

ADDENDUM A

[PROPOSED]

AMENDMENT TO SECOND RESTATEMENT OF THE MAUI LEA TIME INTERVAL
PROGRAM REVISED TIMESHARE DECLARATION AND THE BYLAWS

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

The apartments in the Maui Hill condominium project are subject to a sublease to use the land until November 20, 2064 or as may otherwise be extended.¹ A number of apartments have been assigned to the time share program. Generally, a time share program permits people to share the ownership of an apartment as co-owners and to use that apartment for one or more weeks each year. The co-owners also share the expenses of the time sharing program. In this Declaration, the apartments in the time share program are called time shared apartments. In this time sharing program, each time shared apartment has been divided into fifty (50) shares called “time share interests” which include the ownership of a 2% interest or share in the apartment and the right to use the apartment for a week or more. A person may buy one or more time share interests and one or more persons may join to buy one time share interest.

Although many documents are used to make a time share program effective, this document--the Declaration--is perhaps the most important. The Declaration describes the basic rights and obligations of the people who buy time share interests. Earlier Declarations for this program were signed and recorded on April 15, 1980, December 5, 1981 and February 6, 1991. Parts of the earlier Declarations are now being revised or “amended” by this Declaration. For the convenience of people reading this document, all unchanged parts of the earlier Declarations have been restated in this document. Therefore, it is not necessary to refer back to the earlier Declarations--this document is complete as of the date it is recorded. In the future, however, the Declarations and further revisions probably will not be restated in one document. People will have to read this document together with all future revisions.

ARTICLE 1
DEFINITIONS

In addition to the definitions contained in paragraph 14.2 (the Glossary) and the other definitions contained in this Declaration, the following terms will have the following meanings when they are used in this Declaration:

1.1 “Condominium Project” means the Maui Hill condominium project. It was created and is governed by the Master Declaration.

(a) “Master Declaration” means the “Declaration of Horizontal Property Regime of Maui Hill” (which includes the “By-Laws of the Association of Apartment Owners of Maui Hill” attached to it) and any changes to it. It is the document that established and governs the condominium project. The Master Declaration should not be confused with this document.

(b) “Common Elements” means the parts of the condominium project designated in the Master Declaration as common elements. Generally, all parts of the condominium 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 condominium “apartment” (as that term is defined by the Hawaii condominium law) in the condominium project.

(d) “Apartment Type” means one of the different types of apartments in the condominium project. There are three (3) types of apartments in the condominium project: one-bedroom, two-bedroom and three-bedroom.

(e) “Apartment Lease” means the document used to transfer ownership of the individual whole apartments. The formal name of that document is “condominium conveyance document” and it contains (a) a deed of the apartment and its ownership share of the common elements (except the land) and (b) a sublease of the land on which the condominium project is located.

(f) “Landowner” means the owner of the land on which the condominium project is located.

(g) “Condominium Documents” means the Master Declaration (including the By-laws of the Association of Apartment Owners attached to it), any rules and regulations of the Master Association, and the apartment lease as any of those documents may be changed from time to time.

1.2 “Developer” means Maui Horizons, Inc., a Minnesota corporation registered to do business in Hawaii, which established this time share program. The Developer has terminated its interest in the Project as Developer. Therefore, there are no further Developer rights.

1.3 “Program” or “Time Sharing Program” means the time share plan created by and existing under this Declaration and the other Time Share Documents.

(a) “Time Share Documents” means this Declaration, the Charter, the By-laws, and the Rules and Regulations.

(b) “Declaration” means this document and any changes made to it later. The Declaration can only be changed in the manner provided in Article 13 of this Declaration. This Declaration establishes the time sharing program and should not be confused with the “Master Declaration” which is defined above.

(c) “Association” means the Maui Lea Time Interval Owners Association, a Hawaii non-profit corporation. All owners are members of the Association. It should not be confused with the “Master Association” which is the Association of Apartment Owners of the condominium project.

(d) “Charter” means the Charter of Incorporation of the Association as it may be changed from time to time. The Charter is the document by which the State of Hawaii officially recognizes the Association as a non-profit corporation. The Charter 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 from time to time. 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. They should not be confused with the Rules and Regulations, which establish rights and duties of the members for the use of the time shared apartments.

(f) “Rules and Regulations” means the rules and regulations and any changes made to them from time to time by the Association under paragraph 6.2(g) of this Declaration. The rules and regulations establish rights and duties of the members of the association for use of the time shared apartments.

(g) “Board” means the Board of Directors of the Association.

(h) “Managing Agent” means the agent or agents hired by the Board as provided in Section 6.3 in this Declaration. The Managing Agent manages the time sharing program under the supervision of the Board.

1.4 “Time Shared Apartment” means any apartment included in the time sharing program. Each apartment now in the time sharing program is a time shared apartment. But, any apartment withdrawn from the program under Article 11 will not be a time shared apartment.

1.5 “Common Furnishings” means all furniture, furnishings (things like linens and kitchenware), appliances, equipment, and all similar things (called “personal property” in legal terms) owned or leased by the Association for use by the owners during their use periods.

1.6 “Time Share Interest” means:

(1) an undivided one-fiftieth (1/50th) interest in a time shared apartment. The term “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 time share interests in that apartment.

(2) the exclusive right to use and occupy that time shared apartment and the common furnishings in it during a use period as provided in this Declaration; and

(3) during the same use period, the right to use the common elements of the condominium project together with the other occupants and apartment owners.

(a) “Use Period” means one of the periods of time (usually a week long) listed on Exhibit “C” to the Declaration dated December 5, 1981 or in any Declaration of Annexation recorded. The use period begins at check-in time on the check-in date and ends at check-out time on the check-out date.

(b) “Check-In Time” means 4:00 p.m. on the first date of a use period. “Check-Out Time” means 11:00 a.m. on the last day of a use period.

(c) “Service Period” means:

(i) the five (5) hour period between check-out time in the morning and check-in time later that day, (the time between use periods), and

(ii) any use periods designated as service periods in Exhibit “C” to the Declaration dated December 5, 1981 or in the schedule of use periods included in any recorded Declaration of Annexation.

1.7 “Owner” means the owner of a time share interest. The following persons are “owners”:

(1) the owner named in each original deed of a time share interest and all later owners of that time share interest.

(2) the buyer of a time share interest 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 time share interest is transferred to a trustee under a land trust. The trustee will not be considered the owner.

(4) Deeds and Agreement of Sale

(a) “Original Deed” means the recorded Time Share Deed and Lease by which the Developer first transfers each time share interest

(b) “Deed” means any document used to transfer ownership of a time share interest. This should not be confused with the “original deed”; only certain deeds are “original deeds”.

(c) “Agreement of Sale” means a contract which can be recorded and which binds the seller to sell and the buyer to buy a time share interest. After an initial down payment, the remainder of the purchase price is deferred and the buyer ordinarily makes monthly payments over several years. The seller keeps the technical legal ownership of the time share interest as collateral for the payment of the remainder of the purchase price. But, so long as the buyer makes all payments and keeps his or her promises under the agreement of sale, he or she is entitled to use the time shared apartment during the use period and is considered to be the owner of the time share interest. The seller, however, can keep the right to vote on the “matters substantially affecting his or her security interest” (as that phrase is used in the Hawaii condominium law, Chapter 514B, Hawaii Revised Statutes).²

1.8 “Visitor” means an owner’s or an exchange user’s family, guests, employees, servants, tenants, “licensees” (persons permitted in the time share apartment) and “invitees” (persons invited in). An exchange user is not considered an owner’s visitor.

1.9 “Exchange User” means a person who occupies a time shared apartment through an exchange of occupancy rights under an exchange program.

(a) “Exchange Program” means a service provided by an independent organization recognized as an acceptable exchange organization of the Association by action of the Board or through the Association whereby owners may exchange the right to use their time shared apartment during their use periods:

(i) among themselves,

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

(iii) with the owners of other property that is not included in a time sharing program.

1.10 “Occupant” means an owner during this use period, visitor, or exchange user.

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

1.12 “Lender” means a person who lends money and who has a mortgage covering a time share interest.

(a) “Mortgage” when used as a noun means any recorded document by which an owner puts his or her time share interest up as collateral for the payment of money loaned to him. Usually, if he or she doesn't repay the loan, the time share interest will be sold and the money will be used to repay the loan. Some states have a similar document called a “deed of trust” and the word “mortgage” as used in this Declaration also refers to a recorded deed of trust.

“Mortgage” can also be used as a verb and then it means putting up a time share interest as collateral for payment of money loaned to the owner.

1.13 “Transfer” means all of the methods by which one person may receive a time share interest from another, including for example a voluntary sale, an involuntary sale (such as a foreclosure sale), an inheritance or a gift.

ARTICLE 2 CREATION OF THE TIME SHARING PROGRAM

2.1 Purpose of This Article.

Certain requirements have been met in order to make a time share program effective and binding on the time shared apartments and people who have any rights or interests in those apartments. This Article satisfied those requirements and makes the time shared apartments subject to the provisions of this Declaration and the other time share documents.

2.2 This Declaration Set Up The Time Share Program.

The Developer established a plan for the owners to share in the use, enjoyment, management, upkeep and repair of the time shared apartments. The plan also includes provisions for the transfer of interests in the time shared apartments and for the payment of taxes, insurance premiums and other expenses relating to those apartments of the time sharing program. The plan is intended to increase the value, desirability and enjoyment of each time shared apartment and any interest in them.

2.3 The Time Shared Apartments Will Be Governed By The Time Share Documents.

(a) The time shared apartments are subject to the provisions of the time share documents. This means that those apartments will be owned, used, leased, rented, mortgaged,

encumbered, occupied and improved subject to the agreements, limitations, restrictions and other matters contained in those documents, from now until this Declaration ends;

(b) All of the provisions contained in the time share documents are “covenants running with the land”. That means those documents will be binding on anyone who has a time share interest now or in the future, regardless of whether he or she buys, inherits or is given that interest;

(c) All of those documents are also “equitable servitudes” which means that they apply to the time shared apartments and the common furnishings and to anyone who has any rights or other interests in any time shared apartment or the common furnishings now or in the future; and

(d) The provisions of the time share documents are for the benefit of and binding on all present and future owners of time share interests and anyone else who has any rights or other interests in any time shared apartment or the common furnishings.

2.4 The Time Share Documents Are Binding On You And Anyone Else Who Has Any Interest In The Time Shared Apartments.

An important practical effect of making the apartments subject to the time share documents is that anyone who owns a time share interest or uses a time shared apartment must obey those documents regardless of whether that person ever signed them or expressly agreed to obey them. Another important effect is that any person who has any interest in a time shared apartment is required to obey the time share documents regardless of how or when he or she obtained the interest. Also, any owner or anyone else having any rights or other interests in the time shared apartments or common furnishings can enforce the time share documents as provided in those documents.

ARTICLE 3 USE RIGHTS AND OBLIGATIONS

3.1 Your Rights As An Owner During Your Use Period.

During his use period, each owner will have:

(a) the exclusive right to occupy and use his time shared apartment and its common furnishings, and

- (b) the nonexclusive right to use and enjoy the common elements along with other occupants and apartment owners, and
- (c) all other rights which go with his time shared apartment.

If any owner is entitled to use a time shared apartment for two or more use periods in a row, he or she will be entitled to the exclusive use of that time shared apartment during the five-hour service period between his use periods and the Association will provide normal service period maid service to that apartment either during the five-hour service period or at another time on the day of the service period or on the day preceding or the day subsequent to such service period.

3.2 You Must Stay Off The Condominium Project During Periods Other Than Your Use Period.

Except during his use period, no owner will use or occupy a time shared apartment or the common elements or the common furnishings unless he or she is:

- (a) expressly authorized by the owner entitled to use that apartment at that time or
- (b) acting under the authority of the Association.

3.3 As An Owner You May Permit Others To Use Your Apartment During Your Use Period, But You Will Be Responsible For Them.

Any owner may permit other persons to use his time shared apartment (during his use period) for the purposes permitted by this Declaration. That owner, however, will be fully responsible for his visitors as provided in Article 9. Any owner exchanging his use period through a company or other entity providing exchange services which is not an exchange company operating an approved exchange program as define in Section 1.9(a) hereof shall be considered an owner's visitor for which that owner is fully responsible as provided for in Article 9.

3.4 General Use Restrictions and Obligations.

- (a) Restrictions On Number of Occupants, Commercial Use, and Pets.

The number of people allowed in any time shared apartment will be restricted to the maximum number permitted by law and the condominium documents and the rules and regulations. No business or profession may be conducted in any time shared apartment or on the

common elements. No pets or other animals of any kind may be permitted or kept in any time shared apartment of the condominium project except authorized service animals provided applicable papers are provided at or prior to occupancy of the apartment. Service animals are subject to such reasonable rules as are adopted by the Association and are allowed by applicable laws.³

(b) You Are Restricted In Renting Your Time Share Interest.

Every owner promises not to enter into a “rental pool” or similar arrangement where his use period is placed together in a pool with other owners’ use periods and rented out, or where rental income and/or expenses are otherwise shared. You may however rent your interval yourself or through a rental agent.

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

No owner may make or authorize anyone else to make any alterations, additions, or repairs to any time shared apartment or its common furnishings unless it is necessary to prevent damage or injury to persons or property in an emergency. No owner may paint, refinish or redecorate any time shared 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 obligation of every occupant described below in paragraph (d).

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

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

The owners of the time shared apartments will be responsible, through the Association, for the cost of normal maintenance repair and upkeep of the time shared apartments, any limited common elements that go with the time shared apartments, and the common furnishings, in accordance with the provisions of the condominium documents and time share documents. Note: The Master Association maintains the common elements.

(e) Everyone Must Obey The Condominium And Time Share Documents.

Each owner must obey the provisions of the condominium documents and the time share documents and see that all his visitors also do so. All of the use restrictions contained in the condominium documents will apply to the time shared apartments.

3.5 Your Obligations At The End Of Your Use Period.

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

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

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

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

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

Each occupant of a time shared apartment must leave the time shared 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). The Association may charge any occupant for extra costs of cleaning an apartment in violation of this provision.

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

(a) Special Definitions. The following definitions apply to this paragraph 3.6:

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

(2) "Disobedient person" means anyone who:

(i) uses or occupies a time shared apartment during another's use period without permission or during a service period (including failure to leave at checkout time), or

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

NOTE: Anyone who damages a time shared apartment or its common furnishings so that as a practical matter it is unusable or “uninhabitable” during the following use periods 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 agrees that the measure of liquidated damages in this paragraph 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 condominium project or in the vicinity of the condominium 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 time shared 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 this conduct, including but 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 twice the daily fair rental value of the time shared apartment for each day or part of a day during which the disobedient person prevents the injured person from using the time shared apartment, and
- (5) must pay a late check-out charge as is determined to be appropriate from time to time by the Board.

NOTE: If there is more than one injured person for a single use period, they will have to split the liquidated damages between themselves; the disobedient person does not have to pay each one twice the daily fair rental value.

(c) The Association’s Obligations.

The Association will take any reasonable steps necessary to evict the disobedient person from the time shared 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 time shared 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 is necessary to 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.

(d) This Paragraph Applies to Exchange Users.

If a person occupying a time shared apartment is an exchange user the provisions of paragraph 3.6(a) through (c) will apply to him.

3.7 Rental of Intervals by the Association

(a) The Association May Rent Your Use Period For You.

The Association or a rental program operating in the project may, but shall have no obligation to, rent intervals of owners whose dues are delinquent, with the delinquent owner's permission, provided that the net rental shall be first used to pay delinquent assessments, interest, fines and current dues with any net surplus paid to the delinquent owner.

(b) They Must Not Interfere With Your Use.

No rental by the Association may interfere with the rights of owners to use and occupy the time shared apartments under the time share documents.

(c) Easement For Rental.

The Association, and their agents, employees, contactors, subcontractors and other authorized companies and personnel have an easement for the purpose of conducting rental activities under this paragraph 3.7.

ARTICLE 4 OWNERSHIP RIGHTS AND RESTRICTIONS

4.1 Transferring A Time Share Interest.

(a) You May Transfer Your Time Share Interest.

An owner may transfer his time share interest or interests. If he or she owns more than one time share interest, he or she can treat each one separately. He or she is not required to do with all his time share interests what he or she does with any one.

(b) Your Rights Automatically Go With It.

The transfer of any time share interest will also automatically transfer to the new owner:

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

These things are transferred regardless of whether the document transferring the time shared interest expressly says so.

No share of any owner in funds held by the Association can be withdrawn or separately transferred. If the transferring owner wants to get this money back, he or she must get it back from the new owner. He or she cannot get it back from the Association.

(c) You May Not Transfer Less Than All Of The Time Share Interest.

No owner may transfer any less than everything transferred in the original deed of the time share interest.

(i) One exception to this restriction is that an owner may sell his time share interest under an agreement of sale where the seller keeps legal title and his right to vote on certain matters, but all other rights are transferred to the buyer, who is then considered to be the owner of that time share interest. If the owner is buying his time share interest under an agreement of sale, he or she may not transfer less than the buyer's entire interest under the agreement of sale.

Transfer of an undivided portion of a time share interest to a new or existing co-owner will not be considered a violation of the foregoing.

(d) You Or the New Owner Must Notify the Association When you Transfer Your Time Share Interest.

The Association must be notified in writing of the transfer of any time share interest and must be furnished with a copy of the transfer document. The notice may be given by either the new owner or the present owner. The notice must be given under any circumstances where the time share interest will have a new owner. This would include, for example, a transfer of 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 Association requires and it must state:

- (1) the name, address and Email address of both the present owner and the new owner and the date on which the transfer took place; and
- (2) the apartment number of the time share apartment in which the time share interest is being transferred; and
- (3) the use period being transferred. 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 given by the Association to the “owner” may be given to either the new owner or the present owner or both.
- (e) The Use Period Must Be Identified In The Document Transferring The Time Share Interest.

Any owner who transfer a time share interest must correctly state (in the document transferring the time share interest) the use period identified in his original deed.

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

Each owner will be fully released from liability on the promises contained in this Declaration relating to each time share interest when:

- (a) he or she no longer owns that time share interest; and
- (b) he or she or the new owner gives notice of that fact to the Association, and
- (c) he or she has paid all sums and performed all his other obligations under this Declaration up to the time his ownership ends and notice of the transfer of his time share interest is given.

4.3 Mortgaging Your Time Share Interest.

- (a) You Can Mortgage Your Time Share Interest.

An owner may mortgage his time share interest or interests. If he or she owns more than one time share interest, he or she can treat each one separately.

(b) Restrictions On Your Right To Mortgage Or Encumber Your Time Share Interest.

No owner may mortgage or encumber anything less than the interest described in the original deed for the time share interest. An owner who is buying his time share interest 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, power or authority to mortgage or encumber anything less than the whole time share interest. Any attempt to do so will not be effective; it will be void.

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

(c) You Can Mortgage or Encumber Only Your Time Share Interest.

No owner can mortgage or otherwise encumber:

- (1) the time share interest of any other owner,
- (2) the whole time shared apartment,
- (3) the common furnishings in the time shared apartment, or
- (4) any part of the time shared apartment of its common furnishings (except his time share interest).

No owner has the right, power or authority to do this and any attempt to do so will be void and not effective.

(d) The Declaration Governs Any Mortgage.

Any mortgage of a time share interest will be subordinate to (will be governed by and will not affect) this Declaration.

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

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

- (1) a violation of this Declaration by the owner of that time share interest, 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 Time Share Interests From Liens Or Claims.

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

No owner may cause or permit his time share interest, the time shared apartment or its common furnishings to be subject to any claim or lien which could result in:

- (1) the sale of any time shared apartment, or
- (2) the sale of any common furnishings, or
- (3) the sale of the time share interest of any other owner, or
- (4) any interference in the use or enjoyment by any other owner of this time share interest.

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 time share interest, then any other owner of 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 must immediately repay the owner of the Association the total expenses incurred including all reasonable attorneys' fees and related costs. Those amounts will be a personal charge. See paragraph 8.6.

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

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

4.5 Co-Ownership Rights and Partition.

This Declaration governs all rights with respect to the ownership, possession, use management, and disposition of the time share interests and the time shared apartments including co-ownership rights. Co-ownership is ownership of a time share interest or of a time shared 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 Can Not Ask A Court To Divide Up Your Time Share Interest Or the Time Shared 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 time share interest or any time shared apartment or its common furnishings may ask for or obtain partition of a time share interest or a time shared apartment or its common furnishings. When this Declaration expires or ends, however, any owner may ask a court to sell his time shared apartment and divide the money in equal shares for each time share interest in that apartment.

(c) A Court Can Order A Time Share Interest Sold And The Proceeds Divided.

A time share interest may not, under this Declaration, be split into separate parts because this would violate the rule against transferring less than a whole time share interest. If, however, any time share interest is owned by two or more persons together, any of them may ask a court to sell their time share interest and divide the proceeds among them.

ARTICLE 5 THE ASSOCIATION

5.1 The Association - A Non-Profit Corporation.

The Association is called the “Maui Lea Time Interval Owner’s Association” and 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 Owners are Members Of The Association.

Each owner is a member of the Association and only owners are members of the Association.

5.3 Membership Is Part Of Each Time Share Interest.

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

5.4 Your Voting Rights As An Owner.

Each time share interest will have one vote. If an owner has more than one time share interest, he or she has one vote for each of them. If a time share 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 lose their vote. If a time share interest is owned by more than one person, the vote for that time share interest may be cast by any of its co-owners, unless another of its co-owners objects.

5.5 Power Of The Board.

All Association powers and duties can be exercised by or under the authority of the Board, unless the time share documents or the law limits that exercise. The business and affairs of the Association are controlled by the Board.

ARTICLE 6 MANAGEMENT OF THE PROGRAM

6.1 The Association Manages The Program.

Administration and management of the time sharing program, including the time shared apartments and the common furnishings, is vested in the Association. Owners may not participate in the management or administration of the time sharing program directly, only indirectly through the Association.

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

The Association has the duty and authority to do all things that it is required to do under this Declaration. In addition, the Association is expressly authorized and required to do any or all of the following on behalf of the owners:

(a) Repair and Maintenance.

The Association must repair and maintain the time shared 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 necessary or appropriate to maintain the time shared 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; however, the Association is not required to make any repair 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 time shared apartment at the end of his use period, during service periods and at any other times provided for in the rules and regulations so that the time shared apartment stays neat and in good condition. The Association will also provide any cleaning and maid services made available by the Association when requested by an occupant in addition to the cleaning and maid service normally provided to each time shared apartment. The Association will charge the occupant for any additional cleaning and maid service and those charges will be billed to the occupant as a personal charge. See paragraph 8.6. The Association may provide other cleaning and maid services during use periods as shall be deemed appropriate by the Board.

(c) The Association's Right To Enter Time Shared Apartments.

Except as provided in paragraph 3.1, the Association has exclusive possession of each time shared apartment during the service periods designated for that time shared apartment in order to perform its duties under this Declaration. It also has the right to enter any time shared 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 authority to enter any time shared apartment, at any time, whether or not during a service period and 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 that time shared 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 time shared apartment. Before entering, the occupant of the time shared apartment will be given reasonable notice if the circumstances permit it.

(d) Taxes, Assessments And Rent.

The Association must pay all taxes and assessments, including assessments by the Master Association and governmental assessments. It must also pay lease rent and other amounts due under the apartment leases. It will pay taxes, assessments, lease rent, and the other amounts due as the agent of the owners.

(e) Liens or Claims.

The Association may, but is not required to, pay, compromise or contest liens or claims affecting the time shared 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 time shared apartment. Cable television, internet and telephone service for each time shared apartment is as provided by the Master Association provided however telephone service may be terminated by the master association.

(g) Rules and Regulations.

The Association must adopt, publish and enforce fair and reasonable Rules and Regulations relating to the time shared apartments, including, but not limited to reasonable check-in and check-out procedures. The Rules and Regulations must be consistent with the provisions of this Declaration and the By-Laws. The Association may revise the Rules and Regulations from time to time.

(h) Legal And Accounting Services.

The Association must obtain and pay for any legal and accounting services which are necessary or appropriate for the time sharing program or the time shared apartments or the enforcement of the condominium or time share documents.

(i) Financial Statements.

The Association must have the following statements for the time shared apartments prepared and made available to each owner upon written request to the Association. (The Board may determine in its discretion to give any or all of the following to each owner without request).

(1) the Budget.

A budget of program expenses for the time sharing program for each “fiscal year”. The budget or budget summary must be given to the owners at the beginning of each fiscal year.

(2) The Annual Report.

An annual report must be prepared 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 conditions of the Association for the fiscal year;

(iv) Any other information required by law in any jurisdiction (for example, another state) in which the time sharing program is registered for public sale.

(v) A list of the names, mailing addresses, email addresses and telephone numbers of the members of the Board.

The annual report must be prepared by a certified public accountant for each fiscal year. If such accountant is also retained by the Association on a regular basis, the work performed by the certified public accountant must be audited by another certified public accountant.

(j) Unless the Owners Decide Differently, The Association Must Vote For Each time Shared Apartment In the Master Association.

The Association must vote for each time shared apartment in the Master Association in a manner determined at the annual meeting of this Association which must take place prior to the annual meeting of the Master Association. At such annual meeting of this Association a majority of the time interests voting at the meeting shall determine how the Association shall vote at the Master Association meeting. The votes shall be cast by the President of this Association or in his absence by such other person as the Board shall determine.

The Association shall keep its members informed as to the issues to be determined by the Master Association⁴. The Association must also vote for all time shared apartments at all special meetings of Master Association. Each owner will be considered to have authorized the Association to act for him at any meeting of the Master Association. For this purpose, by accepting the conveyance of the time share interest, 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 Master Association. No further authorization or proxy is or will be necessary to authorize the Board or its delegate to act for that owner at any meeting of the Master Association.

(k) List Of Members.

Each year, the Association must compile a list of the names and addresses of each of the owners in the entire Association grouped by apartment. The Association will furnish a copy of the list within thirty (30) days to the Landowner or any owner who sends a written request for it and pays a reasonable fee (to be determined by the Association). Each person who receives a copy of the list agrees that he or she will not make or permit any commercial use of it or give it or a copy of it to any person who is not an owner.

(l) Insurance.

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

(m) The Association May Do Anything Necessary Or Appropriate To Manage Or Administer The Time Shared Apartments.

The Association may do all other things or acts which it considers to be necessary, desirable or appropriate for the operation, management or administration of the time sharing program or to maintain, repair, preserve or protect the time shared apartments and their common furnishings. Of course, the Association may not exceed the limitations contained in Hawaii law.

(n) The Association May Delegate Its Authority And Responsibility To The Managing Agent And Others.

The Association may delegate its authority and responsibilities under this Declaration to one or more agents, including, among others, the Managing Agent. The agents will be under the supervision of the Board.

6.3 The Association Must Hire A Managing Agent To Manage And Administer The Time Share Program.

If it becomes necessary for any reason to replace the present Managing Agent, the Association has the authority and the obligation to use its best efforts to hire and maintain a reputable firm as the Managing Agent for the time shared apartments and the time sharing program. The Association may divide the job of the Managing Agent among one or more persons each for whom shall be a Managing Agent or Co-Plan Manager for the specific purpose or purposes designated by the Association.

6.4 The Management Agreement.

The Managing Agent must sign a written agreement (the “management agreement”). The management agreement must contain the following provisions:

(If the Association divides the authority and responsibilities of the Managing Agent, it must provide for a management agreement with each Managing Agent which agreements together shall provide the following:)

(a) Must Authorize And Require The Managing Agent To Perform The Duties Of The Association.

The management agreement must authorize and require the Managing Agent to perform all of the duties of the Association, subject to the direction of the Board. The management agreement must provide, however, that the Managing Agent, with the approval of the Board, may delegate its authority and responsibilities to one or more sub-agents for any period and upon any terms it decides is proper.

(b) May Be For Three Years With Renewals Each Year Unless Cancelled.

The management agreement may provide for an initial term of not more than three years with automatic renewals each year after the end of the initial term, unless a written notice cancelling the management agreement is given by either party at least 90 days before the renewal date.

(c) Must Be Subject To Cancellation By The Association.

The Association must have the right to cancel the management agreement without having to pay a cancellation fee in each of the following situations:

(1) The Board must have the right to cancel the management agreement whenever the Managing Agent has violated it. If the Managing Agent disputes such cancellation, the matter will be determined by arbitration in accordance with the Commercial Arbitration Rules of the

American Arbitration Association, and the Board will represent the Association in the arbitration.

(2) The Association will cancel the management agreement if asked to do so by the vote or written request of owners having a majority of the time share interests of all time shared apartments.

(3) May be cancelable by the Board with or without cause upon 90 days or less notice.

(d) Must Provide That The Managing Agent Can Resign Only If He or She Gives Notice And Returns Records To The Association.

The management agreement must provide that the Managing Agent can resign only if:

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

(2) On or before the effective date of his resignation he or she turns over all books and records relating to the management and operation of the time shared apartments and the time sharing program to the Association and the Association has acknowledged that it has received them.

(e) Must Provide For Fees To Be Paid To The Managing Agent; Those Fees Can Be Increased Under Certain Conditions.

The management agreement must specifically state management fees to be paid to the Managing Agent. The fees may be changed if the Board reasonably determines it is in the best interests of the Association to change the fee.

(f) Must Require The Managing Agent To Obtain Errors And Omissions Insurance.

The management agreement must provide that the Managing Agent obtain errors and omissions insurance or a fidelity bond or similar protection naming the Association as an insured.

6.5 Limitations On Contracts For More Than One Year.

The Association may not enter into a contract with a person to furnish goods or services for the time sharing program for a period longer than one year (unless cancelable on 90 days or less notice) unless authorized by a vote of the owners present at a meeting of the Association. This rule will not apply, however, to:

(a) The management agreement.

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission. The term of the contract, however, must be the shortest term for which the supplier will contract at the regulated rate.

(c) Prepaid casualty and/or liability insurance policies not lasting more than three years provided that the policy permits "short-rate cancellation" by the insured.

(d) A lease of common furnishings.

(e) An exchange agreement.

6.6 Neither The Association Nor The Managing Agent Is Responsible For Actions By The Owners.

The Association (including all its directors, officers and agents) and the Managing Agent (including all its directors, officers and agents) will not be responsible for the acts, failure to act or conduct of any owner, exchange user, or their visitors or for the breach of the obligations of any of the owners, exchange users or visitors.

6.7 The President or The Managing Agent Can Represent You or The Association; Service Of Process Can Be made On The Board or the Managing Agent.

(a) The President Of The Association Or The Managing Agent Will Represent The Association Or Owners Situated As A Class In Any Proceeding.

By accepting the conveyance of a time share interest, each owner agrees that the President of the Association or the Managing Agent may represent the Association or any two or more owners similarly situated as a class in any proceeding concerning the Association, the Master Association, the time shared apartments or the common elements. The President or the Managing Agent may begin, defend, intervene in, prosecute or settle any such proceedings. This does not, however, limit the rights of any owner to appear, sue or be sued separately or to decide to not participate. The President or the Managing Agent are subject to the direction of the Board in any representation.

(b) You Give A Power Of Attorney To The President And The Managing Agent To Act For You In Any Proceeding.

By accepting the conveyance of a time share interest, each owner gives a power of attorney to and appoints the President or other officer authorized by the Board of the Association

and the Managing Agent as his attorney-in-fact with full power and authority to do anything which is necessary or appropriate to represent him as provided in paragraph 6.7(a). That power is coupled with an interest, is irrevocable and will not be affected by any disability of the owner. (That means the power of attorney appointment is permanent.) Each owner will be bound by this paragraph whether or not it expressly says so in the deed or whatever document transferred his time share interest to him.

(c) Service of Process For The Association May Be Made On Members Of The Board, The Managing Agent Or The Resident Manager.

Process (such as papers for a lawsuit) for the Association may be served on any member of the Board, a Managing Agent or the resident manager of Maui Hill.

6.8 The Board May Deal With Matters Arising Under Your Apartment Lease.

The Board is authorized and has the right to re-negotiate the annual rent due under the apartment lease for each time shared apartment on behalf of all owners. The Board also has the right to negotiate any other matters that may arise under the apartment lease, including but not limited to, negotiating, voting and executing documents to extend the lease term.⁵

6.9 The Board Will Distribute Any Money It Receives At The End Of The Lease.

When the apartment lease ends, if any money is paid by the Landowner for the building and other improvements on the land, any part of that money to be paid to the owner of a time shared apartment will be paid to the Board. The Board will hold the money as trustee for all owners of that particular apartment. When it receives it, the Board will divide the money in equal shares (one share for each time share interest) and pay it to the owners.

ARTICLE 7 EXCHANGE PROGRAMS

7.1 The Association Must Try To Arrange For An Exchange Program or Programs.

The Association has the authority and the obligation to use reasonable efforts to secure availability of exchange services with one or more organizations providing and operating exchange programs. Any such company officially approved and/or contracted with by the Association is herein called an “exchange company”. The exchange company must permit (but not require), owners to participate in the exchange program. The Association may collect and/or pay any fee required to be paid by the time sharing program and/or the Association under an exchange agreement. That cost will be a program expense. The owners may exchange their time

intervals through other companies; however, any visitors to the property through such exchange companies will only be allowed to occupy an apartment on the written direction of the time interval owner and a person so occupying a time shared apartment shall be considered owners visitor rather than an exchange user. All persons occupying a timeshare apartment through an exchange with an exchange company as herein defined will be considered to be an exchange user.

7.2 Cancellation Of The Exchange Agreement.

(a) Cancellation By The Association.

Unless it cannot be obtained, the Association must have the right to cancel the exchange agreement (without paying a cancellation fee) in each of the following situations:

(1) The Board must have the right to cancel it whenever the exchange company has violated the exchange agreement. If the exchange company disputes such cancellation, the matter will be determined by arbitration under the Commercial Arbitration Rules of the American Arbitration Association, and the Board will represent the Association in the arbitration.

(2) The Association will cancel the exchange agreement if asked to do so in writing or by vote of the owners having a majority of the time share interests for all time shared apartments.

7.3 Complying With The Exchange Agreement.

The Association must, at all times, repair and keep the time shared apartments and the common furnishings in good enough condition to comply with any standards reasonably set by the exchange agreement. The Association must use its best efforts to comply with any other reasonable requirements contained in the exchange agreement.

7.4 The Association and The Managing Agent May Not Be Held Responsible For Actions By An Exchange Company.

The Association and the Managing Agent (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 obligations under an exchange agreement with the Association or the Developer or under any subscription agreement or other contract with an owner.

7.5 Owner's Participation in Exchange Program.

(a) Owners May Participate.

At his own option and risk, any owner may participate in an exchange program, regardless of whether the exchange program is one selected by the Association. Any rules and regulations of the exchange program will not change or suspend the obligations of the owner under the time share documents. Any amounts charged to the owner by the exchange company or relating to the exchange program will not change or reduce the owner's personal obligation to pay all personal charges and assessments charged to him under the time share documents. Any owner participating in an exchange program must notify the Association in writing.

(b) Owner's Obligation To Pay Charges Resulting From His Exchange.

If an owner participating in an exchange program exchanges his use period in this program for use elsewhere, he or she must pay all amounts reasonably charged to him at the other time share project. If he or she fails to do so, the Board may (but does not have to) charge the amount owed as a personal charge to the owner. The Board may examine the charges claimed to be owed to the other time share project and determine which, if any, of the claimed charges will be treated as a personal charge.

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

If an owner participating in an exchange program is suspended under paragraph 10.3, the suspension also applies to any exchange rights the owner may have, all as more fully provided in paragraph 10.3.⁶

7.6 An Exchange User's Obligation.

(a) What an Exchange User Must Do Himself.

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

(1) he or she must obey the condominium and the time share documents and see that his or her visitors do so;

(2) he or she will be responsible for (and personally liable for) his or her visitors just as if he were an owner [see paragraph 9.3];

(3) he or she must promptly pay all personal charges incurred during his or her use period (for example, charges for extra maid services, rule violation charges, air condition charge or telephone calls made or received);

(4) he or she must promptly pay all other personal charges arising from or related to his or her use of the time shared apartments, the common furnishings or the condominium project (for example, legal fees paid to force him or his visitor to leave after the use period ends or to collect personal charges charged to him or his visitors);

(5) he or she will be considered the “owner” of the time share interest for the purposes of paragraph 3.6. Among other things, this means he or she will be liable for and must pay all sums charged to him just as if he or she were the owner;

(6) he or she will not be liable for or have to pay any regular or special assessments.

(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 time shared 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.

(c) Exchange Users May Be Required To Sign An Agreement.

The exchange user may be required at the time he or she checks in (or later) to sign an agreement in which he or she promises that he or she will do the things required in this paragraph 7.6 and to be subject to the other rules for occupants of units in the property. The Association shall have the right to require a credit card authorization or deposit at the time of check in to assure payment of personal charges by the exchange user. This procedure may also be used at check-in for owners and their guests.

7.7 The Association, The Managing Agent And The Exchange Company May Not Be Held Responsible For Actions By Exchange Users.

The Association, the Managing Agent and the exchange company (including all their directors, officers, employees and agents) will not be 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 obligations of any of the exchange users or their visitors.

ARTICLE 8

ASSESSMENTS AND PERSONAL CHARGES

8.1 “Program Expenses”: The Cost of Operating the Time Share Program.

The costs incurred by the Association in connection with the administration and operation of the time shared apartments and the time sharing program are called the “program expenses”. The program expenses will be shared by the owners of time share interests. The share charged to a time share interest is called an “assessment”. The part of this Article on assessments basically explains how the Association divides the program expenses among the owners.

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

- (a) The cost of providing utility services to the time shared apartments, including, for example, water, electricity, garbage disposal, telephone, internet and cable television.
- (b) The cost of repairing, rebuilding or replacing any time shared apartment or its common furnishings.
- (c) The cost of buying insurance required or permitted under this Declaration.
- (d) Wages, accounting, legal fees, management fees, maid service and cleaning fees and other necessary expenses of upkeep, maintenance, management and operation actually incurred for the time shared apartments.
- (e) All common expenses and assessments charged to the time shared apartments by the Master Association. Generally, “common expenses” are the expenses of operating a condominium project; they are shared among the apartments in the manner described in the Master Declaration. If any amount is charged by the Master Association due to an intentional or negligent act by an occupant of a time shared apartment, that amount will be a program 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 a personal charge to that person.
- (f) Any taxes or other governmental charges upon or charged to any time shared apartment, its common interest in the common elements, its common furnishings or any other interests of the owners, except taxes which are separately charged to the individual owners such as transient occupancy taxes, hotel or bed taxes or any governmental charges imposed in place of a hotel or bed tax.
- (g) Lease rent and other charges under the apartment lease for each time shared apartment including costs of collection and attorneys’ fees.

(h) Any liability for loss or damage in connection with the time shared apartments or their use.

(i) The amount of money owed by any owner to the Association (to the extent the Board decides that because of the costs of collection or for any other reason those amounts have become uncollectible).

(j) Amounts necessary to make up any shortfall in funds to pay the program expenses for any prior year.

(k) Amounts necessary for the contingency account. The contingency account is a fund created to provide money to pay program expenses when the owners don't pay their personal charges and assessments on time or if the operation of the time share program for the year is more expensive than the Board expected.

(l) Amounts necessary 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 time shared apartments or common furnishings or the adding of additional furnishings or amenities. (Capital improvements are not day to day maintenance or repair.)

(m) Any amounts needed by the Board to buy or lease a time share interest in a foreclosure sale or deed back.

8.2 Budgeting For Program Expenses.

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

At least ninety (90) days before the beginning of each fiscal year, the Managing Agent of the Association will prepare and give to the Board an estimate of the program expenses for the following year. The estimate will cover the program expenses for all apartments paying assessments or expected to be paying assessments by the beginning of the fiscal year. Upon review and approval by the Board, this estimate (with any changes the Board makes) will become the "budget" for that year.

(b) The Budget Must Set Aside Funds For the Contingency Account.

After the Board determines how much to budget for other program expenses, it must include in the budget money for the contingency account. The amount budgeted for the

contingency account will be whatever amount the Board decides is necessary to provide financial stability in the administration of the time sharing program.

(c) The Budget Must Also Set Aside Funds for the Capital Improvements Accounts.

The Board must consider what capital improvements may be necessary during the next 10 years. The Board will then estimate the amount of money to be included in the budget for the next year so as to provide for the reasonably anticipated needs which will come up in that year and the amount necessary so that with assessments for future years the Improvements within the next 10 years may be made. The Improvements money shall be held in as many improvement accounts as the Board decides are necessary. Its decision shall be final.

(d) With Limited Exceptions, Your Share of Program Expenses May Not Increase By More Than 20% Per Year Without Approval Of The Owners.

The Board may not adopt a budget of program expenses for any year which will increase the regular assessment of any time share interest by more than 20% over the previous year without the approval of a majority of the owners voting at any regular annual meeting of the Association or any special meeting (provided that if approved at a special meeting, notice of the specific increase shall be given with a notice of the meeting).

8.3 When Assessments Being For Each Time Shared Apartment.

The assessments began for each time shared apartment on the date an original deed or agreement of sale transferring the first time share interest in that time shared apartment is recorded. From that date on, the owner of each time share interest in that apartment will have to pay a share of the program expenses.

8.4 Determining Each Owner's Share or Program Expenses: Regular Assessments.

The owner of each time share interest will pay a share of the program expenses. Except for ZZ intervals, the share of each one bedroom, two bedroom and three bedroom interval shall be equal to the other shares of intervals in the same number of bedroom condominiums. The share shall be its equal share of all expenses allocated to the bedroom category. Each interval in each bedroom category shall pay its equal share of all regular budget costs for all apartments plus its equal share of the fixed costs for apartments in its bedroom category. For the purposes of this provision fixed costs are defined as real estate taxes, Master Association dues, property insurance, land rent, and extraordinary costs where there is a clear difference in real cost by virtue of the size of the condominium units involved, such as without limitation costs of replacing bedroom furniture or carpeting bedrooms.⁷ In each time share apartment, use period

ZZ is longer than the other use periods so its share is larger. The share for time share interests having use period ZZ is calculated by multiplying its bedroom type one week share by 12/7ths.

It is recognized that a portion of the program expenses is used to pay Association Dues to the Association of Apartment Owners of Maui Hill ("AOAO"). Assessments for each time share interest shall be divided into two parts being (i) a pass through of AOA Dues, and (ii) other program expenses and the billing therefor shall evidence the amount of the Assessments allocated to each of (i) and (ii) above.⁸

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

(a) If a shortfall exists, the Board can defer certain expenses and add them to next year's budget or charge a Special Assessment.

If for any reason the regular assessments for the program 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 cure the shortfall (i) by deferring an amount sufficient to make up the shortfall in the budget of program expenses for the next year or (ii) by charging a special assessment.

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

If the costs to repair damage or destruction to a time shared apartment or to a repair or replace the common furnishings in it cannot be fully paid by using available insurance proceeds and the money from any appropriate capital improvement savings account, the Board has the same two choices. It may charge a special assessment or add the amount necessary to next year's budget. The special assessment may be charged against all time share interests 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 either vote to levy the special assessment or to the extent necessary under 8.5(d), the Association shall approve the special assessment at any regular or special meeting of the Association. These special assessments shall be payable at such time as the Board shall determine. All time share interests except use periods designated ZZ shall pay equal special assessments except for special assessments for fixed costs which may be assessed to the extent of the fixed costs in equal shares of the fixed costs for apartments in the bedroom category⁹. Use periods ZZ shall pay the one-week share multiplied by 12/7ths.

(d) With Limited Exceptions, Special Assessments May Not Exceed 5% Of Regular Assessments For That Year.

The total of all special assessments charged to the time share interest in a fiscal year may not exceed 5% of the regular assessment for that fiscal year. If the special assessment is for the purpose of restoring or rebuilding a damaged or destroyed apartment or its common furnishings, the limit is raised to 10%. The Board may charge more than the limit if it has been approved by the owners of a majority of the time share interests voting at any regular or special meeting of the Association (provided that if approved at a special meeting, notice of the special assessment shall be given with the notice of the meeting and, provided further, that if approved at a regular meeting, notice of the special assessment shall be given with the notice of the meeting if the special assessment would exceed 20% of the regular assessment for that year)¹⁰. That approval may be given by vote or in writing. If the total of all special assessments would not have exceeded the limit except for an increase in governmental assessments (for example, real property taxes) and/or lease rent, no vote or written agreement is required. If the approval is by written approval it shall be by the owners of a majority of the time share interests in all time shared apartments

8.6 Personal Charges.

A “personal charge” is any expenses resulting from the act or failure to act by an owner, 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, food, beverages, sports supplies, optional mail service and other special services or supplies resulting from the occupancy of the time shared apartment during that person’s use period;

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

(c) expenses to any other owner of the Association due to any intentional or negligent act of that person;

(d) expenses resulting from any intentional or negligent violation of any provisions of the condominium or time share documents by that person;

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

- (f) any late charges and interest on overdue payments.

8.7 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 which will act as the agent of all owners. The Association will transmit payments on behalf of each owner to the persons entitled to receive them. The Association may delegate this duty to the Managing Agent.

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

The Board will select the due date for assessments and will decide whether they must be paid in one lump sum or in installments. If the Board decides to have an assessment paid in installments, the installments must be about equal in amount and may not be due more often than monthly.

- (c) A Bill For The Assessment Will Be Mailed or Emailed To You.

The assessments will be charged by mailing or emailed to each owner, at the address shown on the records of the Association, a bill stating the amount of the assessment for his time share interest and the due date. If there is more than one owner of a single time share interest, the bill may be sent to any of its co-owners. Regardless of when the bill is sent, however, for the purpose of establishing the amount of any secured lien based on the assessment, the assessment will be considered due on the date the Board selects. Failure to receive a billing shall not excuse nonpayment of any assessment.

- (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 then. Examples of charges which may be payable at checkout include food or beverage charges, optional maid service, telephone charges, transient occupancy tax, any applicable air conditioning charges and any penalties, fines, or other charges for violation of Association rules. Before he or she completes his check out, each occupant must pick up and pay all bills for personal charges which are ready at check-out time.

(2) Personal charges which are not billed and paid at the time of check-out must be paid within ten (10) 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 Managing Agent may require an advance payment or security deposit or credit card authorization from any occupant if they believe it to be appropriate. The Association or Managing Agent may (but is not required to) use these funds to satisfy 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 Managing Agent will be liable for not requesting or not keeping advance payments or security deposits. The request or failure to request and keep them does not excuse any occupant from his obligation to pay his personal charges.

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

(a) Assessments Can 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 owners,
- (2) for the improvements, operation, maintenance, repair and replacement of the time shared apartments and common furnishings, or
- (3) to otherwise pay for the operation and administration of the time sharing program and to repay the Association for expenses it incurred 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 Managing Agent will be placed in a general account in safe and responsible banks or savings and loans or other Hawaii authorized accounts for Timeshare accounts. Any extra money in the general account at the end of any year must be used to pay program expenses of the time sharing program in the following years.

- (2) The Capital Improvement Account.

Any part of the regular assessment which is intended for a capital improvement account will be transferred to a separate account with a safe and responsible depository (such as a bank,

savings and loan or trust company) promptly after the Association receives the payment. The money set aside for the capital improvement account may be deposited in a savings or checking account or may be invested in Treasury Bills or Certificates of Deposit or other obligations of an agency of the United States of America (such as U.S. Savings Bonds) or obligations which are fully guaranteed as to principal by an agency of the United States of America or are approved for accounts for Associations under Hawaiian law.

The Board will authorize payments from the capital improvement savings accounts as necessary. The money in each account may be used only to pay for capital improvements.

The assessments for these accounts will be considered conclusively to be savings of the owners of the time shared apartments held for their benefit to pay for capital improvements. Any part of an owner's assessments used or to be used by the Association for capital improvements or any other capital expense will be treated as a capital contribution by the owner. It will be credited by the Association on its books as paid in surplus. It will not be treated as income to the Association or the owners of the time shared apartments.

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

(a) You Have Promised To Pay The Assessments And Personal Charges.

By accepting the conveyance of a time share interest, each owner promises to pay all assessments for his time share interest and all personal charges charged to him. Each owner makes this promise regardless of whether or not the document transferring his time share interest to him expressly says so.

(b) You Are Personally Obligated To Pay The Assessments And Personal Charges.

Each owner is personally obligated to pay on time all assessments charged to his time share interest and all personal charges charged to him. An owner cannot avoid liability for the assessments and personal charges by not using his time share interest or by abandoning it. Even if the owner transfers his time share interest to another, he or she is still personally obligated to pay all assessments and personal charges due before the transfer is effective. This includes all costs of collection, including attorney's fees. An owner is not personally responsible to pay overdue assessments and personal charges owed by the previous owner of his time share interest (but the time share interest may have a secured lien on it as discussed below).

If title to any time share interest is transferred to a trustee under a land trust, the trust estate and the beneficiary will be liable for and must pay all assessment and personal charges against that time share interest or the owner of it. However, no claim for payment or assessments or personal charges will be made against the trustee personally.

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

If those sums are advanced or paid by the Managing Agent or the Association or any other owner or owners pursuant to this Declaration, they will be subject to the same late charge and interest beginning ten (10) days after repayment is requested.

8.10 Assessments And Personal Charges Become A “Secured Lien” On The Time Share Interest. The Secured Lien May Be Foreclosed And The Time Share Interest Sold.

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

In order to protect against nonpayment, assessments and personal charges automatically become a “secured lien” (a claim as collateral) upon the time share interest again which the assessment or personal charge is made. This means that the owner’s time share interest is put up as collateral to make sure he or she pays his assessments and personal charges. If payment is not made, the secured lien may be “foreclosed” which means that the time share interest will be sold and money from the sale will be used to pay the debt. All time share interests are subject to the secured lien. (This includes any time share interest which is held in trust regardless of 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 or She Becomes The Owner But There Will Be A Secured Lien On His Time Share Interest For Those Assessments And Personal Charges.

If the time share interest is transferred, the new owner is not personally responsible to pay assessments and personal charges charged to the previous owner and due prior to the date the transfer took place. However, the time share interest 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 time share interest still could be foreclosed. In that case, the time share interest 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.

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

A new owner can protect himself from foreclosure for assessments and personal charges due before he or she acquires the time share interest by asking the Association for a certificate showing any past due assessments and personal charges. [See subparagraph 8.10 (e).]

(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. But again there will be a secured lien on the time share interest 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 that time share interest 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 time share interest 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 time share interest would still be taken from the seller and sold, and the seller would still get only the money left after all unpaid amounts have been paid.

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

Regardless of 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 a time share interest for a loan made in good faith and for value, if the mortgage is recorded before a notice of lien is recorded as provided in Article 10.3.

However, there will be a secured lien on the time share interest for all amounts which become due under this Declaration after the date ownership of the time share interest is transferred to the buyer at the foreclosure sale.

(e) The Association Will Provide A Certificate Showing All Unpaid Amounts Due On Your Time Share Interest.

Since a time share interest can be sold to pay overdue assessments or personal charges of a previous owner, persons who want to buy or lend against a time share interest should know if there are any unpaid assessments or personal charges. Any owner, lender, potential lender or potential buyer of a time share interest may ask the Association for a certificate showing all amounts unpaid with respect to that time share interest. Within twenty (20) days after receiving the request, the Association must provide the certificate. The Association may have the Managing Agent do this. That certificate will be binding upon the Association in favor of any person other than the owner 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 certificate unless the assessment or personal charge is disclosed in the certificate. The Association may charge a reasonable fee for preparing that certificate.

ARTICLE 9 OWNER'S RESPONSIBILITY FOR OTHERS

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

If there is more than one owner of a single time share interest, each co-owner 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 assessment, not just part of it or his share of it. It does not matter that only one co-owner uses the time shared apartment during the use period or that personal charges were caused by only one of the co-owners and not the others. For example, when one co-owner damages the furniture or makes a long distance call, he or she and each of his co-owners are responsible separately and together to pay for it.

9.2 As An Owner, You Are Personally Responsible For Your Visitors, But Not Exchange Users.

- (a) An owner is personally responsible to see that his visitors:
 - (1) obey the condominium and the time share documents;
 - (2) promptly pay all personal charges incurred during the owner's use period (for example, charges for extra maid services or telephone calls made or received);
 - (3) promptly pay all other personal charges arising from or related to his visitor's use of the time shared apartments, the common furnishings or the condominium project (for example, legal fees paid to force his visitor to leave after the use period ends).
- (b) An owner is not personally responsible for the acts of an exchange user using that owner's use period through an exchange program but shall be responsible for a person who occupies his time interval in connection with an exchange through a program or arrangement which is not an Association approved exchange program.

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

By permitting his visitor to come onto the condominium project (regardless of whether the visitor is expressly invited), the owner agrees that he or she 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 time share documents by his visitor; and
- (c) any personal charges incurred by his visitor.

The owner will be responsible for the acts (or failure to act) of his visitors just as if he or she were using the time shared apartment himself. If his visitors do not pay all amounts charged to them, the owner must pay those amounts. The owner must also pay all costs of trying to collect any amounts charged to his visitor, including court costs and reasonable attorneys' fees. And, the owner must pay all other amounts charged to him as a result of his visitors.

9.4 An Owner And His Visitors Are Liable Separately And Together.

Each owner 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 time shared apartment, the common furnishings, or the condominium project. This means that either the owner 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 of the time share interest 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 An Owner Because Of Your Visitors Is A Personal Charge.

Each owner is personally obligated to pay the amounts charged to him under this Article. Those amounts will be charged to the owner as a personal charge. Consequently, the owner's time share interest will have a secured lien on it.

ARTICLE 10 ENFORCEMENT

10.1 Who May Enforce The Condominium Documents Or The Time Share Documents.

If anyone violates any of the provisions of the condominium documents or the time share documents, the Managing Agent or the Association (acting through the Board) or any other owner or owners have full power and the right to enforce compliance in any manner provided for

in this Declaration or by law or in equity. All enforcement powers contained in this Declaration will be cumulative (they can be used one at a time or all at once). By acquiring a time share interest, each owner has promised and agreed that the Association has all of the rights, powers, and remedies contained in this Declaration.

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

A violation of the condominium or time share documents by anyone will not relieve anyone else from his obligation to continue to comply with the condominium documents and the time share documents. The failure to enforce any provision of the time share 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 Time Share Documents Or The Condominium Documents.

The Managing Agent, the Association, the Master Association, or any owner or owners may employ an attorney to enforce the provisions of the condominium documents or the time share documents against any occupant. If that happens, the person violating the condominium documents or time share 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 Managing Agent May Enter Your Apartment To Stop Any Violations Or To Protect Owners.

The Association and the Managing Agent have the right and authority to enter any time shared apartment (i) to stop a violation of any law or the condominium documents, or time share 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 Program And Fine You For Violations.

If any owner or his visitors violate the condominium documents or time share documents, (including but not limited to the failure of the owner to pay any assessment, personal charges or other amounts due the Association) the Association may charge him a money penalty and/or suspend (take away) his rights under this Declaration and/or impose such other penalty as shall be reasonable under the circumstances. Rights which may be suspended include, among others, the owner's (and his visitors) right to occupy the time shared apartment during his use period and his right to participate in any vote or other decision provided for in this Declaration.¹¹

Subparagraphs (a) – (e) below apply to violations other than failure to pay your assessments, personal charges and other amounts payable to the Association and subparagraph (f) applies to failure to pay your assessments, personal charges and other amounts payable to the Association.¹²

(a) You Are Entitled To An Opportunity To Present Your Case To The Board.¹³

As a requirement to present your case to the Board you must deposit with the Association the amount of the fine which will be due if you lose the case. The deposit shall be held in a separate account and not paid by the Association for any purpose until your case is resolved. In the event you lose your case the Association shall receive the fine for its unrestricted use. If you win the case the deposit shall be returned to you within 10 days.

The Board must hold a meeting (which may be a regular Board meeting) and permit the owner to present his case before it fines him or suspends his privileges and services. Written notice of the meeting stating the purpose thereof including the reasons for the suspension fine or other penalty sought must be given to the owner at least 15 days in advance. The notice must state the purpose of the meeting and the reason for the proposed fine, suspension, or other penalty. A quorum of the Board as defined in the By-laws must be present in person or by phone and the meeting must be held properly as provided in the By-laws. The owner is entitled to appear in person or by phone or in writing, with or without an attorney and/or witnesses as the owner's option and present his case as to why his privileges and/or services should not be suspended or the penalty imposed. The decision whether to suspend privileges or services or to fine the owner will be made by a majority of the Board members present at the meeting.¹⁴

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

Written notice of disciplinary action taken by the Board and the reasons for it must be given to the owner. The disciplinary action will become effective on the date that the notice is given.

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

If an owner participating in an exchange program is suspended, the suspension also applies to any exchange rights the owner may have. See paragraph 7.5(c).

(d) When Your Privileges Will Be Restored.

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, whichever is later.¹⁵

(e) The Board May Give The Managing Agent The Power To Carry Out The Fines Or Suspensions It Imposes.

(f) Notwithstanding the provisions of subparagraph (a) – (e) of this paragraph 10.3, if any owner fails to pay assessments, personal charges or other amounts due hereunder on or before 30 days after the date such payment becomes delinquent, the right of such owner (and his visitors) to occupy his time shared apartment during all future use periods and the right of such owner to participate in any vote or other decisions provided for in this Declaration shall automatically be suspended until all amounts past due are paid in full. The on-site management shall refuse to give possession of any time shared apartment to the owner or anyone claiming under such owner while the owner's use rights are suspended hereunder, except to any exchange user whose rights are confirmed prior to the effective date of notice to the exchange program as defined by the rules of the exchange program. Exchange guests of all companies other than exchange programs through recognized exchange companies shall be deemed to be owner's visitors and thus their rights shall be suspended to the same extent as the owner's rights are suspended.

The foregoing suspension shall include, without limitation, suspension of all rights to exchange of space bank deposit any future use periods, with all such periods previously space-banked with an exchange program which are not subject to confirmed exchanges being considered to be deposited in the bulk bank account of the Association if the Association does not have a bulk bank account with the exchange program or in the Association's bulk bank account if the Association has a bulk bank account with the exchange program. Any bulk banked time owned by any owner whose time share interest is foreclosed upon by the Association or any mortgagee shall vest in the foreclosing party upon completion of foreclosure. The delinquent owner shall be responsible for all costs incurred by the Association in enforcing the provisions of this paragraph 10.3 including, without limitation, charges made by any applicable exchange program.¹⁶

If the suspension of privileges is based solely on the failure of an owner to pay assessments, personal charges or other amounts due hereunder when due, the suspended privileges of any owner shall be reinstated automatically after such time as the owner shall have paid to the Association, in cash or by cashier's or certified check or at the Association's option by credit card, all amounts past-due as of the date of such reinstatement.¹⁷

The provisions of this paragraph 10.3 shall be in addition to all other rights and remedies of the Association as to delinquencies or violations of owners.¹⁸

10.4 The Condominium Documents Or The Time Share Documents May Be Enforced By Filing A Lawsuit.

The Association, the Managing Agent or any owner can ask a court to enforce the condominium documents or the time share documents and ask for any appropriate relief. For example, the appropriate relief could be damages or the specific enforcement of the provisions of those documents or any combination of those remedies. The Association, the Managing Agent or any owner may also enforce the liens provided for in this Declaration and any other lien provided by law and have the right to take the time share interest of any defaulting owner in any lawful manner.

(a) A Violation Will Be Considered A Nuisance.

Every violation of any provision of the condominium documents or the time share documents will be considered a nuisance. The Association, the Managing Agent or any affected owner may seek an “injunction” (an order to stop the owner from doing something or to force him to do something) or any other appropriate relief to end the nuisance.

10.5 Your Time Share Interest Is Subject To A Secured Lien.

(a) The Secured Lien Works Like A Mortgage.

The Association has a secured lien on each time share interest as security (collateral) for the prompt payment of all assessments and personal charges and the performance by each owner of his obligations under the condominium documents and the time share documents. The secured lien is like a mortgage with a private power of sale. This means that the time share interest may be sold at a public auction with or without getting a court order. The secured lien will cover all interests in a time share interest, 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 time share interest or time shared apartment.

(b) The Secured Lien May Be Foreclosed And Your Time Share Interest Sold.

The secured lien may be foreclosed in any lawful manner (by the Association or the affected owners, as provided in this Article) and the defaulting owner’s time share interest may be sold.

(1) Giving Notice Of Default.

Before the sale, the foreclosing person must give a notice to the defaulting owner explaining the defaulting owner's violation. A copy must also be given to the lender of the defaulting owner if the lender has requested a copy and furnished its name and address to the Association. 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 she failed to pay money, the notice must also state the total of any then unpaid amounts.

(2) Foreclosure.

(3) A lien may be foreclosed by any procedure authorized by the State of Hawaii by following the necessary procedures to foreclose as the procedure maybe modified from time to time by applicable law, including by power of sale (nonjudicial) foreclosure and judicial foreclosure. Anyone May Buy The Time Share Interest.

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

(4) The Buyer Will Be Subject To The Time Share And Condominium Documents.

The person who buys the time share interest at the foreclosure sale will have to obey the condominium documents and the time share documents just like any other owner. Of course, the buyer will have to pay any assessments and personal charges which become due after the time share interest 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 or obtain a deficiency judgment in connection with the foreclosure.

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

Other than the exception described in subparagraph 8.10(d), 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 time share interest. The liens created by this Declaration will be superior and controlling regardless of whether the notice of lien is recorded before or after any such encumbrance. Some liens (such as the line of real property taxes and lease rent to the Sublessor) are superior to the liens in this Declaration because the law makes them superior.

(d) Manner of Conveyance Of Foreclosure Intervals After Foreclosure by Private Power of Sale.

In the event of foreclosure by the Association by means of private power of sale, the Association, by and through such person or persons authorized by general or special resolution of the Board, may, in the name of the Association or as attorney in fact of the defaulting owner, which said power of attorney is hereby irrevocably granted and given to the Association, execute all such instruments including, but not limited to, conveyance instruments and do and perform all such things, acts, or deeds as may be necessary to convey the defaulting owner's time share interest under the terms of said sale.¹⁹

ARTICLE 11 WITHDRAWAL OF APARTMENTS

11.1 No Apartments May be added to the Program.

11.2 Apartments May Be Withdrawn By The Owners.

(a) The Owners May Withdraw An Apartment.

If the owners of all time share interests in a particular time shared apartment unanimously decide to do so and their lenders consent, they may withdraw that apartment from the operation of this Declaration and the time sharing program. To do so they must record a document titled "Termination of Time Sharing Status". That document must contain:

- (1) a legal description of the apartment being withdrawn; and
- (2) an affidavit reciting their ownership of all time share interests in that time shared apartment and their desire to withdraw that apartment from the time sharing program.

After that document is recorded, the apartment will no longer be a time shared apartment and will be removed from the time sharing program.

ARTICLE 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 time shared apartment or the common elements. However, subject to those documents, if a time shared 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 thing is still usable, reasonably attractive, safe and in good condition. The Board will decide when such things will be repaired or replaced and its decision will be final. If the Board decides it is better to replace something instead of repairing it, the Board may do so.

(a) Paying For The Repairs.

The Association will use any available insurance or condemnation proceeds to pay for the repair or replacement. "Condemnation" refers to a governmental authority (such as state or county) taking property. "Proceeds" in this instance means any money paid by the governmental 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 improvements accounts 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 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 user, that person must repay the Association and the owner will not be responsible to repay the Association. The Board will decide what things should be repaired or replaced as a result of any damages or destruction and that decision will be binding on any person responsible for repayment. This paragraph (b) does not apply to damage or destruction which the Board decides is the result of ordinary wear and tear.

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

Regardless of what paragraph (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 Association, the Board, the Managing Agent, the

Landowner, or any other owner to the extent the loss is covered by insurance purchased by him or any of them.

12.2 How Excess Insurance Or Condemnation Proceeds Will Be Distributed.

Any excess insurance or condemnation proceeds payable to the owners of a time shared apartment may be divided into equal shares for each time share interest in that time shared apartment, if the Association chooses or it may put the excess into reserves for expenses related to the apartment. The owner of each time share interest will be paid the share for his time share interest, subject to the rights of his lender. Excess insurance or condemnation proceeds are proceeds which result from:

(a) dissolving or terminating (winding up) the condominium project or the time share program for any reason or deleting from the Timeshare program a Timesharing Apartment or Apartments,

(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 time shared 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 Master Declaration, and

(d) any similar cause if those proceeds are not required (i) for the repair or replacement of the time shared apartment or common furnishings or any part of them or (ii) to pay any one or more owners for personal injuries or loss or damage to their property (in which case the proceeds will be distributed with due regard to the loss or damage).

12.3 The Board Must Buy Casualty Insurance Or All Risk Insurance.

The Board must buy a policy of Casualty insurance, with an extended coverage endorsement (including when available at a reasonable cost, insurance against loss or damage by vandalism, malicious mischief, theft or water) or, if possible, a policy of all risk insurance (here in this paragraph 12.3 called the "policy"). The cost of the policy will be a program expense. The Board's obligation as to the Master Association's policy shall be limited to seeing that a policy remains in force and effect. The Board shall, however, insure the contents of the apartments in the program and the following shall apply as to the insurance for such contents.

(a) The Source And Coverage Of The Policy.

The policy must be bought from a company authorized to do business in Hawaii and must, if possible, provide coverage for one hundred percent (100%) of the full replacement cost, without deducting for depreciation, of each time shared apartment and its common furnishings. The insured under the policy will be the Association, by the Board, as trustee for each of the owners of each time shared apartment in proportion to their undivided interests in the time shared apartment. The foregoing shall not prohibit a customary deductible feature from being included in the insurance.

(b) Certain Provisions Are Prohibited And Others Are Required To 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 and must provide that the liability of the insurance company will not be affected by any such other insurance. 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 Landowner, the Board or the Master Association, or

(ii) any breach of warranty or condition caused by the Board, the Landowner, the Master Association Board, 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 requested by the Board) unless the insurance company gives sixty (60) days' written notice of the cancellation or changes to the Board and the Managing Agent;

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

(5) Must contain a provision in which the insurance company gives up any right of subrogation (or agrees to recognize a waiver of liability) to any right of the Landowner, the Master Association, the Board or any apartment owner (including owners of time share interests)

against 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 time shared apartment will be adjusted (settled) by the insurance company and the Board;

(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 Landowner, the Board or any occupant will not release the insurance company from its obligations 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 (provided that 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 an assignment of any mortgage 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 or 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 of any time shared apartment, 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 to insure the Board, the Association, the Landowner, each owner, the Managing Agent and all officers, employees, and agents of the Association and the Managing Agent against claims for personal injury, death and property damage arising out of the condition of any time shared apartment or activities in or construction work on any time shared apartment or the common elements (here in this paragraph 12.4 called the “policy”). The cost of the policy will be a program expense.

(a) The Source And Coverage Of The Policy.

The policy must be purchased from a company qualified to do business in Hawaii. The policy must be under a Comprehensive General Liability Form or commercial package policy or successor form with an aggregate limit of at least \$1,000,000 and an occurrence limit of at least \$500,000. The Board may establish higher limits for the policy from time to time based on prevailing prudent business practices in the State of Hawaii.

(b) Certain Provisions Are Prohibited And Other Are Required 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 buildings, whether or not the increased hazard is within the control or knowledge of the Managing Agent, the Landowner, the Board or the Master Association, or

(ii) any breach of warranty or condition by any occupant, or

(iii) any act or neglect of the Managing Agent, the Landowner, the Board or any occupant;

(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 requested by the Board) unless the insurance company gives a written notice of the cancellation or change at least sixty (60) days in advance to the Board and the Managing Agent;

(3) Must contain a provision in which the insurance company gives up any right of subrogation (or recognition of a waiver of liability) to any right of the Board, the Association, the Master Association, the Managing Agent, the Landowner or any apartment owner (including owners of time share interests) against any occupant.

(4) Must contain a “severability of interest” provision preventing the insurance company from denying the claim of any owner because of negligent acts of the Board, the Association, the Managing Agent, the Landowner or any occupant.

12.5 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 paragraph 12.5 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. The policy must be obtained from a company qualified to do business in Hawaii. The cost of the policy will be a program 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 must pay for any expense actually and reasonably incurred including, but 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.

12.6 The Association Must Buy Fidelity Bonds For Anyone Handling Association Money.

The Association must obtain adequate fidelity bonds covering the Managing Agent and all directors, officers, employees, and volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or other reasonable protection must name the Association as the obligee (the person protected and who gets paid in case of loss) and provide coverage in an amount determined reasonable by the Board after consultation with its Fidelity Bond or insurance agent. The bonds must 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 Managing Agent; and
- (2) Provide coverage for persons who serve without pay (for example, a volunteer) and contain a waiver (release) of any defense based upon the exclusion of such persons from any definition of the term “employee” or similar term.

12.7 The Board Is Responsible For The Association’s Insurance Program. You And Your Lender Are Entitled To 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 necessary. In addition to insurance the Board is required to obtain, it may buy insurance against any additional risks that it considers advisable for the

protection of the owners. For example, the Board may buy any worker's compensation insurance it decides is necessary or is required by law. The owners will have the right to buy additional insurance for their own benefit at their own expense.

If asked to do so, the Board will furnish 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 buyer having a contract to buy a time share interest) at the office of the Managing Agent.

ARTICLE 13 REVISING, TERMINATING, AND INTERPRETING THIS DECLARATION

13.1 How This Declaration May Be Changed.

(a) This Declaration May be Amended by Owners Of Time Share Interests And Each Amendment Must Be Recorded.

This Declaration may be "amended" (changed) at any regular or special meeting of the Association, called and held in accordance with the By-Laws, by the affirmative vote of the owners present, in person or by proxy, at any Association Meeting.²⁰

(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 time share interest unless the amendment is signed by that owner and his lenders (if any). No amendment may take away the right of any owner to exclusively occupy his time shared apartment, and to use and enjoy the common elements and all the other rights which go with the time shared apartment during his use period unless that owner expressly consents.

(c) Amendments Will Be Binding On Every Owner And Time Share Interest.

Any Amendment which complies with these provisions will be binding upon every owner and every time share interest.

(d) How This Declaration and the By-Laws May Be Restated.

Notwithstanding any other provision of this Declaration, the Association at any time may restate the Declaration or By-Laws of the Association to set forth all amendments thereto by a

resolution adopted by the Board. The Association at any time may restate the Declaration or By-Laws to amend the Declaration or By-Laws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, by a resolution adopted by the Board. The restated Declaration or By-Laws shall be as fully effective for all purposes as if adopted by a vote or written consent of the owners. The restated Declaration or By-Laws must be recorded and, upon recordation, shall supersede the original Declaration or By-Laws and all prior amendments thereto.²¹

13.2 How This Declaration Will End.

This Declaration will remain in effect until the end of the apartment lease unless terminated sooner because of any of the following events:²²

- (a) If all of the apartments subject to this Declaration are withdrawn from the operation of the provisions of this Declaration under paragraph 11.2 above, or
- (b) If all of the time shared apartments are destroyed and a decision is made under the Master Declaration not to repair, rebuild, or restore them, or
- (c) If all the time shared apartments are taken in eminent domain proceedings or under threat of eminent domain, or
- (d) If the Master Declaration is terminated.

13.3 The “Rule Against Perpetuities”.

If any provision of this Declaration would violate the “Rule against Perpetuities” or any other limitation imposed by law on the duration of the provision, then that provision will be considered effective only until the earlier of:

- (a) the maximum permissible period permitted by law, or
- (b) 21 years after the death of the last survivor of the now living descendants of Senator Edward M. Kennedy of Massachusetts, former Senator Robert F. Kennedy of New York, former President Ronald W. Reagan, and Governor George R. Ariyoshi of Hawaii.

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

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

13.5 How This Declaration Should Be Read And Interpreted.

The captions in this Declaration are for convenience only and 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 is clearly intended.

ARTICLE 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 and received when delivered personally or 4 days after they are deposited in the United States Mail, postage prepaid, addressed to an owner at the last address he or she gives to the Association for delivery of notices or by email as provided in this Declaration as amended from time to time. If an owner does not give the Association an address, the notice will be addressed to his last known address. If he or she has no known address, the notice will be addressed to his time shared apartment. If any time share interest is transferred to a trustee under a land trust, notice must be given both to the trustee and to any beneficiary whose name and address has previously been furnished, in writing, to the Board.

Notices to the Association must be personally delivered or mailed to the address the Association gives by written notice to all owners. Notices to the Managing Agent must be personally delivered or mailed to the address the Managing Agent gives by written notice to the Association.

The addresses for purposes of this paragraph 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 a time share interest is placed in a land trust, ordinarily the person entitled to use the time shared apartment during the use period for that time share interest 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” which is contained in Chapter 558, Hawaii Revised Statutes, as amended from time to time, or in any substitute or successor statute (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 time share interest.
- (i) “Lien” means a claim against property. For example, a mortgage on a time share interest is a claim on the time share interest 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 (which means that they own it together).

[PROPOSED]
AMENDMENT TO SECOND RESTATED BY-LAWS OF THE MAUI LEA TIME
INTERVAL OWNERS ASSOCIATION
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ARTICLE I
GENERAL PROVISIONS

Section 1. Name and Address of the Association.

The name of the association is the “Maui Lea Time Interval Owners Association (the “Association”). The principal office of the Association is at 2881 South Kihei Road, Kihei, Maui, Hawaii 96753 or any other place in the State of Hawaii selected by the Board of Directors from time to time.

Section 2. Definitions.

Unless expressly stated to the contrary, the terms used in these By-Laws have the following meanings:

(a) “Declaration” means the Second Restatement of the Maui Lea Time Interval Program Revised Time Share Declaration recorded at the same time as these By-Laws and to which these By-Laws are attached, and all revisions to the Declaration.

(b) “Other Terms” All of the terms defined in the Declaration have the same meaning when used in these By-Laws.

Section 3. Purpose of the Association.

The purpose of the Association is to exercise the powers and perform the duties of the Association set forth in these By-Laws, the Charter of Incorporation (the “Charter”), and the Declaration.

Section 4. Conflicts Between the Controlling Documents.

In case any of these By-Laws conflict with the provisions of the Declaration or the Charter, the provisions of the Declaration or Charter, as the case may be, control.

Section 5. Persons Subject to these By-Laws and Other Directions.

All present and future owners, lenders, visitors and exchange users of time shared apartments and their employees, and any other person who may use any time shared apartment in any manner are subject to these By-Laws, the Declaration and the Rules and Regulations. By accepting ownership of a time share interest or by occupying a time shared apartment, a person agrees that he or she accepts, approves and will obey these By-Laws, the Rules and Regulations, and the provisions of the Declaration, as they may be revised from time to time.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

Section 1. Qualifications for Membership in the Association.

Each owner of a time share interest upon becoming an owner, automatically becomes a member of the Association and continues to be a member of the Association until his ownership of that time share interest ends for any reason, at which time his membership in the Association automatically ends. If a time share interest is owned by more than one person, all of them are members of the Association. However, for the purpose of representing the time share interest with regard to the affairs of the Association and for voting as members of the Association, that time share interest is entitled to only one (1) vote which will be exercised and cast in accordance with the provisions of these By-Laws. Ownership of a time share interest in a time shared apartment in this program is the sole qualification for membership in the Association.

Section 2. Your Membership Goes with Your Time Share Interest.

The Association membership of each owner is appurtenant to the time share ownership interest. The Deed of a time share interest automatically transfers the membership in the Association which goes with that time share interest to its new owner.

Section 3. Your Voting Rights As An Owner.

Except as provided in Article IV Section 3 each member is entitled to one (1) vote for each time share interest. When a time share interest is owned by more than one person, the vote for that time share interest will be exercised as they decide among themselves, but in no event may more than one vote be cast for any time share interest.

Whenever these By-Laws or the Declaration require the vote, assent or presence of a particular number of owners or members entitled to vote on a matter or at a meeting with regard to the taking of any action or any other matter whatsoever, the provisions of this Article II and Section 3 of Article IV govern as to the total number of available votes, the number of votes an owner is entitled to cast at the meeting, and the manner in which the vote of a time share interest having more than one owner will be cast.

Section 4. Co-Owner Disputes Over How to Cast Their One (1) Vote.

The vote for each time share interest may be cast only as a unit, and fractional (split) votes are not allowed. If co-owners of a time share interest are unable to agree among themselves as to how their vote or votes will be cast, they lose their right to vote on the matter in question. If any owner or owners cast a vote representing a certain time share interest, it is conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of all other owners of that time share interest.

Section 5. Members' Right and Duties.

Each member has the rights, duties and obligations contained in these By-Laws, the Charter and the Declaration, as those documents may be revised from time to time.

Section 6. Cumulative Voting.

In any election of the Board of Directors of the Association (the "Board"), every owner entitled to vote at that election has the right to cumulate his vote. This means each owner has the right to give to one candidate, or divide among any number of candidates, a number of votes equal to the number of directors to be elected multiplied by the number of votes which that owner is otherwise entitled to cast according to the Declaration and these By-Laws. Subject to the provisions of Article VI, Section 1 of these By-Laws, the candidates receiving the highest number of votes, up to the number of Board members to be elected, are elected.

ARTICLE III

MEMBERSHIP ASSESSMENTS, PERSONAL CHARGES AND LIEN RIGHTS

Section 1. Membership Assessments And Personal Charges.

All assessments and personal charges provided for in the Declaration must be paid by the members of the Association as set forth in the Declaration. The Board will fix, levy, collect and enforce those assessments and personal charges as set forth in the Declaration.

Section 2. Enforcement, Lien Rights.

For the purpose of enforcing and collecting assessments and personal charges, the Association has the lien rights described in the Declaration, and those lien rights may be enforced by the Board in the manner described in the Declaration. The Board also has and is entitled to exercise all other rights and remedies set forth in the Declaration or otherwise provided for at law or in equity.

ARTICLE IV

MEMBERSHIP RIGHTS AND PRIVILEGES

Section 1. Your Rights and Privileges As A Member.

No member has the right, without approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Association or the Board by these By-Laws, or the Declaration. Each member has all of the rights and privileges during his use period granted to the members by these By-Laws and the Declaration subject to any limitations imposed in accordance with these By-Laws and the Declaration.

Section 2. The Board May Adopt Rules and Regulations.

The Board may establish any fair and reasonable rules, regulations and conditions to the use or enjoyment of the time shared apartments and/or the condominium project as the Board, in

its sole determination, deems appropriate, so long as those rules, regulations and conditions do not materially decrease the rights of members set forth in the Declaration. All rules and regulations adopted under this Section 2 and under the Declaration are referred to in these By-Laws as the "Rules and Regulations". All rules and regulations adopted by the Board shall be subject to confirmation by Association Vote at the next annual or special meeting of the Association.

Section 3. The Board May Take Away Your Voting Rights and Fine You For Violations.

If any member or his visitors violate the condominium documents or time share documents (including but not limited to the failure of the member to pay any assessment or personal charge on time) the Association may charge him a money penalty and/or suspend (take away) his rights under the time share documents. Rights which may be suspended include, among others, a member's (and his visitors) right to occupy the time shared apartment during his use period and his right to participate in any vote or other decision provided for in the Declaration.

(a) You Are Entitled To An Opportunity to Present Your Case Unless You Don't Pay Your Assessments or Personal Charges. The Board must, if requested by you, hold a meeting which may be in Executive Session at a regular Board Meeting and permit the member to present his case before it releases any fines charged to him or suspends his privilege and services unless the suspension is because of an owner's failure to pay any assessments or personal charges on time or unless the member chooses not to request presenting his or her case at a meeting within 30 days after the fine is levied and notice given.

Written notice of the meeting must be given at least fifteen (15) days in advance to the member whose voting rights may be suspended or against whom money penalties may be imposed. The notice must state the purpose of the meeting, including the reasons for seeking the suspensions or fines. The notice must be given in the manner provided in the Declaration for giving notice to owners. The member is entitled to appear in person or by telephone at the meeting and explain why the penalty should not be imposed. The Board will decide whether the member's defense will be oral or written. The decision whether to suspend privileges or to fine members will be made by a majority of the members of the Board present at the meeting and is binding upon all members. No action taken at such meeting is effective unless a quorum of the Board is present and the meeting is held as provided in these By-Laws.

(b) The Fine or Suspension Will Be Effective When You Are Given Written Notice. Written notice of the disciplinary action taken and the reasons for it must be given to the suspended owner. The disciplinary action will become effective on the date that the notice is given. No written notice of suspension of use or voting rights needs to be given any owner when the suspension is based on failure to pay any assessment or personal charges on time.

(c) A Suspension Will Take Away Your Right to Exchange Unless An Exchange User Has Confirmed Reservations. If a member participating in an exchange program is suspended, the suspension also applies to any exchange rights the member may have. The Board must notify that exchange program of the suspension. Existing confirmed reservations made by an exchange user through the member's exchange program will not, however, be affected by any suspension.

(d) When Your Privileges Will Be Restored. If the disciplinary action is based on the failure of a member to pay assessments or any other amounts when due, the suspended privileges and services will be restored automatically when the Association is paid, 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 Managing Agent The Power To Carry Out The Fines Or Suspensions It Imposes. The Board may give the Managing Agent 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 rights and privileges during the period of time that the owner is behind in paying assessments or personal charges.

ARTICLE V

MEETINGS OF MEMBERS

Section 1. Meeting Place.

All meetings of the members must be held at a place selected by the Board.

Section 2. Annual Meetings of Members.

The annual meetings of members will be held in the first quarter of each fiscal year of this Association. At all annual meetings there will be elected a Board of Directors in accordance with the requirements of these By-Laws.²³ The members may also transact any other business of the Association which properly comes before them at the annual meeting.

Section 3. Special Meetings Of The Members.

Special meetings of members, for any purpose or purposes at all, may be called at any time by a majority of the Board or by members representing three percent (3%) or more of the total voting power of all members. Upon receipt of a request or petition for a special meeting, the Secretary will send written notice of the meeting to all owners. The meeting will be held at the time stated in the request or petition. If no meeting date is stated, the meeting will be held on a date which is not less than thirty (30) nor more than ninety (90) days after the receipt of the request or petition at any reasonable time of day. If notice is not given within twenty (20) days after receipt of the request or petition, the persons requesting the meeting may give the notice.

Section 4. How To Give Notice Of Meetings And Other Notices.

The written notice of all meetings of the members (whether an annual or special meeting) must state the place, date and hour of the meeting and whether it is an annual or special meeting and must also list the items on the agenda for that meeting and contain a brief statement of the business proposed to be transacted at it (including all matters that the Board expects to present or expects others to present). The notice may contain a standard proxy form authorized by the Association, if any. The notice of meetings permitted or required to be delivered by these By-Laws must be given to all owners at least thirty-five (35) days but not more than ninety (90) days before the date of the meeting either by (i) personal delivery; (ii) mailing the notice by first-class mail, or (iii) electronic transmission (including email); provided that any notice by mail or email must be sent to the owner at his or her address or email address as it is shown in the records of the Association.²⁴ Upon delivering to the Board a written request for copies of all notices, any lender having a recorded mortgage on a time share interest may obtain a copy of any and all notices permitted or required to be given to the owner whose interest is covered by that mortgage. If notice is given in accordance with the provisions of this paragraph, the failure of any owner or lender to receive actual notice of the meeting will not in any way make the meeting or proceedings at the meeting invalid. The presence of any owner or lender in person or by proxy at any meeting is deemed a release of the right to receive any required notice by that owner unless at the beginning of the meeting that owner objects to holding that meeting because of the failure to give proper notice. Each member must keep the Board informed of any change in the member's current mailing address and email address.²⁵

Section 5. Adjourned Meetings And Notices For Them.

(a) Any meeting of the members whether or not a quorum is present, may be "adjourned" (temporarily ended and then continued later) from time to time by the vote of a majority of the owners entitled to vote and who are present at that meeting in person or by proxy. If there is not a quorum, no other business may be handled at the meeting unless these By-Laws or the Declaration provide otherwise.

(b) When any meeting of the members is adjourned for thirty (30) days or more, notice that the meeting is starting up again must be given in the same way as it was given for the original meeting. In all other cases, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, other than by an announcement at the meeting which is being adjourned to a later date.

Section 6. Quorum.

At any meeting of the members, the presence either in person or by proxy of members entitled to cast at least fifteen percent (15%) of that number of votes which is equal to the difference between (i) the total number of votes in the Association held by members and (ii) the number of votes held by members as to which voting rights are suspended at the time of the

meeting in accordance with these By-Laws, will be a quorum for any action by the members, unless a different requirement is imposed by law, the Charter, these By-Laws or the Declaration. A majority of the votes held by all members entitled to vote present at a meeting at which a quorum is present prevails (is the deciding vote) at those meetings unless a different percentage is required by law, the Charter, these By-Laws or the Declaration. Subject to the provisions of Section 4 of this Article V and unless otherwise expressly authorized by these By-Laws or the Declaration, all action required or permitted to be taken by the members may be taken only at a legally called annual or special meeting at which a quorum is present and for which proper notice was given. If any meeting cannot be held because a quorum is not present, a majority of the members present either in person or by proxy and entitled to vote, may, without further notice, adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called, by announcing that adjournment at the meeting.

Section 7. Taking Action Without Having a Meeting.

Any action (except the election of directors) which may be taken at a meeting of the members, may be taken without a meeting and without advance notice if:

- (a) the written ballot of every member entitled to vote is solicited;
- (b) the written ballot provides an opportunity for the member to specify a choice between approval and disapproval of each matter of business proposed to be acted upon by the Association and further provides that the vote of the members will be cast according to the choice they selected;
- (c) the required number of signed approvals in writing, setting forth the action taken, is received;
- (d) the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action;
- (e) the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of ballots cast; and
- (f) all the solicitations indicate (i) the number of responses needed to meet the quorum requirement; (ii) the percentage of approvals necessary to pass the measure being voted on.

The solicitation must state the deadline by which the ballot must be received in order to be counted and must provide a reasonable time for the member to return the ballot to the Association.

Any member casting a ballot, or the proxy representatives of a member or a new owner of a membership or a personal representative of the member or their respective proxyholders

may cancel the ballot or substitute another, by a written letter or other document received by the Association before but not after the deadline to return ballots specified in the solicitation. The cancellation will be effective when it is received by the Secretary of the Association.

Section 8. Record Date For Determining Who May Receive Notice And Vote.

For each meeting of the members, the Board of Directors may pick a date in the future as the “record date” for the purpose of determining which members are entitled to notice of and to vote at the meeting. The record date may not be more than sixty (60) days before the meeting date. When a record date is picked, only members who are shown as owners on the Association’s records on that date will be entitled to notice of and to vote at the meeting, despite any changes on the books of the Association after the record date.

If no record date is set the record date for determining those members entitled to receive notice of, or to vote at, a meeting of members will be the last business day before the day on which notice is given, or, if notice is waived, the last business day before the day on which the meeting is held. The record date for deciding which members are entitled to vote by ballot on corporate action without a meeting, when no previous action by the Board has been taken, will be the day on which the first written consent is given. When previous action of the Board has been taken, it will be the date on which the Board adopts a resolution relating to that action.

Section 9. Proxies and Pledges.

The authority given by any member to another person to represent him at meetings of the Association is called a “proxy”. To be effective, the proxy must be in writing, signed by that member and filed with the Secretary. Unless limited by its terms, the proxy will continue to be effective until it is revoked (cancelled) by a written document filed with the Secretary or by the death or incapacity of that member. Any proxy distributed to members of the Association must

- (a) state the name of the person picked or designate the Board as the proxy representative, and
- (b) provide an opportunity for the member to select a choice between approval and disapproval of each matter of business determined by the Board to be controversial to be acted upon by the Association and to select candidates running for the Board of Directors, and²⁶
- (c) provide that the vote of the member will be cast according to the choice selected.

Voting rights transferred by a mortgage or agreement of sale covering any time share interest, a true copy of which is filed with the Managing Agent, may be exercised only by the person designated in the mortgage or agreement of sale until the written release or other termination of the mortgage or agreement of sale is filed with the Managing Agent. A proxy form which accompanies a notice of meeting of the Master Association is valid only for the meeting covered by the notice (and any adjournment of the meeting) and may select any person as the proxy representative and may be limited as the member desires and indicates.

Notwithstanding anything hereto to the contrary, every proxy, to be valid shall be delivered to the Secretary of the Association or to the managing agent, if any, no later than 4:30 p.m. H.S.T. of the second business day prior to the date of the meeting to which it pertains, or such earlier time as may be specified from time to time by applicable law.²⁷

Section 10. Rules For Conducting The Meetings And The Order Of Business.

All meetings of the Association must be conducted in accordance with the latest available revision of Roberts Rules of Order, or other generally accepted rules for conducting meetings. Business will be discussed at all meetings of the Association in this order:

- (a) Roll call;
- (b) Proof of notice of the meeting;
- (c) Reading of the minutes of the previous meeting;
- (d) Reports of the Officers;
- (e) Report of the Board;
- (f) Reports of any committees;
- (g) Election of inspectors of election to conduct the election (when necessary);
- (h) Election of directors (when necessary);
- (i) Unfinished business; and
- (j) New business.

Section 11. List of Members.

The Managing Agent or the Board will keep an accurate and current list of members of the Association and their current addresses and email address to the extent submitted by the members. The list will be kept at a place selected by the Board. A member must pay to the Association or the Managing Agent on demand a reasonable service charge, in an amount fixed from time to time by the Board, for registering on the records of the Association any change of ownership of that member's time share interest.

ARTICLE VI

DIRECTORS

Section 1. Number, Qualifications, Term of Office.

The business of the Association will be managed by a Board of Directors composed of seven (7) persons. All of the 7 persons duly elected, must be owners, co-owners, or officers of a corporate owner. The partners in a general partnership and the general partners of a limited

partnership are considered to be the owners of a time share interest owned by their partnership for the purposes of this Section. The Managing Agent and its employees may not serve on the Board of Directors. At each annual meeting of the members, the members will elect directors. The new directors will serve for a term to which they are elected. The Directors are elected in three (3) term cycles. In the first term three (3) Directors will be elected. In the second term, one year later, two Directors will be elected and in the third term, one year later, two additional Directors will be elected. Thereafter, the cycles shall repeat themselves. If a vacancy occurs during any of the cycles, a new Director can either be appointed to the board by the remaining Directors or elected by the members, to complete the term of the vacancy. If more than one vacancy exists and the remaining terms are different, the candidate receiving the majority of the votes will serve for the longer term. The number of directors may be increased or decreased from time to time by an amendment to these By-Laws by the members, but in no event may the number of directors be set at less than three (3).²⁸

(a) The notice of the meeting at which the directors are to be elected must state that one of the directors will be elected by members and must ask for nominations. Any member entitled to vote at the meeting under the provisions of these By-Laws is eligible as a candidate for the position of director.²⁹ The board shall give notice asking for nominees at least 30 days before the notice for the meeting is given.

Directors Emeritus

In addition to the foregoing, the Association may elect any persons who have been Directors in the past to the position of Director Emeritus at any regular or special meeting of the Association. Directors Emeritus shall have all the rights and privileges of Directors except that they shall have no vote, shall not be entitled to reimbursement for expenses of attending meetings and shall only be entitled to receive mailings or emails of Director communications if they shall request at least annually that they receive such mailings or emails. This designation shall be made to recognize past service and to provide a method for prior Directors to use their experience to furnish input to the present Directors.³⁰

Section 2. Solicitation of Members

For every election of directors the managing agent will solicit those persons interested in running for the term of director.

All eligible persons indicating their desire to run will be put on the ballot. No person who is delinquent in paying assessments or personal charges shall be eligible to run for director. Each proxy shall list the names of the persons so nominated and the election notice and proxy shall be accompanied by a short one-paragraph biography of each candidate. Each candidate will be allowed to do such other campaigning as he or she shall desire. The proxy shall allow members to elect directors running for the Board of Directors. Members shall be allowed to vote for the election of directors by casting votes on the proxy or by ballot at the annual meeting. If a

member votes for the election of directors both by ballot at the annual meeting and by proxy, the ballot casted at the meeting shall be counted and the proxy vote shall be discarded.³¹

Section 3. Removal of Directors and How to Fill Vacancies.

The entire Board or any individual director may be removed from office, with or without cause, at any properly called meeting of the members, at which a quorum is present. A decision to remove a director will be made by owners having a majority of the total votes present at that meeting either in person or by proxy, and entitled to vote; provided, however, that unless the entire Board is removed from office by the vote of members of the Association, no individual director may be removed before the end of his term of office if the votes cast against removal or not consenting in writing to his removal would be sufficient to elect a director if voted cumulatively (See Article II, Section 6) at an election at which the same number of votes were cast and the entire number of directors authorized to be elected at the time of the most recent election of the directors were then being elected. Vacancies in the Board may be filled by the vote of a majority of the remaining directors, or may be elected by the members at a properly called meeting, and each director elected in either of those ways will hold his office as director for the rest of the term of the person he or she replaced. A vacancy is deemed to exist:

- (a) when a director dies, resigns, or is removed, or
- (b) if the members increase the authorized number of directors but fail at the meeting at which that increase is authorized or any continuation of that meeting to elect the additional director so provided for, or
- (c) in case the members fail at any time to elect the full number of authorized directors.

If the authorized number of directors is increased, no more than one director may be appointed, rather than elected, to fill a vacancy created by increasing the number of directors. If the Board accepts the resignation of a director which will take effect at a future time, the Board has the power to elect a replacement to take office when the resignation takes effect.

If any director misses three (3) consecutive regular meetings of the Board, the Board may, at the third or any later meeting, declare the office of the absent director to be vacant.

Section 4. Meeting Place for Director's Meetings.

All meetings of the Board will be held at or near the condominium project if reasonably possible. But, if the Board decides that meeting at another place would significantly reduce the costs to the Association and/or the inconvenience of directors, the meeting may be held elsewhere as designated at any time by resolution of the Board or by the unanimous written consent of the directors.

Section 5. Organization Meeting of the Board.

Immediately after each annual meeting of the members, the Board must hold a regular meeting at the same place to organize the Board, elect officers and transact any other business. Notice of that meeting is not necessary.

Section 6. Other Regular Meetings of The Board.

Other regular meetings of the Board will be held at the times picked by the Board. Regular meetings of the Board will be held at least four times each year. Written notice of the time and places of regular meetings of the Board and the nature of any business to be considered must be given to each director, given at least thirty (30) days before the date of that meeting by (a) written notice by first-class mail, (b) by telephone notice, (c) by written notice delivered personally to the director, or (d) by electronic transmission, including email. Any notice by mail or email must be sent to the director addressed to the director at his or her address or email address as it is shown in the records of the Association.³² If the notice is mailed, it will be deemed given and received ninety-six (96) hours after being put in the United States mail . A notice by email will be deemed given and received ninety-six (96) hours after the notice is sent.

Section 7. Special Meetings of The Board.

Special meetings of the Board for any purposes may be called by written notice at any time by the President or by any two directors.

Notice of the time and place of special meetings and of the nature of any special business to be considered must be given to each director by notice given at least fifteen (15) days before the date of that meeting by (a) written notice by first-class mail, (b) by telephone notice, (c) by written notice delivered personally to the director, or (d) by electronic transmission, including email. Any notice by mail or email must be sent to the director addressed to the director at his or her address or email address as it is shown in the records of the Association.³³

If any director is absent from any meeting of the Board and notice of that meeting was properly given to that director, an entry will be made in the minutes stating that notice was properly given.

Section 8. Meetings by Telephone.

Any meeting may be held by telephone conference call or similar communications equipment, so long as all directors participating in the meeting can hear one another at the same time. All directors participating will be deemed to be present in person at that meeting.

Section 9. Quorum Requirement, Waiver of Notice.

The transaction of any business at any meeting of the Board will be as valid as though made at a meeting properly held after regular call and notice, if a quorum is present (unless a quorum is expressly not required according to these By-Laws) and if, either before or after the meeting, each of the directors not present signs a written release of his right to receive notice, or

a consent to the holding of that meeting, or an approval of the minutes of it. All of those releases, consents and approvals must be filed with the Association records and made a part of the minutes of the meeting. Attendance by a director at any meeting of the Board releases his right to receive notice of the time and place of the meeting, unless at the outset of the meeting he or she objects to the lack of notice and he or she does not give up that objection later. In that event, the meeting cannot be held until proper notice is given.

Section 10. Taking Action Without A Board Meeting.

Any action required or permitted to be taken by the Board by law or according to the Charter or these By-Laws or the Declaration may be taken without a meeting, if all directors separately or together consent in writing to that action. Any written consent or consents must be filed with the minutes of the meetings of the Board, and have the same force and effect as a unanimous vote of the directors.

Section 11. Quorum.

A majority of the Board is a quorum. Every act or decision done or made by a majority of the directors present at a meeting properly held at which a quorum is present, in person or by telephone will be regarded as the act or decision of the Board, unless the provisions of these By-Laws, the Charter or the Declaration require or permit the particular action involved to be taken by the Board under other circumstances.

Section 12. Adjournment.

A quorum of the directors may adjourn (temporarily end, to be continued later) any Board meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at any Board meeting may adjourn from time to time until the time fixed for the next regular meeting of the Board. At any continuation of a Board meeting at which a quorum is present, any business which could have been transacted at the meeting originally called may be transacted at the continuation of the meeting.

Section 13. Notice of Adjournment.

Notice of adjournment of any Board meeting need not be given to absent directors, if the time and place are selected at the meeting which is adjourned until later. If the meeting is adjourned for more than five (5) days, however, notice of the time and place of the continuation of the Board meeting must be given to the directors who were not present at the time of the adjournment.

Section 14. Members May Attend Most Board Meetings.

(a) Regular and special meetings of the Board are open to all members of the Association, but members who are not on the Board may not participate in any discussion unless expressly permitted to do so by the vote of a majority of a quorum of the Board. Any member

may ask to be and will be connected to any meeting being held by telephone conference call. If the number of members asking to be connected makes the telephone conference call impractical or impossible, that meeting may not be held by a telephone conference.

(b) Upon the approval of a majority of the Board, the Board may adjourn a meeting and reconvene in “executive session” (which means that only Board members and persons invited by the Board may attend) to discuss and vote upon personnel matters, lawsuits and other legal proceedings in which the Association is or may become involved and budget³⁴. The nature of any and all business to be considered in the executive session must first be announced at the open session.

Section 15. Payments To Directors and Officers.

No one will receive any salary or other compensation for services rendered as a director or officer of the Association. However, directors and officers will be reimbursed for transportation expenses incurred and reasonable per diem payments for expenses incurred in connection with their attendance at regular and special meetings of the Board in accordance with reimbursement policies enacted by the Board from time to time. Nothing in these By-Laws prevents any director from serving the Association in any capacity other than as an officer or a director and being paid for those services as authorized and approved by the Board. Any director being paid for services in any capacity other than as an officer or director will be excluded from the discussions and voting by the Board on whether to hire him and how much to pay him for serving in that other capacity.

Section 16. Executive and Other Committees.

The Board may appoint an Executive Committee and other committees and may delegate to those committees any of the powers and authority of the Board in the management of the business and affairs of the Association, except the power to:

- (a) adopt, amend or repeal the Charter or By-Laws;
- (b) fill vacancies on the Board or on any committee;
- (c) change or repeal any resolution of the Board which says that it cannot be so changed or repealed;
- (d) appoint any other committees of the Board or the members of these committees;
- (e) approve any transaction (1) to which the Association is a party and in which one or more directors have a material financial interest or (2) between the Association and one or more of its directors or (3) between the Association and any company in which one or more of its directors have a material financial interest.

Each committee will be composed of two (2) or more directors (one member of the Executive Committee will be the President) and will keep regular written minutes of its actions and reports its activities to the Board.

Section 17. Powers and Duties of the Board.

Subject to the limitations contained in the Charter, these By-Laws, the Declaration and the Hawaii Revised Statutes as to action required to be taken, authorized or approved by the members of the Association, or a part or percentage of them, all Association powers and duties including those contained in the Declaration are exercised by, or under the authority of the Board, and the business and affairs of the Association are controlled by the Board.

Section 18. Minutes of Meetings of the Board.

A copy of the written minutes of any Board meeting will be sent to all members upon request or as may be otherwise directed by the Board.

ARTICLE VII

OFFICERS

Section 1. List of Officers.

The officers of the Association are the President, Vice President, Secretary, Treasurer and any other officers the Board deems necessary. Any person may hold more than one office, except that neither the Secretary nor the Treasurer may also be the President at the same time. The President, Vice President, Treasurer and Secretary must be directors. Each officer must be a member of the Association.

Section 2. The Board May Appoint Other Officers.

The Board may appoint, and may authorize the President or another officer to appoint, any other officers needed for the business of the Association. Such officers need not be directors. Each of them will have the title, hold office for the period, have the authority, and perform the duties specified in these By-Laws or determined from time to time by the Board.

Section 3. Election of Officers.

The officers will be picked annually by a majority vote of the directors on the date of the annual meeting of the Association each year. Officers may be removed or replaced at any later meeting of the Board by a majority vote of the total number of directors on the Board.

Section 4. Term of Officers.

All officers hold office at the pleasure of the Board. This means that they continue as officers only for so long as the Board desires that they do so, however, no officer shall hold the same office for more than three (3) consecutive years.

Section 5. President.

The President is the chief executive officer of the Association. Subject to the direction and limitations set by the Board, he or she supervises, directs and controls the business and affairs of the Association. He or she presides at (is the chairperson of) all meetings of the members and all meetings of the Board. He or she is a member of all permanent committees, including the Executive Committee, if any, and has the general powers and duties of management usually authorized for the office of president of a nonprofit corporation organized under the laws of the State of Hawaii. This includes, among others, the power to appoint committees from among the owners from time to time as he or she alone decides are appropriate to assist in conducting the affairs of the Association. He or she also has any and all other powers and duties given to him by these By-Laws or assigned to him from time to time by the Board.

Section 6. Vice President.

If the President is absent or disabled, the Vice President performs all the duties of the President, and when he or she is acting as President, the Vice President has all powers of, and is subject to all the restrictions on, the President. The Vice President also has any other powers and performs any other duties given to him from time to time by the Board, President or by these By-Laws.

Section 7. Secretary.

(a) The Secretary will keep or cause to be kept, at the principal office of the Association or any other place the Board picks, a book containing the minutes of all meetings of directors and members. The minutes must state the time and place that the meeting was held, whether it was a regular or special meeting, and how it was authorized if it was a special meeting, the notice of the meeting given, the names of the persons present at the Board meetings, the number of members present or represented at the members' meetings and a brief description of what happened at the meetings.

(b) The Secretary will give, or cause to be given, notice of all the meetings of the members and of the Board required by these By-Laws or by law. The Secretary also has any other powers and performs any other duties given to him by the Board or the By-Laws. Duties of the Secretary in this Section may be delegated to the Managing Agent.

Section 8. Treasurer.

The Treasurer must supervise the Managing Agent in keeping and maintaining full and accurate books and records of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account are always open to inspection by any director. The Managing Agent must deposit all money and other valuables in the name and to the credit of the Association with the depositories (such as a bank) picked by the Board. The Treasurer will

instruct the Managing Agent to pay out of the funds of the Association as ordered by the Board and to provide to the President and the Board, whenever they ask for it, an accounting by the Managing Agent of all his transactions as Treasurer and of the financial condition of the Association. The Treasurer also has any other powers and performs any other duties given to him by the Board or the By-Laws. The Board may delegate the performance of the Treasurer's duties, subject to supervision by the Treasurer, to a professional manager hired by the Association, including, but not limited to, the Managing Agent.

ARTICLE VIII

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 1. Definitions.

For the purpose of this Article VIII,

(a) "agent" means any person who is or was a director, officer, employee, or other agent of the Association, or is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, trust or other company;

(b) "proceeding" means any threatened, pending, or completed action or proceeding (such as a lawsuit). It could be, for example, a civil suit, a criminal matter, or an administrative or investigative proceeding;

(c) "expenses" includes, but is not limited to, attorneys' fees, costs, judgments, fines, settlements and other amounts actually and reasonably incurred.

Section 2. The Association Will Indemnify (Reimburse) Its Agents.

To the extent allowed by law, the Association must indemnify (that means they will pay for) any expense incurred by any agent in any proceeding. Section 416-35 of the Hawaii Revised Statutes defines how, when, and under what conditions the Association can make those payments. These By-Laws authorize and require the Association to reimburse its agents to the full extent allowed by law. If available, the Association must buy insurance to provide those payments and the Association may, but is not required, to buy insurance which provides for reimbursement under circumstances where the Association could not reimburse the expense directly.

ARTICLE IX

MISCELLANEOUS

Section 1. Who Can Sign Checks, Etc.

All checks, drafts or other orders for payment of money, notes or similar documents issued in the name of or payable to the Association, must be signed or endorsed by such person

or persons and in such manner as, from time to time, decided by resolution of the Board or, in the absence of a resolution, by any two of the President, Vice President, Secretary or Treasurer.

Section 2. Contracts, Etc., How Executed.

The Board, except as otherwise provided in these By-Laws, may authorize any officer or officers, agent or agents, to enter into any contract or sign any document in the name and on behalf of the Association. That authority may be general or confined to specific things. Unless authorized by the Board, no officer, agent or employee has any power or authority to bind the Association or to pledge its credit or to make it liable for any purpose or for any amount.

Section 3. Inspection of Declaration, the Charter, By-Laws and Rules and Regulations.

The Association will keep in its principal office the original or a copy of the Declaration, the Charter, these By-Laws and the Rules and Regulations with the latest revisions. The documents are open to inspection by the members at all reasonable times during office hours. The Association may set reasonable rules such as coping cost payments for copies.

Section 4. Fiscal Year.

The fiscal (tax) year of the Association ends on June 30th of each year, or any other year end date the Board picks.

Section 5. The Association's Books and Records.

The books, records and papers of the Association will be kept at the principal place of business of the Association or any place or places selected by the Board. Copies of the Declaration, the Charter, the By-Laws and the Rules and Regulations of the Association may be bought by owners at a reasonable cost. The minutes of the meetings of the Association, the Board, and all committees will be kept in written or typed form, and the accounting books and records will be kept either in written or typed form or in any other form (such as in a computer) capable of being changed into written, typed or printed form. The minutes, records, papers and accounting books and records are open to inspection on the written demand of any member, at any reasonable time during usual business hours, for a purpose reasonably related to the member's interests as a member. The inspection may be made in person or by an agent or attorney, and includes the right to copy and make extracts. The Board will establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of records by the member desiring to make the inspection or to obtain copies.
- (b) Hours and days of the week when an inspection may be made.
- (c) Payment of the cost of making copies of documents requested by a member.

Each director has the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director or member includes the right to make extracts and copies of documents. As a condition to permitting a member (including directors) to inspect the list of members or to furnishing information from the register or other books, papers or records of the Association, the Association, by its Rules and Regulations, may require that the member agree in writing not to use, or allow the use of, that information for commercial or other purposes not reasonably regulated to the regular business of the Association and the member's interest in the Association.

Section 6. Annual Report to Members.

The Association must provide to each member upon request of the member as required by the Board, the budget and the annual report discussed in the Declaration.

ARTICLE X

GENERAL PROVISIONS

Section 1. Certificate of Membership.

The Board may, but is not obligated to; issue to the members certificates of membership in the Association in any form the Board picks.

Section 2. How The Charter and the By-Laws Can be Changed.

(a) The Association May Revise The Charter, The Declaration and The By-Laws.

The Charter, the Declaration and these By-Laws may be revised from time to time by vote at any properly called, noticed and held regular or special meeting of the members at which a quorum is present. Any revision to these By-Laws requires the vote or written assent of members having a majority of time share interests present at a regular or special meeting. If the amendment is at a special meeting, the text of the amendment shall be sent in writing to the ownership with the notice of the meeting before the matter can be brought up at the special meeting. A specific clause or provision of these By-Laws may require a higher vote. If so, no revision to that clause or provision will be effective unless approved by the members having the percentage of votes required for action to be taken under that clause or provision. Amendments will be kept by the Association with the other records and books of the Association.

Amendments become effective upon recording a document in writing, signed by the President and Secretary of the Association, or any other officers if approved by the Board, setting forth the changes and certifying that the amendment was adopted by the required vote of the owners. Amendments to the Charter require the approval of two-thirds of the members present at a properly called meeting of the members.

Section 3. Captions.

The captions in these By-Laws are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provisions of these By-Laws.

Section 4. Gender.

The use of any gender (sex) in these By-Laws includes either or all of the other genders and the use of the singular includes the plural whenever the context so requires.

Section 5. Failure to Enforce These By-Laws Now Does Not Mean They Cannot Be Enforced Later.

No restriction, condition, obligation or provision contained in these By-Laws will be deemed to have been waived (given up) because of any failure to enforce it, no matter how many breaches of it take place.

Section 6. How These By-Laws Should be Read and Interpreted.

The provisions of these By-Laws will be liberally interpreted to carry out the purpose of creating a uniform plan of time sharing ownership under which the Association carries out and pays for the operation and maintenance of the property committed to the time sharing program.

Section 7. Even if Part of These By-Laws is Invalid, That Will Not Affect the Rest.

The provisions of these By-Laws are and should be treated as being separate and independent. If any one provision is invalid or partly invalid or unenforceable that will not affect the validity or enforceability of any other provision of these By-Laws.

ENDNOTES

¹ This provision was amended by instrument recorded on December 22, 2017 as Document No. A65650676.

² This provision is amended to comply with the amendment to Hawaii Revised Statutes § 514B-32 effective January 1, 2019.

³ This provision is amended to comply with the Fair Housing Act, 42 U.S.C. §§ 3601-3619 and Hawaii Revised Statutes Chapter 515.

⁴ Article 6, Section 6.2(j) was amended by instrument recorded on July 5, 1991 as Doc No. 91-091095.

⁵ Article 6, Section 6.8 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.

⁶ Article 7, Section 7.5(c) was amended by instrument recorded on September 27, 1993 as Doc No. 93-157671.

⁷ Article 9, Section 8.4 was amended by certain instrument recorded on November 21, 1996 as Document No. 96-165438.

⁸ Article 8, Section 8.4 was amended by certain instrument recorded on May 19, 1999 as Document No. 99-079918.

⁹ Article 8, Section 8.5(c) was amended by certain instrument recorded on November 21, 1996 as Document No. 96-165438.

¹⁰ Article 8, Section 8.5(d) was amended by instrument recorded on July 5, 1991 as Doc No. 91-091095.

¹¹ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹² Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹³ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹⁴ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹⁵ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹⁶ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

¹⁷ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.

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- ¹⁸ Article 10, Section 10.3 was amended by certain instrument recorded on September 27, 1993 as Document No. 93-157671.
- ¹⁹ Article 10, Section 10.5 was amended by certain instrument recorded on December 23, 1984 as Document No. 94-210881.
- ²⁰ Article 13, Section 13.1(a) was amended by instrument recorded on March 23, 2000 as Document No. 2000-038828.
- ²¹ Article 13, Section 13.1 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²² Article 13, Section 13.2 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²³ Article V, Section 2 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²⁴ Article V, Section 4 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²⁵ Article V, Section 4 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²⁶ Article V, Section 9 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ²⁷ Article V, Section 9 was amended by certain instrument recorded on May 19, 1999 as Document No. 99-079918.
- ²⁸ Article VI, Section 1 was amended by instrument recorded on February 21, 1992 as Document No. 92-024730.
- ²⁹ Article VI, Section 1(b) was deleted as to the amendment recorded on December 22, 2017 as Document No. A65650676.
- ³⁰ Article VI, Section 1 was amended by certain instrument recorded on November 21, 1996 as Document No. 96-165438.
- ³¹ Article VI, Section 2 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ³² Article VI, Section 6 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ³³ Article VI, Section 7 was amended by instrument recorded on December 22, 2017 as Document No. A65650676.
- ³⁴ Article VI, Section 14 was amended by instrument recorded on July 5, 1991 as Doc No. 91-091095.