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STATE OF HAWAII
BUREAU OF CONVEYANCES
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/s/ S. FURUKAWA
REGISTRAR OF CONVEYANCES,

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SANDS OF KAHANA

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TITLE OF DOCUMENT: DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR VACATION PLAN OWNERSHIP IN THE SANDS OF KAHANA
VACATION CLUB

PARTIES TO DOCUMENT:

Developer: Consolidated Maui, Inc.

PROPERTY DESCRIPTION:

**LIBER/PAGE:
DOCUMENT NO.:**

**TRANSFER CERTIFICATE OF
TITLE NO(S):**

Sands of Kahana VACATION PLAN

**Declaration of Covenants, Conditions, and Restrictions
for Vacation Plan Ownership in the
Sands of Kahana Vacation Club**

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After Recordation Return By: Mail () Pickup ()

**Declaration of Covenants, Conditions, and Restrictions
for Vacation Plan Ownership in the
Sands of Kahana Vacation Club**

THIS DECLARATION is made on or as of the 15th day of March, 1994, by Consolidated Maui, Inc., a Hawaii corporation (herein sometimes referred to as the "Developer").

Part 1 — Recitals

1.1 Developer intends to establish that certain plan set forth in section 1.4 on that certain parcel described as follows:

All of that certain parcel of land (being portions of the lands described in and covered by Royal Patent Grant Number 1166 to D. Baldwin, J.F. Pogue and S.E. Bishop; Royal Patent Number 6231, Land Commission Award Number 3925-1, Apana 1 to Pala situate, lying and being at Kahananui, Kaanapali, District of Lahaina, Island and County of Maui, State of Hawaii; being the Consolidation of Lot 4-C-1 of the "BECHERT ESTATE SUBDIVISION", containing an area of 6.788 acres, more or less, and being more particularly describes as per survey of George F. Newcomer, Registered Professional Land Surveyor, Certificate Number 2715-5, dated October 26, 1979.

Said parcel of land being more particularly described in Declaration of Horizontal Property Regime dated October 14, 1980, recorded in the Bureau of Conveyances in Liber 15060 at page 527, as amended.

1.2 Developer is the owner of certain condominium units by way assignment of apartment deeds and subleases. Said apartment and subleases are hereinafter referred to as Units.

1.3 Developer proposes to convey undivided interests in each of the Units, together with an assignment of a percentage lease in the respective unit. Provided that in each Vacation Plan Conveyance Document (as that term is defined hereinafter) relating thereto that the grantee or grantees shall have certain defined rights to occupy an Assigned Unit (as that term is defined hereinafter) of the same Unit Type (as that term is defined hereinafter) as the Unit in which such undivided interest is conveyed and to use the Common Elements of the Project and the rights and easements appurtenant to the Assigned Unit during one or more Use Period(s) (as that term is defined hereinafter) and reserving to Developer and its successors and assigns the exclusive right to occupy the Units and the non-exclusive right to use the Common Elements of the Project and appurtenant rights and easements during all other Use Periods, subject to the limitations, covenants, conditions, and restrictions set forth in this Declaration.

1.4 By this Declaration, Developer intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, and improvement of the Units and the interests therein conveyed or reserved, and for the payment of taxes, assessments, insurance premiums, and other expenses pertaining thereto.

NOW THEREFORE, in furtherance of such intent, Developer hereby declares that the Vacation Plan Units (as that term is hereafter defined) are and shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, restrictions, covenants, and conditions set forth in this Declaration, in the by-laws attached to this Declaration as Exhibit A and made a part hereof (the "By-laws"), as this Declaration and the By-laws may from time to time be further amended, and in such other rules and regulations as are instituted pursuant to the provisions of this Declaration and the By-laws, all of which declarations, limitations, restrictions, covenants, and conditions are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and enjoyment of each Vacation Plan Unit and the interest or interests therein to be conveyed or reserved. All such limitations, restrictions, covenants, and conditions shall constitute covenants running with the Land, to wit, each Vacation Plan Unit and each Vacation Plan (as that term is hereafter defined) are equitable servitudes and liens, and shall be binding on and for the benefit of Declarant and each such interest conveyed and upon all parties having or acquiring any right, title, interest, or estate in a Vacation Plan Unit, including without limitation the heirs, executors, administrators, and assigns of any such parties and all subsequent owners and lessees of all or any part of a Vacation Plan Unit.

Part 2 — Definitions

In addition to other definitions provided for in this Declaration, as used in this Declaration the following terms shall have the following meanings:

2.1 "Assigned Unit" means any Vacation Plan Unit, the occupancy of which has been assigned to a Designated Owner in accordance with the provisions of Part 3 of this Declaration.

2.2 "Check-in Time" and "Check-out Time" means the times designated as such in the then current Club Rules.

2.3 "Club" means the Sands of Kahana Vacation Club, a Hawaii nonprofit corporation, whose members consist of Vacation Plan Owners.

2.4 "Club Calendar Year" means each one (1) year period commencing on the first (1st) day of January of each calendar year and ending on December 31 of the calendar year; provided, however, that the first Club Calendar Year shall be the partial one (1) year period beginning on the date this Declaration is recorded in the Bureau of Conveyances, State of Hawaii (hereinafter referred to as "Bureau") and ending on December 31, 1994; provided, further, that the Club year shall be subject to change by amendment to the Club By-laws.

2.5 "Club Rules" means the rules and regulations adopted and promulgated from time to time by the Club pursuant to Paragraph 5.2(d) of this Declaration relating to the possession, use, and enjoyment of the Vacation Plan Units.

2.6 "Common Elements" means those elements designated in the Master Declaration as Common Elements and Limited Common Elements.

2.7 "Common Furnishings" means all furniture, furnishings, appliances, and all other personal property located in Vacation Plan Units or elsewhere upon the Project and from time to time owned, leased, or held for use by the Club.

2.8 "Declarant" means Developer or any successor-in-interest by express conveyance of the rights of Declarant under this Declaration by an instrument executed by Developer and (i) filed in the Bureau or (ii) filed with the Secretary of the Club.

2.9 "Declarant Excluded" when added at the end of any of the terms defined in Section 2.15 through 2.17 inclusive means that the Vacation Plans of Declarant and any vote of Declarant shall be excluded in making the subject determination.

2.10 "Declaration" means this instrument, as this instrument may be amended from time to time in the manner herein provided.

2.11 "Designated Owner" means a Vacation Plan Owner who has achieved the status of a Designated Owner pursuant to the provisions of Section 3.2 below.

2.12 "Holiday Owner" means a Vacation Plan Owner of a Holiday Vacation Plan.

2.13 "Holiday Season" means the annual two (2) week period that includes both December 25th and January 1st, and which commences on the Saturday preceding (but not on) December 25th. The Club Rules may designate a different day of the week than Saturday for commencement in which case the Holiday Season would commence on that day and include the preceding two holidays.

2.14 "Holiday Vacation Plan" means two (2) Vacation Plans entitling the Vacation Plan Owner thereof (a Holiday Owner) the right to use and occupy a Vacation Plan Unit of the Owner's Unit Type during the Holiday Season, as provided in Section 3.3 of this Declaration.

2.15 "Majority of Voting Owners" means Vacation Plan Owners who concur in a given determination (by vote, written consent, request, approval, disapproval, or otherwise) owning in excess of fifty percent (50%) of all Vacation Plans whose Vacation Plan Owners participate in making such determination.

2.16 "Majority of Owners/Unit" means a Vacation Plan Owner of Vacation Plan Owners owning in the aggregate more than fifty percent (50%) of the Vacation Plans in a Vacation Plan Unit.

2.17 "Majority of Voting Owners/Unit" means Vacation Plan Owners in one (1) Vacation Plan Unit who concur in a given determination (by vote, written consent, request, approval, disapproval, or otherwise) and who own in excess of fifty percent (50%) of the Vacation Plans in said Vacation Plan Unit whose Vacation Plan Owners participate in making such determination.

2.18 "Managing Agent" means that agent engaged by Declarant pursuant to the provisions of Section 5.3 of this Declaration or by the Board pursuant to an din the manner provided in Section 5.3 of this Declaration.

2.19 "Master Association" means the Association of Apartment Owners of the Sands of Kahana, created by the Master Declaration.

2.20 "Member" means a member of the Club. Each Vacation Plan Owner is a Member.

2.21 "Mortgage" means a mortgage or deed of trust.

2.22 "Mortgagee" means the beneficiary of a deed of trust or the holder of a mortgage encumbering any Vacation Plan.

2.23 "Original Conveyance Document" means each Vacation Plan Conveyance Document from Declarant which first conveys a Vacation Plan, excluding any assignment of any apartment ground lease or other conveyance which conveys the entire interest in a Unit.

2.24 "Owner's Contract Date" means, with respect to each Vacation Plan Owner, the date the Purchase Agreement executed by such Vacation Plan Owner is accepted by Declarant, as Seller under the Purchase Agreement, as inserted in the space therefor in the Purchase Agreement.

2.25 "Owner's Unit Type" means the Unit Type designated in the Original Conveyance Document naming such Vacation Plan Owner, or his predecessor in interest, as the named grantee.

2.26 "Owner's Use Year" means, with respect to each Vacation Plan Owner who is not a Holiday Owner, the one (1) year period beginning each year on the first day of the calendar month following the calendar month in which such Vacation Plan Owner shall become a Designated Owner — for example, if the Vacation Plan Owner becomes a Designated Owner in the month of March, the applicable Owner's Use Year would start each year on the first day of April and end on the last day of the following March; provided, however, that there shall be no

Owner's Use Year starting on the first day of January and ending on the last day of December, and if a Vacation Plan Owner shall become a Designated Owner in the month of December, then the Owner's Use Year for such Vacation Plan Owner shall be the one (1) year period beginning each year on the first day of February and ending on the last day of the following January. Each Holiday Owner shall have an Owner's Use Year starting on the first day of each July and ending on the following June 30th.

2.27 "Purchase Agreement" means an agreement between Declarant, as Seller, and the person(s) or entity named therein as "Purchaser" ("Purchaser" herein) pursuant to which Declarant agrees to sell and Purchaser agrees to purchase a Vacation Plan.

2.28 "Regular Season" means all 50 weeks of each year excluding the two week Holiday Season.

2.29 "Starting Date" means the date of recordation of the first Original Conveyance Document to be recorded.

2.30 "Units means any apartments in the condominium project now or hereafter submitted to this Declaration. Unit refers to an apartment and the undivided interest in the common elements (except the land) in fee simple and an undivided leasehold interest in the land. The following apartment are hereby committed to this Declaration:

112, 125, 126, 127, 128, 133, 134, 135, 136, 142, 143, 144, 145, 146, 154, 161, 172, 182, 216, 223, 226, 227, 233, 237, 242, 252, 316, 323, 333, 341, 351, 361, 415, 417, 422, 423, 425, 426, 427, 428, 434, 435, 443, 444, 445, 446, 451, 452, 453, 454, 455, 464, 473.

Additional apartments may be annexed to this Declaration as provided in part 8 of the Declaration.

2.31 "Unit Type" means any one (1) of the following three (3) classes of Units, being a IRIS, a ORCHID or a PLUMERIA, which have the following meanings:

- (a) "IRIS" means all one bedroom units as defined under the Declaration of Horizontal Property Regime.
- (b) "ORCHID" means all two bedroom units as defined under the Declaration of Horizontal Property Regime.
- (c) "PLUMERIA" means all three bedroom units as defined under the Declaration of Horizontal Property Regime.

2.32 "Use Period" means the time period or periods during which a Vacation Plan Owner has reserved the use of a Vacation Plan Unit in accordance with the reservation procedures set forth in this Declaration and the Club Rules.

2.33 "Use Week" means a one (1) week (i.e., seven (7) day) period commencing on Check-in Time on a Saturday and ending on Check-out Time on the following Saturday; provided, however, that the Club Rules may from time to time designate a different day of the week for the commencement and ending of the Use Week.

2.34 "Vacation Plan" means a 1/52nd undivided fee interest in a unit, an assignment of a percentage leasehold interest in the Land and an undivided percentage interest in the Common Elements, together with the right to use and occupy a Vacation Plan Unit of the Owner's Unit Type in the Season (either Holiday Season or Regular Season) purchased and the Common Furnishings contained therein and to use and occupy the Common Elements as provided in this Declaration. "Every Other Year Vacation Plan" also known as a one half vacation plan, means a 1/104th undivided fee interest in a unit, an assignment of a percentage leasehold interest in the land and an undivided percentage in the Common Elements, together with the right to use and occupy a Vacation Plan Unit of the Owner's Unit type purchased and the Common Furnishings contained therein and to use and occupy a unit for the number of weeks purchased every other year. For each one week "odd" year, a purchaser is entitled to use one week each year ending in "1", "3", "5", "7", "9", for each one week "even" year a purchaser is entitled to use one week each year ending in "0", "2", "4", "6", "8".

2.35 "Vacation Plan Conveyance Document" means that certain recordable instrument by which Declarant conveys one or more Vacation Plans to a Vacation Plan Owner.

2.36 "Vacation Plan Owner" means and includes (i) the grantee or grantees named in each Original Conveyance Document of a Vacation Plan and the successive owners of each Vacation Plan so conveyed by Declarant; provided, however, that if any such grantee or owner ("Vendor") shall enter into an agreement of sale respecting such Vacation Plan pursuant to which the right of possession is granted to the vendee thereof ("Vendee"), subject to the provision of Section 10.4 below, such Vendor shall cease to be a Vacation Plan Owner unless and until such Vendee's interest is cancelled and such Vendee shall be the Vacation Plan Owner of such Vacation Plan for all purposes of this Declaration, and (ii) Declarant with respect to any Vacation Plan in a Vacation Plan Unit not so conveyed.

2.37 "Vacation Plan Unit Type Percentage" means 1/52nd of the common interest of the apartment as established in the Declaration of Horizontal Property Regime.

2.38 "Vacation Plan Unit" means each Unit in which a Vacation Plan has been conveyed by an Original Conveyance Document. A Unit, even though listed in Section 2.30 of this Declaration or subsequently annexed to this Declaration, shall not be a Vacation Plan Unit, for any purpose under this Declaration, and shall not be subject to the conditions, covenants, restriction, agreements, equitable servitudes, liens, and common scheme and plan provided for in this Declaration, unless and until it becomes a Vacation Plan Unit by reason of the conveyance of a Vacation Plan therein pursuant to an Original Conveyance Document.

Part 3 — Reservation Rights, Use Rights, and Use Restrictions

3.1 Use Easements In order to permit the use and occupancy of Vacation Plan Units in accordance with the provision of this Declaration and the Club Rules, each Original Conveyance Document, by incorporation of this Declaration, shall include a reservation of the following easements:

(a) For the benefit of each Vacation Plan Owner who is a Designated Owner and whose Owner's Unit Type is the same Unit Type as that conveyed by the Original Conveyance Document, as easement for use and occupancy of the Vacation Plan Unit described in the Original Conveyance Document contained therein for a Use Period obtained pursuant to the provisions of Section 3.2 or 3.3 below, subject to all other provisions of this Declaration and to the Club Rules.

(b) For the benefit of each Vacation Plan Owner, as easement for the use and occupancy of the Vacation Plan Unit described in the Original Conveyance Document for a Use Period obtained pursuant to the provision of Section 3.4 below (Additional Use), subject to all other provisions of this Declaration and to the Club Rules.

(c) For the benefit of Declarant the right to rent Vacation Plan Units provided for in Section 3.10 below.

3.2 Reservation and Use Rights of Designated Owners other than Holiday Owners. Until a Vacation Plan Owner has achieved the status of a Designated Owner, such Vacation Plan Owner shall have neither the right to reserve the use or occupancy of a Vacation Plan Unit nor the right to use or occupy a Vacation Plan Unit.

A Vacation Plan Owner shall become a Designated Owner, and once having achieved such status shall remain a Designated Owner, upon being designated as such by written notice from the Club to the Vacation Plan Owner, a copy of which notice shall be filed with the Secretary of the Club. Such notice shall also set forth the applicable Owner's Use Year relating to such Designated Owner. The date on which such notice is filed with the Secretary of the Club is the date on which a Vacation Plan Owner shall become a Designated Owner. The Club shall designate as Designated Owners Vacation Plan Owners of the same Unit Type in the order of their respective Owner's Contract Dates. Notwithstanding the failure or nonoccurrence of any of the above-stated conditions, or any of the foregoing procedures, upon close of escrow, a Purchaser will be deemed to be a Designated Owner, and shall be entitled to all of the rights and privileges thereof.

Subject to all of the terms and conditions contained elsewhere in this Declaration and in the Club Rules, a Designated Owner other than a Holiday Owner shall have the right, during his or her Owner's Use Year, to use and occupy a Vacation Plan Unit which is of the same Unit Type as his or her Owner's Unit Type for one (1) Use Week (if such Designated Owner owns more than one (1) Vacation Plan, for the number of Use Weeks equal to the number of Vacation Plans owned by such Designated Owner) in the Regular Season starting in the Owner's Use Year, providing that such Designated Owner shall have reserved such Use Week in accordance with the following procedures for the making of reservations pursuant to this Section 3.2 and shall have otherwise complied with the conditions set forth below:

(a) Except as provided in Paragraph 3.2(b), reservations shall be requested in writing on a form supplied by the Club and/or otherwise as provided from time to time in the Club Rules. Such request shall set forth, in the order of preference, two (2) alternative Use Weeks. If the Club Rules then so require, such request shall also indicate whether the Designated Owner intends to use or exchange the Use Period reserved. Reservation requests cannot be made pursuant to this Section 3.2 more than three hundred sixty-five (365) days or (except as provided in Paragraph 3.4(b)) less than forty-five (45) days prior to the date ("Commencement Date") which is the first date for which such reservation is sought. Reservations made pursuant to this Section 3.2 more than ninety (90) days in advance of the Commencement Date will be automatically cancelled unless reconfirmed by the Designated Owner not later than the forty-fifth (45th) day preceding the Commencement Date. Reservation requests shall be considered made when actually received by the Club. Reservation requests received more than three hundred sixty-five (365) days prior to the Commencement Date will not be considered. Reservations will be confirmed on a first-come, first-served basis. In the event reservation requests are received on the same date and cannot all be confirmed, the Club shall resolve such conflict, if possible, based on the past reservation history of the Designated Owners involved. Assigned Units shall be assigned in an equitable manner giving effect to the past reservation history of Designated Owners with the objective of providing, over a period of time, each Designated Owner with the equal opportunity to have assigned to him or her Units on the upper floors of the Project or Units, which for other reasons, are considered the most desirable. Reservations may not be made if there is another reservation made pursuant to this Section 3.2 outstanding in the name of such Designated Owner. All past due Assessments must be paid and brought current before reservations can be made for the use of the applicable Vacation Plan. In addition, with respect to a reservation relating to a Use Week starting in a year other than such Designated Owner's current Owner's Use Year, before the reservation can be confirmed by the Club the additional amount required as determined from time to time pursuant to the Club Rules must have been received by the Club.

(b) A Designated Owner who has not used a Vacation Plan Unit during his current Owner's Use Year and who does not have a reservation outstanding for his current Owner's Use Year made pursuant to this Section 3.2 [Regular Owners] or Section 3.3 [Holiday Owners] may reserve a Vacation Plan Unit for a Use Week in the Regular Season (for Regular or Holiday Owners) or in the Holiday Season (for Holiday Owners only) or in the current Owner's Use Year in the same manner as provided in Section 3.4 for reserving Additional Use; provided, however, that no charge shall be made for the use so reserved unless the Assigned Unit has a Vacation Plan Unit Type Percentage which is greater than the Vacation Plan Unit Type Percentage of such Designated Owner's Unit Type. In such event, such Designated Owner shall pay a use fee, in advance of his use, equal to the difference between (i) the Basic Assessment for the Club Fiscal Year in which the Use Period of such Designated Owner occurs payable by a Vacation Plan Owner of a Unit Type which is the same as the Assigned Unit and (ii) the Basic Assessment for such Club Fiscal Year payable by such Designated Owner. In the event the Assigned Unit has a Vacation Plan Unit Type Percentage which is less than the Vacation Plan Unit Type Percentage of such Designated Owner's Unit Type, there will be no adjustment of the Basic Assessment payable by such Designated Owner. Designated Owners seeking reservations pursuant to this Paragraph 3.2(b) shall not be

afforded any priority over persons seeking reservations for Additional Use pursuant to Section 3.4.

(c) The conditions and penalties, if any, for the cancellation of reservations made pursuant to this Section 3.2 shall be as provided in the Club Rules. Each Designated Owner shall, in addition to complying with the foregoing provisions of this Section 3.2, comply with all the provisions contained in the then effective Club Rules relating to the making of reservations for Use Weeks. If a Use Week is not used in an Owner's Use Year, there shall be no accrual or carry-over of unused time to succeeding Owner's Use Years.

3.3 Use Rights of Holiday Owners who are Designated Owners. A Vacation Plan Owner shall become a Designated Owner, and once having achieved such status shall remain a Designated Owner, upon being designated as such by written notice from the Club to the Vacation Plan Owner, a copy of which shall be filed with the Secretary of the Club on the same date as it is sent to the Vacation Plan Owner. Such notice shall also set forth the applicable Owner's Use Year relating to such Designated Owner. The date on which a copy of such notice is filed with the Secretary of the Club is the date on which a Vacation Plan Owner shall become a Designated Owner. The Club shall designate as Designated Owners Vacation Plan Owners of the same Unit Type in the order of their respective Owner's Contract Dates, provided, however, that a Vacation Plan Owner shall become a Designated Owner no later than the date of him or her Vacation Plan(s).

Subject to all other terms and conditions contained elsewhere in this Declaration and in the Club Rules, a Holiday Owner who is a Designated Owner shall have the right during each Owner's Use Year to use and occupy a Unit which is of the same Unit Type as his or her Owner's Unit Type for the Holiday Season within such Owner's Use Year. A Holiday Owner shall make reservations in the same manner as a Regular Vacation Plan Owner. Assigned Units shall be assigned in an equitable manner giving effect to the past reservation history of Designated Owners with the objective of providing, over a period of time, each Designated Owner with the equal opportunity to have assigned to him or her Units on the Upper floors of the Project or Units, which for other reasons, are considered the most desirable. All past due Assessments must be paid and brought current before a Holiday Owner makes a reservation for the use of the applicable Vacation Plan.

3.4 Additional Use. Subject to all of the terms and conditions contained elsewhere in this Declaration and in the Club Rules, any Designated Owner shall have the right to reserve the use of and to use and occupy a Vacation Plan Unit of any Unit Type pursuant to the provisions of this Section 3.4. Such use ("Additional Use") shall be in addition to any use obtained pursuant to Section 3.2 or 3.3. Reservations for Additional Use shall be made in accordance with the following procedures:

(a) Reservations will be confirmed on a space available basis only on a first-come, first-served basis. While Additional Use reservations may be made for days in the Holiday Season, it is anticipated that there will be no space available for Additional Use during the Holiday Season. A Vacation Plan Unit shall not be available for occupancy for any period during which, in the judgment of the Club, the Club requires the possession of such Vacation Plan Unit to effect repairs or maintenance.

(b) No reservation for Additional Use may be made more than thirty-seven (37) days prior to the date ("Commencement Date") which is the first date for which such reservation is sought.

(c) No reservation for Additional Use may be made for a period extended beyond forty-four (44) days from the date the reservation is requested.

(d) Reservations for Additional Use may be made in person, by telephone, telegraph, or mail.

(e) No reservation for Additional Use may be made by a person who then has another reservation for Additional Use outstanding or if there is any unpaid Assessment due from such person. A reservation for Additional Use must be for a Use Week or for a shorter period ending within the Use Week in which it commences.

(f) Each Vacation Plan Owner who shall use a Vacation Plan Unit pursuant to the provision of this Section 3.4 shall pay, in advance of his or her use, a reasonable rental therefor, which rental shall be fixed from time to time by the Club. All rental revenues generated by the use of Vacation Plan Units pursuant to this Section 3.4 shall be deposited in the General Account of the Club.

(g) Reservations for Additional Use may be cancelled, without penalty, at any time prior to fourteen (14) days before the Commencement Date. If a reservation is cancelled less than fourteen (14) days before the Commencement Date (or not used), the Purchaser or Vacation Plan Owner shall pay to the Club a cancellation fee equal to one (1) day's rental.

3.5 Adjustments to Reservation and Use Rights. In the event the Club determines that the reservation system provided for in Sections 3.2 through 3.4 is unmanageable or unfair, the Club may, by amendment to the Club Rules, revise the reservation system with the objective of assuring a more manageable and fair system.

3.6 Use and Occupancy. Each Vacation Plan Owner shall have the right to occupy and use an Assigned Unit and the Common Furnishings contained within such Assigned Unit and the non-exclusive right to use and enjoy the Common Elements during such Use Period or Use Periods as shall have been properly reserved by him or her pursuant to the foregoing provisions of this Part 3. No Vacation Plan Owner shall occupy a Unit or exercise any other rights of ownership with respect to any Unit other than the rights provided to him or her in this Part 3 during any period other than his or her Use Period(s) unless expressly authorized by the Vacation Plan Owner entitled to occupy the Assigned Unit during such time. Each Vacation Plan Owner shall keep the Assigned Unit occupied by him or her and Common Furnishings therein in good condition and repair during his or her Use Period(s), vacate the Assigned Unit at the expiration of his or her Use Period(s), remove all persons and property therefrom, excluding only the Common Furnishings, leave the Assigned Unit and the Common Furnishings therein in good and sanitary condition and repair and otherwise comply with such reasonable check-out and other procedures and regulations as may from time to time be contained in the Club Rules. Any Vacation Plan Owner may permit a Unit reserved by him or her to be occupied by other persons (not in excess of the number of occupants permitted by this Declaration) for the purposes permitted by this Declaration during his or her Use Period, but such Vacation Plan Owner shall

be responsible for any loss, damage, destruction, or violation of this Declaration which occurs during such occupancy [except for loss, damage, destruction or violation caused by an exchange user] as if such Vacation Plan Owner were occupying the Unit.

3.7 Failure to Vacate. If any Purchaser or Vacation Plan Owner fails to vacate a Unit at the end of his or her Use Period, or otherwise uses or occupies a Unit during a period other than his or her Use Period, or prevents another Purchaser or Vacation Plan Owner from using or occupying a Unit during such other Vacation Plan Owner's Use Period, such Purchaser or Vacation Plan Owner (the "Detaining Owner") shall (a) be subject to immediate removal, eviction, or ejection from the Unit wrongfully occupied; (b) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction, or ejection (to the extent that such notices may be waived under Hawaii law); (c) reimburse the Purchaser or Vacation Plan Owner otherwise entitled to use the Unit for all costs and expenses incurred by him as a result of such conduct, including but not limited to costs of alternative accommodations, travel costs, court costs, and reasonable attorneys' fees incurred in connection with removing, evicting, or ejecting the Detaining Owner from such Unit; and (d) pay to the Vacation Plan Owner entitled to use the Unit during such wrongful occupancy, as liquidated damages, a sum equal to two hundred percent (200%) of the fair rental value per day of the Unit for each day or portion thereof, including the day of surrender, during which the Detaining Owner prevents occupancy of the Unit. "Fair rental value" for a Unit shall be based upon the costs of renting comparable accommodations located in the vicinity of the Project. Each Purchaser and Vacation Plan Owner agrees that, in the event of a failure to vacate by him or her, damages would be impracticable or extremely difficult to ascertain and that the measure of liquidated damages provided for herein constitutes fair compensation to those who are deprived of occupancy. If a Purchaser or Vacation Plan Owner, by his or her intentional or negligent act, renders a Unit uninhabitable for successive Use Period(s), such Purchaser or Vacation Plan Owner shall be liable to the Purchaser(s) or Vacation Plan Owner(s) entitled to use the Unit during successive Use Period(s) just as if such Purchaser or Vacation Plan Owner had refused to vacate the Unit at the end of his or her Use Period. For the purposes of this Section, the act or negligence of a guest [excluding any person occupying through an exchange program], or any member of the Purchaser's or Vacation Plan Owner's family shall be deemed to be the act of such Purchaser or Vacation Plan Owner.

3.8 Use Restrictions. Any of the use restrictions for the Project set forth in the Master Declaration shall apply to the Vacation Plan Units, and each Vacation Plan Owner shall comply with and hold his or her Vacation Plan subject to the provisions of the Master Declaration. Unless the then effective Club Rules shall otherwise provide, a Vacation Plan Unit shall not be occupied by more than four (4) persons. In any event, the Amendment to Declaration of Horizontal Property Regime provides for a lesser number of occupants (no more than 2 persons for each bedroom included in a unit) and this will control if the occupants are not members of the immediate family of guests. No Vacation Plan Owner shall paint, repaint, tile, paper, or otherwise refinish or redecorate the inner surfaces of the walls, ceilings, floors, windows, or doors bounding any Unit which such Vacation Plan Owner may from time to time occupy, or remove, alter, or replace any portion of the Common Furnishings without the prior written consent of the Club; the right to perform all of the foregoing acts has been delegated to the Club by this Declaration. The foregoing prohibitions, however, shall not modify or affect the obligation of each Vacation Plan Owner for the prudent care and ordinary maintenance and upkeep of all property subject to his or her use. No animals, livestock, birds, fish, poultry, dogs, cats, or household pets of any kind shall be allowed or kept in or upon any Unit.

3.9 Temporary Use by Declarant. Declarant and its agents, employees, and independent contractors shall, during all times not included in any Use Period, have the right, for a five (5) year period following the Starting Date, to use each Vacation Plan Unit for the following purposes, in addition to those purposes elsewhere in this Declaration authorized:

- (a) Maintaining model units; and
- (b) The showing of Units.

3.10 Rental of Units by Declarant. Units which are not Vacation Plan Units are not subject to this Declaration even though described in this Declaration or annexed hereto; accordingly, since Units which are not Vacation Plan Units are not subject to any restriction contained in this Declaration, Declarant has the right and intends among other things to rent the same to members of the general public. Declarant shall also have the right and may rent unsold Vacation Plans in Vacation Plan Units to the general public, to Purchasers and to Vacation Plan Owners. Any rentals received by Declarant shall inure to the benefit of Declarant. Notwithstanding the foregoing provisions of this Section 3.10, in the event Declarant (a) becomes in excess of sixty (60) days delinquent with respect to any Assessment owed by it under the provisions of this Declaration and (b) thereafter fails to pay any such delinquent Assessments within ten (10) business days following receipt from the Club of written notice to pay, the Club shall thereafter, and until all delinquent Assessments owed by Declarant are paid in full, have the right to rent Declarant's Units that are not Vacation Plan Units, as well as Declarant's unsold Vacation Plan in Vacation Plan Units, to the general public. No rental (whether by Declarant or the Club) shall interfere with or diminish the rights of the Vacation Plan Owners to use and occupy Vacation Plan Units in accordance with this Declaration. In no event shall any rental be made by Declarant or the Club for the account of any individual Vacation Plan Owner.

3.11 Transfer of Interest. No Vacation Plan Owner shall sell, convey, hypothecate, or encumber less than all of his or her interest in his or her vacation Plans. However, if an owner owns more than one Vacation Plan, each plan can be disposed of separately as long as no less than the entire plan is disposed of. Any sale, conveyance, hypothecation, or encumbrance by any Vacation Plan Owner of less than all of his or her interest in his or her Vacation Plans shall be null, void, and of no effect. The two (2) Vacation Plans comprising a Holiday Vacation Plan may not be sold, conveyed, hypothecated, encumbered, or otherwise transferred separate from one another. The transfer of any Vacation Plan shall operate to transfer to the new Vacation Plan Owner of the Vacation Plan the interest of the prior Vacation Plan Owner in all funds in the hands of the Club, without further instrument of transfer.

3.12 Separate Mortgages. Each Vacation Plan Owner shall have the right to mortgage or otherwise encumber all, but not less than all, of his or her Vacation Plan. Any Mortgagee shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Vacation Plan Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise. Notwithstanding any other provision of this Declaration, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof, shall defeat or render invalid the lien of any Mortgage of any Vacation Plan Owner's Vacation Plan if such Mortgage is recorded in the Bureau and is given in good faith and for value.

3.13 Waiver of Tenancy-in-Common Attributes. It is intended that this Declaration alone govern all rights with respect to the possession, use, enjoyment, management, and disposition of Vacation Plan(s) and the Project. Accordingly, all rights with respect to the use, possession, enjoyment, management, or disposition of a Vacation Plan or the Project which a Vacation Plan Owner might otherwise have as a tenant-in-common (including but not limited to any common law or statutory right to jointly use, possess, or manage commonly owned property) are hereby unconditionally and irrevocably waived. If however, any Vacation Plan is owned by two (2) or more persons as tenants-in-common or as joint tenants or as community property, nothing contained in the Declaration shall prohibit a judicial sale of the Vacation Plan in lieu of partition as between such person. In the event this Declaration is terminated for any reason, any Vacation Plan Owner shall, following such termination, have the right subject to the terms of the Master Declaration to maintain an action for sale in lieu of partition as to the Units, and any proceeds arising from such sale shall be distributed pro rata to the Vacation Plan Owners, subject to the rights of such Vacation Plan Owner's Mortgagees and the Lessor.

3.14 Protection of Interest. No Vacation Plan Owner shall permit his Vacation Plan to be subject to any lien (other than the liens of current real property taxes), claim, or charge, the enforcement of which may result in a sale or threatened sale of the Vacation Plan of any other Vacation Plan Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Vacation Plan Owner. In the event of a threatened sale of the Project or the Vacation Plan Unit or any part thereof, or should the use and enjoyment of any portion thereof by any Vacation Plan Owner be threatened by reason of any lien, claim, or charge against the Vacation Plan of any other Vacation Plan Owner, or should proceedings be instituted to effect any such sale or interference, any Vacation Plan Owner acting on his own behalf or through the Club or the Club acting on behalf of any one or more Vacation Plan Owners (unless promptly indemnified to his or its satisfaction) may, but shall not be required to, pay or compromise the lien, claim, or charge without inquiry into the proper amount or validity thereof and, in such event, the Vacation Plan Owner whose interest was subjected to such lien, claim, or charge shall forthwith pay the amount so paid or expended to the Vacation Plan Owner or the Club, whomsoever shall have paid or compromised the lien, claim, or charge, together with such reasonable attorneys' fees and related costs as he or it may have incurred. No Vacation Plan Owner shall permit his interest in any funds from time to time in possession of the Club to be subjected to any attachment, lien, claim, or charge or other legal process and each Vacation Plan Owner shall promptly restore any funds held by the Club in respect of his Vacation Plan Owner to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge, or other legal process and shall reimburse the Club for all reasonable attorneys' fees or other costs incurred in respect thereof.

Part 4 — The Club

4.1 Club. Sands of Kahana Vacation Club, a Hawaii nonprofit corporation, is the owner's association for the time share ownership plan created by this Declaration and is referred to herein for all purposes as the "Club."

4.2 Membership in Club. Each Vacation Plan Owner (including Declarant as to any Vacation Plans owned by Declarant) shall be a Member and shall remain a Member until he or she ceases to be a Vacation Plan Owner.

4.3 Transfer of Membership. The membership of each Vacation Plan Owner in the Club is appurtenant to and inseparable from his or her ownership of a Vacation Plan and shall be automatically transferred upon any authorized transfer or conveyance of the ownership of his or her Vacation Plan to any transferee or grantee and, except as provided in this Declaration, said membership shall be non-transferable whether by gift, bequest, assignment, or otherwise.

4.4 Voting. In accordance with the provisions of the By-laws, each Member shall, subject to the provisions of the next following sentence, be entitled to one (1) vote for each Vacation Plan owned. When more than one (1) person or entity holds a Vacation Plan, all such persons and entities shall be Members and the vote for such Vacation Plan shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Vacation Plan. Other voting provision shall be as set forth in the By-laws.

4.5 Board of Directors. The initial Board of Directors of the Club shall be selected and named by the Declarant. At the first annual meeting, the Members (including Declarant) shall elect, in accordance with the By-laws, a Board of Directors replacing the Board of Directors so originally selected and named by the Declarant. As used in this Declaration, a reference to the "Board" shall mean the Board of Directors of the Club. The Board shall have the powers and duties and be subject to the provisions set forth in this Declaration and in the By-laws.

Plan 5 — Management

5.1 Powers and Duties Generally. The Club, acting alone, through the Board, its officers, or other duly authorized representatives may, subject to the provisions of the By-laws and this Declaration, exercise any and all rights and powers hereinafter enumerated and all the rights and powers of a nonprofit corporation under the laws of the State of Hawaii.

5.2 Specific Powers and Duties of the Club. The management of the Vacation Plan program, the maintenance and repair of the Project, the acquisition (by purchase or lease), maintenance, repair, and replacement of the Common Furnishings and the administration of the affairs of Vacation Plan Owners, the occupancy of the Vacation Plan Units, and payment, as agent, of expenses and costs enumerated in this Declaration shall be under the direction and control of the Club. The Club shall have the duty to maintain and repair the Vacation Plan Units, to acquire (by lease or purchase), maintain, repair, and replace Common Furnishings as needed, to administer the Vacation Plan operation provided herein and to levy, collect, and enforce the Assessments enumerated in this Declaration. The Club shall monthly compile and maintain a roster of the names and addresses of each of the Vacation Plan Owners (the "Roster"). Upon the written request of a Vacation Plan Owner, the Club shall furnish such Vacation Plan Owner with a copy of the Roster; the Club may charge such Vacation Plan Owner a reasonable fee for such Roster. Each Vacation Plan Owner who requests and receives a copy of the Roster thereby and hereby agrees that he or she will not make any commercial use of the same and will not distribute a copy of the Roster to any third party. The Club shall have the power to do all things that are required to be done by it pursuant to this Declaration. Without limitation of the foregoing powers and duties, the Club is expressly authorized in its discretion and on behalf of the Vacation Plan Owners to do any or all of the following:

(a) Repair and Maintenance. To repair, maintain, repaint, furnish, or refurnish the Vacation Plan Units or any part thereof; to establish reserves for anticipated costs,

including the costs of acquisition and replacement of Common Furnishings; to acquire and pay for materials, supplies, furniture, furnishings, labor, or services which the Club deems necessary or proper for the maintenance and operation of the Vacation Plan Units and the Common Furnishings.

(b) Service Period. The Club shall have the exclusive possession of each Vacation plan Unit during the service period therefor. The service period is the time between use period (i.e. the time between check-out time in the morning and check-in time later that day). When an owner has reserved two or more consecutive use periods, the owner shall be entitled to remain in the unit during the service period between his Use Periods.

(c) Taxes, Lease Payments, and Assessments. As agent and not as principal, to collect and pay all lease payments and taxes and assessments (including but not limited to assessments levied by the Master Association), and other costs affecting or relating to the Vacation Plan Units or Common Furnishings; and to discharge, contest, or protest liens or charges affecting the Vacation Plan Units.

(d) Utilities. To obtain and pay the costs of electrical, telephone, gas, and other utility services for the Vacation Plan Units.

(e) Club Rules. To adopt, publish, change, and enforce, from time to time, rules and regulations relating to the possession, use, and enjoyment of the Vacation Plan Units.

(f) Legal and Accounting. To obtain and pay the cost of legal and accounting services necessary or proper in the maintenance and operation of the Vacation Plan Units and the enforcement of this Declaration, the By-laws, and the Club Rules.

(g) Insurance. To the extent not maintained by the Master Association, to obtain and pay the cost of (i) insurance covering the Vacation Plan Units, the Common Furnishings, and any other contents against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (ii) public liability insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on, or about the Project; and (iii) any other insurance, including, but not limited to, Workmen's Compensation Insurance, deemed necessary or desirable by the Club. The policies of insurance shall cover such risks, be written by such insurers, and be ins such amounts as the Club shall deem proper under the circumstances. The Club shall cause the Managing Agent and any employee of either the Managing Agent or the Club who has charge of Vacation Plan Owners' funds to be bonded.

(h) Levy and Collection of Assessments. To levy, collect, and enforce Assessments against the Vacation Plan Owner in the manner provided in Parts 6 and 7 of this Declaration in order to pay the expenses of the Club and Vacation Plan operation and the fee of the Managing Agent; and to do all things necessary to enforce each Vacation Plan Owner's obligations under this Declaration.

(i) Financial Statements and Audit. To cause an external audit by an independent public accountant to be conducted for fiscal year financial statements (other than the Budget, as that term is hereinafter defined) for any fiscal year in which gross collections

by the Club exceed Seventy-Five Thousand Dollars (\$75,000.00), and to cause the following statement to be regularly prepared and copies thereof distributed to each Vacation Plan Owner:

(1) A proforma operating statement (the "Budget") of Basic Expenses (as that term is defined in Paragraph 6.1(a) of this Declaration) for the Club, Vacation Plan operation and the Vacation Plan Units, as a group, for each Club Fiscal Year, which shall be distributed to Vacation Plan Owners not less than sixty (60) days before the beginning of each Club Fiscal Year, except the first Club Fiscal Year.

(2) A balance sheet as of the last day of each Club Fiscal Year and other operating statements for such Club Fiscal Year, which shall be distributed within one hundred twenty (120) days after the end of each such Club Fiscal Year.

(3) Such additional financial statements as may be required by law or by the Board from time to time.

(j) Master Association Voting. To exercise the vote that each Vacation Plan Unit is entitled to exercise in the Master Association unless a Majority of Owners/Unit elect on any particular occasion to themselves exercise the same. In connection with the exercise of such vote, the Club shall use its best efforts to timely obtain the agenda for each annual and special meetings of the Master Association and such other information as may be available on the matters to be voted upon at any such meeting, and the Club shall disseminate such agenda and information by mail to each Vacation Plan Owner together with a form of ballot prepared by the Club for return by each Vacation Plan Owner to the Club, which form shall request that each Vacation Plan Owner indicate to the Club the manner in which such Vacation Plan Owner desires the vote of the particular Vacation Plan Unit to be exercised with respect to each matter upon which a vote is to be taken. The Club shall exercise the vote for each Vacation Plan Unit in that manner which is approved by Vacation Plan Owners constituting a Majority of Voting Owners/Unit; provided, however, if Vacation Plan Owners responding split evenly on any such matter, the Club shall be entitled to exercise the vote for such Vacation Plan Unit in the manner it sees fit. The Club shall be entitled to exercise the vote for each Vacation Plan Unit as it sees fit as to all matters which come before a meeting of the Master Association if, because of circumstances beyond the control of the Club, the Club shall not have had the time to reasonably implement the foregoing procedure. Each Vacation Plan Owner shall be deemed to have authorized the Club to act for him or her at any such meeting of the Master Association and, for this purpose, shall deliver to the Club a proxy authorizing the Club or its designee to act for such Vacation Plan Owner at any such meeting whenever requested to do so.

(k) Bank Accounts. All funds collected from Vacation Plan Owners pursuant to Part 6 of this Declaration and all other amounts collected by the Club in connection with its duties provided herein shall be deposited as follows:

(1) All funds shall be deposited in a separate bank account or accounts (the "General Account") with a bank or banks located in the State of Hawaii, in which no other funds except those generated by the rental of Vacation Plan Units by the Club pursuant to Section 3.10 shall be deposited. The Club shall keep accurate

books and records reflecting the amount of such accounts attributable to each Vacation Plan Owner. Funds deposited in such account may be used by the Club only for the purposes for which such funds have been collected.

(2) Funds which the Club shall collect pursuant to Section 6.8 shall, within ten (10) days after deposit in the General Account, be deposited in an account (the "General Fund Account") with a bank or savings and loan association selected by the Club, and the Club shall keep accurate books and records reflecting the amount in the General Fund Account attributable to each Vacation Plan Owner. Funds deposited in the General Fund Account shall be held in trust and may be used by the Club only for the purposes for which such General Fund has been collected.

(3) Funds which the Club shall collect for Reserve Expenses (as that term is defined hereinafter) shall, within ten (10) days after deposit in the General Account, be deposited in an interest bearing account with a bank or savings and loan association selected by the Club or invested in Treasury Bills or Certificates of Deposit (said interest bearing bank or savings and loan account or Treasury Bills or Certificates of Deposit are all herein collectively referred to as the "Reserve Account"), and the Club shall keep accurate books and records reflecting the amount in the Reserve Account attributable to each Vacation Plan Owner. Funds deposited in the Reserve Account shall be held in trust and may be used by the Club only for the specific purposes for which such amounts have been collected.

(l) Statement of Status. Upon the request of any Vacation Plan Owner, Mortgagee, prospective mortgagee, or prospective transferee of a Vacation Plan, to issue a written statement setting forth the amount in the General Account, the General Fund Account, and the Reserve Account pertaining to such Vacation Plan, any amounts unpaid with respect thereto, the use entitlement for the remainder of the Owner's Use Year, and the reservation status respecting such Vacation Plan. Such statement, for which a reasonable fee may be charged, shall be binding upon the Club in favor of any person who may rely thereon in good faith.

(m) Cleaning and Maid Service. To provide for cleaning and maid service and maintenance and repairs upon the departure of each Vacation Plan Owner or other occupant of the Vacation Plan unit and during Service Periods so that the Units are maintained in good order and repair. In addition to cleaning and maid service that is normally provided to each Vacation a Plan Unit, to provide such cleaning and maid services as shall reasonably be requested by a Vacation Plan owner. The Club shall charge for such special cleaning and maid service and such charges shall be paid by the Vacation Plan Owner when he or she checks out of the Vacation Plan Unit.

(n) Right of Entry. The Club shall have the right and authority, during Service Periods and at any other reasonable time when a Vacation Plan Unit is not occupied, to enter upon and within any Vacation Plan Unit at any time, whether or not during a Service Period and whether or not in the presence of a Vacation Plan Owner, for the purpose of (i) making emergency repairs therein, (ii) abating any nuisance or any dangerous, unauthorized, prohibited, or unlawful activity being conducted or maintained in such Unit, (iii) protecting property rights and welfare of the other Vacation Plan Owners and other owners of apartments in the project, or (iv) for any other purpose

reasonably related to the performance by the Club of its responsibilities under the terms of this Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use, and/or enjoyment of the Vacation Plan Owner or occupant of such Vacation Plan Unit and shall be preceded by reasonable notice to the Vacation Plan Owner or occupant thereof whenever the circumstances permit.

(o) Other Necessary Acts. To do all other things or acts deemed by the Club to be necessary, desirable, or appropriate for the operation and maintenance of the Club and Vacation Plan operation.

(p) Delegation. To delegate the authority and responsibilities of the Club under this Declaration to one (1) or more agents, including, but without limitation, the Managing Agent.

5.3 Authority and Duty to Engage Managing Agent. The Developer shall have the authority to engage and shall use its best efforts to engage, on or before the Starting Date, and maintain a reputable firm as the Managing Agent for the Club and the Vacation Plan operation contemplated by this Declaration pursuant to a written agreement (the "Management Agreement") meeting the requirements of this Section 5.3. The Club's Managing Agent may be (but is not required to be) the same as employed by the Master Association for the Project. Each Management Agreement shall:

(a) Authorize and obligate, subject to the review and approval of the Board, the Managing Agent to perform the duties and obligations of the Club specified in Section 5.2 above; provided, however, that the Managing Agent may, with the prior approval of the Board, delegate its authority and responsibilities to one (1) or more sub-agents for such periods and upon such terms as the Managing Agent deems proper, subject to the limitations set forth in Section 5.4 below.

(b) Provide for a term of not more than three (3) years, except that the Management Agreement may provide that the term will be automatically renewed for successive three (3) year terms unless notice of non-renewal is given no later than three (3) months prior to the end of any three (3) year term by either party; provided, however, that the Management Agreement shall be subject to termination at any time for cause.

(c) Provide that the Managing Agent may resign only upon compliance with all the following conditions:

(1) The Managing Agent shall have given at least sixty (60) days prior written notice to the Club.

(2) Prior to or at the expiration of the period of such a notice (not less than sixty (60) days) the Club shall have entered into a Management Agreement with another firm meeting the requirements of this Section 5.3. If at the end of the period specified in such notice the Club, despite reasonable efforts to do so, has not entered into such a Management Agreement, the resignation of the Managing Agent shall not be effective until such new Management Agreement has been entered into.

(3) On or before the effective date of the Managing Agent's resignation, the Managing Agent shall turn over all books and records relating to the management and operation of the Club and the Vacation Plan operation to the successor Managing Agent

(d) Provide for reasonable sums to the Managing Agent in the event the Club is in default, but in no event no sums as penalty more than four times the management's monthly fee.

(e) Provide for compensation to be paid to the Managing Agent not to exceed ten percent (10%) of Basic Expenses (as that term is defined in Paragraph 6.1(a) below), exclusive of the fee to the Managing Agent. Such compensation may be increased if authorized by a Majority of Voting Owners or if, despite the failure to obtain a Majority of Voting Owners after requesting the same, the Club is unable to procure a reputable and experienced real estate management firm to act as Managing Agent without increasing such compensation.

5.4 Representation of Vacation Plan Owners in Legal Proceeding: Service of Process.

By accepting the conveyance of a Vacation Plan, each Vacation Plan Owner agrees that the President of the Club or the Managing Agent may represent the Club or any two or more Vacation Plan Owners similarly situated as a class in any proceeding concerning the Club, the Vacation Plan Units 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 Vacation Plan Owner to appear, sue or be sued separately or to decide not to participate. The President and the managing Agent are subject to the direction of the Board in any representation. By accepting the conveyance of a Vacation Plan, each Vacation Plan Owner gives and shall be deemed to have given a power of attorney to and appoints the President of the Club and the Managing Agent as such Vacation Plan Owner's attorney-in-fact with full power to do anything which is needed or helpful to represent such Vacation Plan Owner as provided herein. Such power is coupled with an interest, is irrevocable and will not be affected by a disability of the Vacation Plan Owner. Each Vacation Plan Owner will be bound hereby whether or not he or she expressly agrees hereto in the document conveying the Vacation Plan. Process (such as papers for a lawsuit) for the Club may be served on any member of the Board.

5.5 Limitation on Powers of the Club and the Managing Agent. Notwithstanding the powers of the Club as set forth in Sections 5.1, 5.2 and 5.3, neither the Club nor the Managing Agent (as the delegatee of the Club's powers and duties) shall enter into a contract with a third person or entity whereby such person or entity will furnish goods or services for the Club and Vacation Plan operations for a term longer than one (1) year unless authorized by Vacation Plan Owners constituting a Majority of Voting Owners-Declarant Excluded, except for:

(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 Regulatory Agencies, Public Utilities Division, State of Hawaii; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(c) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits short-rate cancellation by the insured.

(d) A lease of Common Furnishings.

5.6 Limited Liability. Neither the Club nor the Managing Agent shall be responsible for the acts, omissions to act, or conduct of any of the Vacation Plan Owners or Purchasers or for the breach of any of the obligations of any of the Vacation Plan Owners or Purchasers.

Part 6 — Assessments

6.1 Additional Definitions Relating to Assessments. As used in this Declaration the following terms shall have the following meanings"

(a) "Basic Expenses" means the aggregate amount of expenses set forth in the Budget, being the estimated amount of the expenses to be incurred by the Club during the applicable Club Fiscal Year (which estimate shall, in part, be based on an estimate of the number of Vacation Plans relating to Vacation Plan Owners who are expected to become Designated Owners during such Club Fiscal Year):

(1) to operate, manage, and repair the Vacation Plan Units and the Common Furnishings and to administer the Club and Vacation Plan operation,

(2) to provide for reserves to ensure payment when due of the cost of capital expenditures relating to the repair of the Vacation Plan Units and the repair and replacement of Common Furnishings, and for such other purposes as are required by good business practice (the "Reserve Expenses"),

(3) to provide for a fund to account for the possibility that some Assessments may not be paid on a current basis,

(4) to maintain the General Fund Account at the level determined by the Club as provided in Section 6.8, and

(5) to provide for the payment of the fee of the Managing Agent.

Without limiting the generality of the foregoing, Basic Expenses shall include but not be limited to (A) all assessments levied against the Vacation Plan Units by the Master Association, (B) lease payments due with respect to each Vacation Plan and real property taxes and other taxes assess against the Vacation Plan Units; provided, however, that while lease payments and real property taxes shall constitute a Basic Expense and shall be collected through the assessment procedure provided for in this Declaration, each Vacation Plan Owner shall be considered to have personally paid his or her share of the real property taxes levied against the Vacation Plan Unit and his or her lease payments, and (C) all charges, costs, and expenses whatsoever incurred by the Club for or in connection with the administration and operation of the Vacation Plan program. Basic Expenses shall not include any expenses constituting a Personal Charge. The Reserve

Expenses portion of the Budget shall consist of specific items and amounts for which such Reserve Expenses are being collected.

(b) "Assessable Vacation Plan" means a Vacation Plan whose owner is a Designated Owner; provided, however, that, for the purposes of this Part 6, Declarant shall be considered a Designated Owner of all Vacation Plans owned by it in a Vacation Plan Unit if any Vacation Plan Owner of a Vacation Plan in such Vacation Plan Unit is a Designated Owner. As described below, Assessments shall be due and payable only with respect to Assessable Vacation Plans — which means that:

(1) the Club shall assess Basic Assessments to each Vacation Plan Owner of an Assessable Vacation Plan (i.e., Designated Owner) before the beginning of each Owner's Use Year, and

(2) the Club may assess Special Assessments at any time during a Club Fiscal Year to each Designated Owner at the time of such Special Assessment, or as otherwise reasonably determined by the Board.

(c) "Vacation Plan Unit Type Percentage" means the Vacation Plan Unit Type Percentage of a Vacation Plan as set forth in Section 2.37 of this Declaration.

(d) "Basic Percentage" means the pro forma total of all Vacation Plan Unit Type Percentages relating to actual and expected Assessable Vacation Plans for the applicable Club Fiscal Year as determined by the Club using the same criteria as used for determining the Budget.

(e) "Proportionate Share" means the applicable Vacation Plan Unit Type Percentage divided by the Basic Percentage.

6.2 Creation of Personal Obligations for Assessments. Declarant, for each Assessable Vacation Plan owned by it, hereby covenants and each Vacation Plan Owner, by acceptance of an Original Conveyance Document, whether or not it shall be so expressed in said Original Conveyance Document, shall be deemed to have covenanted and agreed, for each Vacation Plan owned, to pay to the Club the Basic Assessment, all Special Assessments (Basic Assessment and Special Assessment shall be payable only with respect to Assessable Vacation Plans) and Personal Charges (which shall be payable by all Vacation Plan Owners, whether or not owners of an Assessable Vacation Plan, and by Purchasers) as hereinafter described in Section 6.4, 6.6, and 6.7 respectively (all of which are in this Declaration individually and collectively referred to as "Assessment(s)"), which shall be established, made and collected as hereinafter provided. The Assessments shall be the personal obligation of each Vacation Plan Owner at the time the Assessment becomes due and payable and shall be a lien and charge upon the Vacation Plan against which the Assessment or charge is made. The personal obligation for delinquent Assessment shall not pass to successors-in-title unless expressly assumed by them; provided, however, that all past due Assessments must be paid and brought current before such successor-in-title will be allowed to make reservations for the use of the applicable Vacation Plan. No Vacation Plan Owner may waive or otherwise avoid liability for the Assessments by non-use of his or her Vacation Plan or any part thereof or any abandonment thereof.

6.3 Purpose of Assessments. Assessments shall be used to promote the recreation, health, safety, and welfare of the Vacation Plan Owners, the improvement, operation, and maintenance of the Vacation Plan Units, to pay for the administration of the Club and Vacation Plan operation, reimbursement of expenses incurred by the Club and other expenditures incurred in the performance of the duties of the Club as set forth in this Declaration.

6.4 Basic Assessment. An assessment (which together with any late charges, interest on past due amounts, attorneys' fees for collection and other related costs are in this Declaration collectively referred to as the "Basic Assessment") for each Assessable Vacation Plan (with each Holiday Vacation Plan being two (2) Assessable Vacation Plans) shall be determined by multiplying the Basic Expenses for the applicable Club Fiscal Year by the Proportionate Share of such Assessable Vacation Plan.

Each Vacation Plan Owner hereby agrees that in the event the Board shall determine at anytime during a Club Fiscal Year that the Budget for such Club Fiscal Year is or is expected to be in excess of the amounts needed to meet the Basic Expenses (other than Reserve Expenses) for such Club Fiscal Year, the Board shall have the authority, exercisable in its sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously prepared Budget for the fiscal year to which such excess is applicable. The reduced total Budget shall then be allocated among the Vacation Plan Owners in accordance with their respective Proportionate Shares. No Vacation Plan Owner shall, by reason of such reduction, be entitled to a refund of all or any portion of any Basic Assessment previously paid. Each Vacation Plan Owner hereby agrees that any amount assessed and collected in excess of the amount required to meet the Basic Expenses (other than Reserve Expenses) shall be applied to reduce the amount assessed to meet the Basic Expenses for the next succeeding Club Fiscal Year. Any reduction in the Budget, as provided herein, shall not relieve any Vacation Plan Owner from his or her obligation to pay any past due Basic Assessment.

6.5 Payment of Basic Assessment. The Basic Assessment shall be determined by the Club and sent each year to each Vacation Plan Owner of an Assessable Vacation Plan prior to the start of his or her Owner's Use Year. Such Basic Assessment shall be due and payable within sixty (60) days after the start of such Owner's Use Year, or as otherwise set forth from time to time in the Club Rules. Such Basic Assessment shall be sent with each notice of a Vacation Plan Owner being made a Designated Owner. Each portion of the Basic Assessment which is attributable to the reserve established for capital expenditures shall constitute a capital contribution to the Club by and for the benefit of the applicable Vacation Plan Owner. Such amounts collected shall be deposited in the Reserve Account provided for in Paragraph 5.2(j). Late charges, interest on past due amounts, attorneys' fees for collection and other costs shall be as set forth from time to time in the Club Rules. All past due Assessments must be paid and brought current before reservations can be made for the use of the applicable Vacation Plan.

6.6 Special Assessments. If the Basic Assessments with respect to Assessable Vacation Plans are or are expected to become inadequate to meet all expenses incurred and other commitments of the Club under this Declaration for any reason, including without limitation the nonpayment by Vacation Plan Owners of Assessments on a current basis, the Club shall determine the approximate amount of such inadequacy, prepare and distribute a supplemental budget, and levy against each Vacation Plan Owner of an Assessable Vacation Plan a special assessment (which together with any late charges, interest or past due amounts, attorneys' fees for collection and other related costs are in this Declaration collectively referred to as a "Special Assessment")

in an amount sufficient to provide for such inadequacy. Any Special Assessment shall be payable in one (1) lump sum or in installments, as determined by the Board, and shall be payable within thirty (30) days after receipt of a statement therefor. All past due Assessments must be paid and brought current before reservations can be made for the use of the applicable Vacation Plan.

6.7 Personal Charges. The term "Personal Charges" means any expense resulting from the act or omission to act of any Purchaser or Vacation Plan Owner, whether or not the owner of an Assessable Vacation Plan, or other persons occupying a Vacation Plan Unit during the Use Period of a Vacation Plan Owner (including persons occupying through an exchange program), including without limitation the cost of long distance telephone charges or telephone message unit charges, food, beverages, sports supplies, optional maid service, and other special services or supplies attributable to the occupancy of a Vacation Plan Unit during such Vacation Plan Owner's Use Period; the cost to repair any damage to the Vacation Plan Unit or to repair or replace any Common furnishings located therein on account of loss or damage occurring during such Vacation Plan Owner's Use Period; the cost to satisfy any expense relating to any intentional or negligent act or omission to act of such Vacation Plan Owner, his or her family, guests or invitees, or persons occupying through an exchange program; the cost to satisfy any expense resulting from the breach by such Vacation Plan Owner of any provisions of this Declaration, the By-laws, or the Club Rules; and any late charges, interest on past due amounts, attorneys' fees for collection and other related costs. All past due Personal Charges must be paid and brought current must be paid and brought current before reservations can be made for the use of the applicable Vacation Plan. Such Personal Charges shall be paid by each Vacation Plan Owner as follows:

(a) If the Club is able to determine the amount of Personal Charges at Check-out Time (for example, Personal Charges constituting food charges, beverage charges, optional maid service, etc.), such Personal Charges shall be payable at Check-out Time of the Vacation Plan Owner's Use Period.

(b) Personal Charges which are not ascertainable as provided in Paragraph 6.7(a) above shall be payable within thirty (30) days after receipt of a statement therefor.

Personal charges shall include amounts debited against a Vacation Plan Owner's interest in the General Fund Account pursuant to the provisions of Section 6.8 below.

6.8 General Fund. Upon acquisition of a Vacation Plan, each Vacation Plan Owner shall be required to pay an amount equal to TWO HUNDRED DOLLARS (\$200.00), which amount shall be retained by the Club in the General Fund Account and used to pay any expenses (other than capital expenditures) which may arise in connection with the operation of the Club and Vacation Plan operation and for which the Basic Assessments and any Special Assessments prove to be inadequate. The Basic Assessment shall include an amount sufficient to maintain the balance in said General Fund Account at an amount equal to TWO HUNDRED DOLLARS (\$200.00) (or such greater sum which the Club shall from time to time determine) multiplied by the number of Vacation Plans then in existence. The Club may debit the interest of a Vacation Plan Owner in the General Fund Account in an amount equal to any Assessments or other amounts due from said Vacation Plan Owner and which are then delinquent, and thereupon withdraw from the General Fund Account an amount equal to such debit and apply the same in payment of such Assessment or any other sum hereunder. The amount so debited shall constitute a Personal Charge payable by such Vacation Plan Owner upon demand.

Part 7 — Enforcement of Restrictions

7.1 In General. The Club shall have full power and authority to enforce compliance with this Declaration, the By-laws, and the Club Rules in any manner provided by law or in equity, including without limitation the right to enforce the Declaration, the By-laws, and the Club Rules by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of this Declaration, the By-laws, and Club Rules, to enforce the liens provided for in this Declaration and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for Vacation Plan Owner and the right to take possession of the Vacation Plan of any Vacation Plan Owner in the manner provided for by law. In the event the Club shall employ an attorney to enforce the provisions of this Declaration, the By-laws, and the Club Rules against any Vacation Plan Owner, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for in this Declaration. All sums payable under this Declaration by a Vacation Plan Owner shall bear interest at ten percent (10%) per annum from the due date, or if advanced or incurred by the Club, or any other Vacation Plan Owner pursuant to authorization contained in this Declaration, within ten (10) days after repayment is requested. All enforcement powers of the Club shall be cumulative.

7.2 Certain Specific Enforcement Powers. In amplification of and not in limitation of the general powers specified in Section 7.1 above, the Club shall have the following rights and powers:

(a) Suspension of Privileges. If any Vacation Plan Owner shall be in breach of this Declaration, the By-laws, or the Club Rules, including but not limited to the failure of such Vacation Plan Owner to pay any Assessment on or before the due date thereof, subject to the limitations hereinafter in the Paragraph 7.2(a) set forth, the club may suspend the Vacation Plan Owner's right to reserve the use of and his or her right to occupy a Vacation Plan Unit during his or her Use Period and the right of such Vacation Plan Owner to participate in any vote or other determination provided for in this Declaration. If in the case of Vacation Plan Owner, such suspension of privileges is based on any act or omission other than the failure of a Vacation Plan Owner to pay Assessments or any other amounts due under this Declaration when due, no such suspension shall be made except after a meeting of the Board at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in the By-laws for the noticing, calling, and holding of a special meeting of the Board. Written notice of such meeting shall be given to the Vacation Plan Owner whose privileges are being sought to be suspended at least ten (10) days prior to the holding of such meeting. Such Vacation Plan Owner shall be entitled to appear at such meeting and present his or her case as to why his or her privileges should not be suspended. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board present at such meeting.

(b) Enforcement by Lien. The Club shall have a secured lien, in the nature of a Mortgage with private power of sale on each Vacation Plan as security for the prompt and faithful performance by each Vacation Plan Owner's obligations under this Declaration, the By-laws, and the Club Rules and the payment of costs of enforcement and reasonable attorneys' fees; provided, however, that as against any transferee, Mortgagee, or beneficiary of a Vacation Plan Owner's interest (other than Declarant) acquiring all or any

interest in such Vacation Plan Owner's interest by deed or Mortgage given by such Vacation Plan Owner (other than Declarant) for valuable consideration and accepted by the transferee, Mortgagee, or beneficiary without notice of default in the payment or performance secured, no such lien shall be effective to secure past-due payment or performance in default at the time of recording such deed or Mortgage, except to the extent that notice of default in the payment or performance has been given at the time of recording such deed or Mortgage by the prior recording of a notice of lien filed within the immediately preceding twenty-four (24) calendar months in the Bureau, which notice of lien describes the Vacation Plan affected and sets forth the name of the record Vacation Plan Owner thereof and recites that the particular payment or performance is or may be in default. The Purchaser at any foreclosure sale shall obtain title subject to the provision of this Declaration. The Club may bid at the foreclosure sale and may hold, lease, mortgage, or convey any Vacation Plan acquired at such sale. The filing of this Declaration is and shall be deemed to be notice of said secured lien to each and every person who may have or acquire any interest in or to any Vacation Plan Unit or Vacation Plan therein. Said secured lien may be foreclosed by the Club by its Board, in any lawful manner and the delinquent Vacation Plan Owner's Vacation Plan may be sold at public or private sale; provided, that the Club shall first give notice to the defaulting Vacation Plan Owner of the occurrence of any default (with a copy to the Mortgagee of such Vacation Plan Owner if such Mortgagee has requested a copy and furnished its name and address to the Club) stating the date of the delinquency, the amount of the delinquency, and making demand for payment thereof, and if such delinquency is not paid within ten (10) days after delivery of such notice, then the Club shall also execute and file in the Bureau a claim of lien and notice of intent to foreclose against the Vacation Plan of such delinquent Vacation Plan Owner, which claims of lien shall contain (i) a designation of the Vacation Plan and the Vacation Plan Unit against which the claim and notice is made, (ii) the amount claimed to be due and owing (after the allowance of any proper offset), (iii) that the claim and notice is made by the Club pursuant to the terms of this Declaration and the attached By-laws, and (iv) that a lien is claimed and will be foreclosed against such Vacation Plan in an amount equal to the net amount of the stated delinquency plus any accrued interest and the costs of enforcement, including attorneys' fees, if any. Such claim and notice shall be signed and acknowledged by the Club or the Managing Agent (on behalf of the Club) and shall be dated as of the date of execution. Each default shall constitute a separate basis for a claim and notice of lien, but a single claim and notice may be filed with respect to more than one (1) default. Upon foreclosure of said secured lien pursuant to this Paragraph 7.2(b), all Assessments still unpaid shall remain the obligation of and shall be payable by the Vacation Plan Owner foreclosed upon, but if such sum should prove uncollectible, then it shall be deemed to be a Basic Expense.

7.3 Subordination to Certain Mortgages. The lien provided for in this Declaration shall be prior to all encumbrances made by a Vacation Plan Owner or imposed by legal process upon any Vacation Plan except taxes, bonds, assessments, and other levies, which by law, are prior thereto, whether the claim of lien is recorded prior or subsequent to any such encumbrances, except that the lien provided for in this Declaration shall be subordinate to the lien of (a) any first Mortgage in favor of any Mortgagee, including Declarant or any affiliate of Declarant, and (b) any second Mortgage in favor of Declarant, providing such first or second Mortgage is made in good faith for value and filed in the Bureau prior to the recordation of a claim of lien under this Declaration. The sale or transfer of any Vacation Plan shall not defeat or affect the lien provided

for in this Declaration; provided, however, that the sale or transfer of any Vacation Plan which is subject to a first Mortgage or second Mortgage in favor of Declarant pursuant to a foreclosure under such first or second Mortgage or any proceeding in lieu of foreclosure thereof shall extinguish the lien provided for in this Declaration as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Vacation Plan or the Vacation Plan Owner thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

Part 8 — Annexation and De-annexation

8.1 Annexation. Declarant may annex one (1) or more Units to this Declaration, without the consent of any Vacation Plan Owner at any time within five (5) years after the filing of this Declaration in the Bureau. Upon such annexation and at all times thereafter, this Declaration shall govern the ownership, use, and transfer of such Unit, if and only when such Unit shall have become a Vacation Plan Unit. Any monetary encumbrances or liens existing on the date of annexation shall be subordinate to this Declaration and the lien rights conferred by this Declaration.

8.2 Annexation Procedure. The Annexation of any Unit to the scheme of this Declaration shall be effected by the filing of a Supplemental Declaration in the Bureau which shall contain the following:

(a) A legal description of the annexed Unit(s) and the names and addresses of the record owner or owners thereof; and

(b) A statement submitting the annexed Unit(s) to this Declaration, which Declaration shall be referred to by title and Bureau recording identification information.

8.3 De-annexation. In the event Declarant shall desire that any Unit which is not then a Vacation Plan Unit be deleted from this Declaration, Declarant may file in the Bureau a document entitled "Termination of Vacation Plan Status," duly executed and acknowledged, stating that said Unit is no longer to subject to the provisions of this Declaration.

Part 9 — Damage or Destruction

9.1 Master Declaration Controls. The provisions of the Master Declaration shall control as to all matters provided therein relating to damage or destruction to a Unit or the Common Elements.

9.2 Damage or Destruction to Common Furnishings. In the event of any damage or destruction to the Common Furnishings other than by ordinary wear and tear, the Club shall forthwith cause such damage to be repaired and shall use any available insurance proceeds for such purpose. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Club shall levy a Special Assessment ratably against all Vacation Plan Owners for the amount required to meet the cost of such repair or restorations, as provided in Section 6.6 above. In the event the damage or destruction was caused by the intentional or negligent act or omission of a Vacation Plan Owner (whether or not the Vacation Plan Owner of the damaged or

destroyed Vacation Plan Unit), his or her family, guests, invitees, or persons occupying through an exchange program, the cost of such repair or the amount of such deficiency shall be a Personal Charge and paid by such Vacation Plan Owner as provided in Section 6.7 above.

9.3 Excess Insurance Proceeds. And excess insurance proceeds over the cost of repair or restoration of the Common Furnishings shall be the property of the Club.

Part 10 — Miscellaneous Provision

10.1 Amendment of Declaration or By-laws. This Declaration and/or the By-laws may be amended as follows:

(a) For five (5) years from the Starting Date, by Declarant—provided, however, that Declarant may only make necessary, fair and reasonable amendments and may not make any amendments causing increased burdens upon any Vacation Plan Owner, Purchaser or any Vacation Plan existing as of the effective date of any such amendment. The Declaration under this provision may not be amended in any way to materially alter any Vacation Plan Owner's or Purchaser's rights under the Declaration or By-Laws.

(b) By a Majority of Voting Owners.

Except as set forth above, any amendment shall be binding upon every Vacation Plan Owner and every Vacation Plan whether the burdens thereon are increased or decreased. Any amendment authorized by this Declaration shall be evidenced by an instrument in writing signed and acknowledged by Declarant (if the amendment is made pursuant to Paragraph 10.1(a) above) or by any two (2) officers of the Club, which amendment shall be effective upon filing in the Bureau. Any amendment may not decrease any owner's rights except ratably to all owners.

10.2 Termination. Unless duly modified or extended, this Declaration shall remain in effect during the same period as the Master Declaration.

10.3 Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or ninety-six (96) hours after depositing the United States mail, postage prepaid, addressed to a Vacation Plan Owner at the last address such Vacation Plan Owner designates to the Club for delivery of notices, or in the event of no such designation, at such Vacation Plan Owner's last known address. Notices to the Club shall be addressed to the address designated by the Club by written notice to Vacation Plan Owners or by recordation of a notice of change of such address. Notices to the Managing Agent shall be addressed to the address designated by the Managing Agent by written notice to Vacation Plan Owners or by recordation of a Notice of such change of address.

10.4 Notification of Sale of Vacation Plan. No later than ten (10) business days after the sale or transfer of any Vacation Plan under circumstances whereby the transferee becomes the Owner thereof, including a conveyance of a Vendee's interest by agreement of sale, the transferor shall notify the Club in writing of such sale or transfer. Such notice shall set forth: (a) the name and address of the transferee and transferor; (b) the Vacation Plan Unit in which the Vacation Plan is being purchased; and (c) the date of sale. Unless and until such notice is given, the Club shall not be required to recognize the transferee for any purpose, and any action taken by the

transferor as a Vacation Plan Owner may be recognized by the Club. Prior to receipt of any such notification by the Club, any and all communications required or permitted to be given by the Club shall be deemed duly given and made to the transferor and transferee if duly and timely made and given to such transferor.

10.5 Severability and the Rule against Perpetuities. If any provision of this Declaration, or any section, sentence, clause, phrase, or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word and any other circumstances shall not be affected thereby. If any provision of this Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained in this Declaration imposed by law, then such provisions shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of Senator Edward M. Kennedy of Massachusetts and President Bill Clinton, whichever is later.

10.6 Successors. The provisions of this Declaration shall be binding upon all parties having or acquiring any Vacation Plan or any right, title or interest therein and shall be for the benefit of each Vacation Plan Owner and his heirs, successors and assigns. Each Vacation Plan Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Vacation Plan upon ceasing to own such Vacation Plan and paying all sums and performing all obligations under this Declaration insofar as the same relate to each Vacation Plan up to the time his ownership is terminated.

10.7 Violation Deemed Nuisance. Every act or omission whereby any provision of this Declaration, the By-laws or the Club Rules is violated in whole or in part is hereby declared and deemed to be a nuisance and may be enjoined or abated whether or not the relief sought is for negative or affirmative action, by Declarant, the Club or any Vacation Plan Owner.

10.8 Interpretation. The captions of the Parts, Sections and Paragraphs of this Declaration are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and neuter, and vice versa.

10.9 No Waiver. The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

10.10 Service of Process. Process may be served upon the Club directly or upon the Managing Agent.

IN WITNESS WHEREOF, Developer has executed this Declaration on or as of the date first set forth above.

CONSOLIDATED MAUI, INC.

By 
Its President

