandalism, malicious mischief, theft or water. The all risk or fire insurance bought is called the "policy" in this section 12.3. Instead of buying the policy, the Board may rely on the condominium (AOAO) policy (with such supplemental insurance as the Board deems appropriate) so long as it provides reasonable protection. But, the Board must be certain the policy is kept in force at all times. The cost of the policy will be a plan expense.

(a) The Source And Coverage Of The Policy.

The policy must be bought from a company authorized to do business in Hawaii. It must, if possible, provide coverage for one hundred percent (100%) of the full replacement cost, without deducting for depreciation, of each vacation apartment and its common furnishings. The insured under the policy will be the condominium

association and the Association, by the Board, as trustee for each of the owners in proportion to the intervals they own.

(b) Certain Provisions Are Prohibited. Others Must Be In The Policy.

Unless the Board decides the cost is unreasonably high (and its decision will be final), the policy:

(1) Must contain no provision limiting or prohibiting any owner from buying other insurance. It must also provide that the liability of the insurance company will not be affected by any such other insurance. And, it must also provide that the insurance company may not claim any right of set-off, counterclaim, apportionment, proration or contribution because of any such other insurance.

(2) Must contain no provision relieving the insurance company from liability because of:

(I) increased hazard in the buildings, whether or not within the control or knowledge of the Board or the condominium association, or

(II) any breach of warranty or condition caused by the Board, the condominium (AOAO) board, the Plan Manager/RME or any occupant, or

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

(3) Must provide that the policy and the coverage provided under it may not be cancelled or substantially changed by the insurance company (whether or not asked by the Board) unless the insurance company gives sixty (60) days written notice of the cancellation or changes. The notice must be sent to the Association Board.

(4) Must contain a provision in which the insurance company gives up any right to repair, rebuild or replace a damaged or destroyed vacation apartment if a decision is made under the condominium documents not to do so;

(5) Must contain a provision in which the insurance company gives up any right of subrogation to any right of the condominium association, the Association, the Board, or any apartment owner (including owners of intervals) against any of them and any occupant. ("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 apartment will be adjusted (settled) by the insurance company and the Board; and

(7) Must contain a standard "mortgagee clause" which:

(I) Says that any lender whose name has been furnished to the board is also an insured or protected person;

(II) Provides that any act or neglect of the Board or any occupant will not release the insurance company from its duties to the lender;

(III) Provides that the insurance company gives up:

a. any rights it has under any provision invalidating the mortgagee clause because the lender fails to notify the insurance company of any hazardous use or vacancy.

b. any requirement that the lender pay any policy premium. (But, the lender may pay any premium due if the Board fails to do so),

c. any rights it has under a contribution clause, and

d. any right to be subrogated to the right of any lender against any occupant or the Board or to require that any mortgage be transferred to the insurance company. (However, the insurance company may have 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 and occupant. The right of subrogation must not, however, impair the lender's right to sue any person for any loss or deficiency not covered by the insurance proceeds; and

(IV) Provides that any reference to a lender in the policy includes all lenders for any interval, in their order of priority, whether or not named in the policy.

12.4 The Board Must Buy Liability Insurance.

The Board must buy and always have in effect a comprehensive policy of public liability insurance (here in this section 12.4 called the "policy"). It must insure the Board, the Association, each owner, the Plan Manager/RME, and all officers, employees, and agents of any of those persons against claims for personal injury, death and property damage arising out of the condition of any vacation apartment or activities in or construction work on any vacation apartment or the common elements. The cost of the policy will be a plan expense.

(a) The Source And Coverage Of The Policy.

The policy must be bought from a company qualified to do business in Hawaii. The policy must be under a Comprehensive General Liability form. The policy limits may not be less than \$1,000,000 for personal injury and \$300,000 for property damage arising out of a single accident or occurrence. From time to time the Board may set higher limits for the policy based on prevailing prudent business practices in the State of Hawaii.

(b) Certain Provisions Are Prohibited. Others Must Be In The Policy.

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:

(I) increased hazard in the building, whether or not the increased hazard is within the control or knowledge of the Plan Manager/RME, the Board or the condominium association, or

(II) any breach of warranty or condition by the Board, the condominium association board, the Plan Manager/RME, any master trustee, or any occupant, or

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

(2) Must provide that the policy and the coverage it provides may not be cancelled 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 Plan Manager/RME

(b) Must contain a provision in which the insurance company gives up any right of subrogation to any right of the Board, the Association, the condominium association(AOAO), the Plan Manager/RME, or any apartment owner (including owners of intervals) against any of them and any occupant; and

(c) Must contain a "severability of interest" provision. This prevents the insurance company from denying the claim of any owner because of negligence of the Board, the Association, the Plan Manager/RME or any occupant.

12.5 The Board Must Buy Insurance To Cover Motor Vehicles Owned Or Leased By The Association.

The Board must buy and maintain a comprehensive policy of insurance (here in this section 12.5 called the "policy") to insure motor vehicles owned by the Association. It must insure the Board, the Association, the Plan Manager/RME and all agents and employees of the Association against claims for personal injury, death and property damage arising out of the condition, use, operation, ownership or lease of any motor vehicle owned or leased by the Association. The cost of the policy will be a plan expense.

(a) The Source And Coverage Of The Policy.

The policy must be bought from a company qualified to do business in Hawaii. The policy limits may not be less than \$1,000,000 for personal injury or property damage arising out of a single accident or occurrence. From time to time the Board may set higher limits for the policy based on prevailing prudent business practices in the State of Hawaii.

(b) Certain Provisions Must Be In The Policy.

(1) The policy must provide:

(I) "no fault" coverage or other coverage required by the laws of the State of Hawaii, uninsured motorist coverage, collision coverage, comprehensive coverage and any other coverage the Board decides is advisable;

(II) that the policy and the coverage it provides may not be cancelled or substantially changed by the insurance company (whether or

not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least sixty (60) days in advance to the Board and the Plan Manager/RME.

(2) Unless the Board decides the cost is unreasonably high (and its decision will be final), the policy:

(I) must contain a provision in which the insurance company gives up any right of subrogation to any right of the Board, the Association, its agents and employees, the Plan Manager/RME, or any occupant;

(II) must contain a severability of interest provision.

12.6 The Board MUST buy Insurance To Cover Directors, Officers, Employees And Agents Of The Association.

The Board must buy and maintain a policy to insure 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 as a result of his holding that position (here in this section 12.6 called the "policy"). The policy must also cover any person who is serving at the request of the Association as a director, officer, employee or agent of another entity. Any policy must be obtained from a company qualified to do business in Hawaii. The cost of the policy will be a plan expense.

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 may 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 permitted by law.

12.7 The Association May buy Fidelity Bonds For Anyone Handling Association Money.

A "fidelity bond" covers the loss of money while it is being handled. The Association may obtain fidelity bonds covering the Plan Manager/RME and/or all directors, officers, employees, and volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bonds may name the Association as the obligee (the person protected and who gets paid in case of loss). The bonds may also:

(1) Provide that they may not be cancelled or substantially changed without at least thirty (30) days advance written notice to the Association and the Plan Manager/RME; and

(2) Provide coverage for persons who serve without pay (for example, a volunteer) and contain a waiver (release) of any defense based on the exclusion of such persons from any definition of the term "employee" or similar term.

The decision as to whether to buy such bonds, and the extent of coverage of such bonds, weighed against the cost and availability of such bonds, will be in the discretion of the Board of Directors.

12.8 The Board Is Responsible For The Association's Insurance Program. You And Your Lender May See The Policies

At least once a year the Board must review the adequacy of the Association's entire insurance program and adjust it if needed. In addition to insurance the Board is required to obtain, it may buy insurance against any other risks that it considers worthwhile for the protection of the owners. For example, the Board may buy any worker's compensation insurance it decides is needed. The owners will have the right to buy extra insurance for their own benefit at their own expense.

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. Copies of every policy of insurance bought by the Board will be available for inspection by any owner or Vacation License/RTU holder (or buyer having a contract to buy an interval or vacation license) at the office of the Plan Manager/RME.

PART 13

REVISING, TERMINATING, AND INTERPRETING THIS DECLARATION.

13.1 How This Declaration May Be Changed.

(a) This Declaration May Be Amended By A Majority Of All Timeshare Interest Holders. Each Amendment Must Be Certified And Recorded.

This declaration may be "amended" (changed) by the affirmative vote of a majority of the timeshare interest with the holders at a regular or special meeting of the Association called and held in accordance By-Laws. No amendment will be effective until certified by any two officers of the Association and recorded.

(b) An Amendment May Not Change Certain Rights Or Privileges You Have Without Written Approval.

No amendment will change an owner's undivided interest in a vacation apartment or the voting rights that go with his interval unless the amendment is signed by that owner and his lenders (if any). No amendment may take away the right of any owner or Vacation License/RTU holder to exclusively occupy a vacation apartment, and to use and enjoy the common elements and all the other rights which go with the vacation apartment during his vacation week unless that owner or Vacation License/RTU holder expressly consents.

(c) Amendments Will Be Binding On Every Owner And Interval And Every Vacation License/RTU Holder and Vacation License/RTU.

Any amendment which complies with these provisions will be binding on every owner and every interval. It will also be binding on every Vacation License/RTU holder and Vacation License/RTU.

13.2 How This Declaration Will End.

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 this declaration is recorded. This declaration may be terminated earlier if any of the following events happen:

(a) If all of the vacation apartments are withdrawn from the operation of the provisions of this declaration under section 11.4 above, or

(b) If all of the vacation apartments are destroyed and a decision is made under the condominium documents not to repair, rebuild, or restore them, or

(c) If all the vacation apartments are taken in condemnation proceedings or under threat of condemnation, or

(d) If the condominium declaration is terminated.

13.3 The "Rule Against Perpetuities".

If any portion of this declaration would violate the "Rule against Perpetuities" or any other limitation imposed by law on the duration of the portion, then that portion will be considered effective only for the maximum permissible period permitted by law.

13.4 Even If Part Of This Declaration Is Invalid. That Will Not Affect The Rest.

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

13.5 How This Declaration Should Be Read And Interpreted.

The captions in this declaration are for convenience only. They will not be considered in the interpretation of this declaration. As used in this declaration the singular includes the plural and the masculine includes the feminine and neuter.

This declaration was written so that it would be easy to read and understand. Words may be used which are different than the words which courts are used to seeing. Consequently, if any court is ever asked to interpret this declaration, it should interpret it as common sense would require in order to do what the Association intended.

PART 14

MISCELLANEOUS PROVISIONS AND GLOSSARY OF LEGAL TERMS

14.1 How To Give Notices.

Notices provided for in this declaration must be in writing and will be considered properly given when delivered in person, by Fax, e-mail or put in the United States Mail, postage prepaid, addressed to an owner or Vacation License/RTU holder at the last address he gives to the Association for delivery of notices. If an owners or Vacation License/RTU holder does not give the Association an address, the notice will be sent to his last known address. (If he has no known address, the notice will be addressed to his vacation apartment.) If any interval is transferred to a trustee under a land trust, notice must be sent both to the trustee and to any beneficiary whose name and address has previously been furnished, in writing, to the Board.

Notices to the KTOA Association must be delivered in person, by Fax, e-mail or mailed to the address the Association gives by written notice to all timeshare interest holders. Notices to the Plan Manager/RME must be delivered in person or mailed to the address the Plan Manager/RME gives by written notice to all timeshare interest holders.

The addresses for purposes of this section 14.1 may be changed by giving written notice of the change. Unless written notice of an address change is received, the last address will be considered effective for all purposes.

14.2 Glossary Of Legal Terms.

(a) "Attachment" refers to the act or process of seizing property under a court order.

(b) "Beneficiary," when used in connection with a trust, means the person designated to receive the income or other benefits from the trust. For example, if an interval is placed in a land trust, ordinarily the person entitled to use the vacation apartment during the vacation week for that interval is the beneficiary of that trust.

(c) "Easement" means any right or interest a person has which entitles him to use property owned by someone else.

(d) "Encumber" refers to putting a legal claim or "encumbrance" on property.

(e) "Encumbrance" means a right or interest in property held by someone other than the owner of that property.

(f) "Hawaii 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).

(g) "Incur" means to pay or to become obligated to pay, or both.

(h) "Land Trust" means a land title holding trust created under the Hawaii Land Trust Act and under which the trust beneficiary has substantially all powers of possession and control of the interval. The master trust may be a land trust but it does not have to be one.

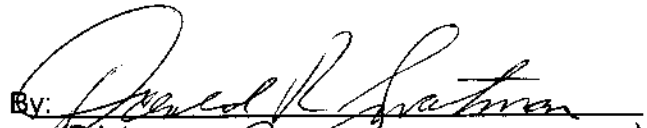
(i) "Lien" means a claim against property. For example, a mortgage on an interval is a claim on the interval as collateral for the payment of money.


(j) "Recorded", "Recording" and similar terms refer to and mean officially filed on the records of the Bureau of Conveyances of the State of Hawaii.

(k) "Undivided Interest" means ownership by two or more persons jointly or in common. (This means that they own it together.)

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 19 day of January, 2009 and do hereby certify that the attached is a true copy of the Association Declaration of Covenants and Conditions and Restrictions as changed and amended in accordance with Part 13 Section 13.1 of the Declaration of Covenants and Conditions of the Kihei Akahi Vacation Plan.

**THE KIHAI TIMESHARE OWNERS
ASSOCIATION**

By: 
(Print name: President)
Its: DONALD R. SWATMAN

By: 
(Print name: LANE DORGAN)
Its: V. P.

STATE OF Hawaii)
COUNTY OF Mauai) ss.

On this 19th day of January, 2009, before me personally appeared Donald R. Swatman, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

LS

Anthony Gallo Jr
Print Name: Anthony Gallo Jr
Notary Public, State of Hawaii

My Commission Expires: ANTHONY GALLO JR.
Commission expires Aug. 6, 2012

STATE OF Hawaii)
COUNTY OF Mauai) ss.

On this 19th day of January, 2009, before me personally appeared Lane Dargin, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

LS

Anthony Gallo Jr
Print Name: Anthony Gallo Jr
Notary Public, State of Hawaii

My Commission Expires: ANTHONY GALLO JR.
Commission expires Aug. 6, 2012