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	July 18, 2007

## DISCLOSURE STATEMENT

ON

MARRIOTT OWNERSHIP RESORTS, INC.

IN THE

KO OLINA BEACH CLUB VACATION OWNERSHIP PROGRAM  
*Name of Time Share Plan or Building*

Honouliuli, District of Ewa, City and County of Honolulu, Oahu, Hawaii  
*Location*

# READ THIS DISCLOSURE STATEMENT BEFORE SIGNING ANYTHING

This disclosure statement is prepared and issued by the developer of the time share plan. It is NOT prepared or issued by the State of Hawaii.

THE STATE OF HAWAII HAS NOT PASSED ON THE MERITS  
OF THE TIME SHARE PLAN DESCRIBED HEREIN.

**DISCLOSURE STATEMENT**  
**FOR**  
**KO OLINA BEACH CLUB**  
**VACATION OWNERSHIP PROGRAM**

**A FEE SIMPLE VACATION OWNERSHIP PROGRAM**

1. **DEVELOPER.** Marriott Ownership Resorts, Inc., a Delaware corporation ("Developer"), with its principal place of business and post office address at 6649 Westwood Boulevard, 3<sup>rd</sup> Floor, Orlando, Florida 32821-6090, and its telephone number being (407) 206-6000, is the developer of the Ko Olina Beach Club Vacation Ownership Program ("Program"). The Developer is offering for sale, vacation ownership interests ("Ownership Interests") in the Program that is located at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii. All capitalized terms not otherwise specifically defined in this document have the meanings ascribed to such terms in the Program Declaration.

2. **PLAN MANAGER (PROGRAM OPERATOR).** Owners of Ownership Interests will manage this Program through an association of owners. Most of its management responsibilities, duties and authorities, as described in Paragraph 15.C, will be given to an agent, called the "Program Operator." Marriott Resorts Hospitality Corporation ("MRHC"), a South Carolina corporation, is the initial Program Operator. Its principal place of business is 6649 Westwood Boulevard, 3<sup>rd</sup> Floor, Orlando, Florida 32821-6090, its mailing address is Post Office Box 911020, Orlando, Florida 32891 and its telephone number is (407) 206-6000. Stephen Bradley is its responsible managing employee, and his address is the same as that for the Program Operator. The Program Operator's responsibilities and authority include, among other things, (i) oversight of the management and maintenance of the Units; (ii) preparing a budget for the Program and assessing and collecting Program Expenses and Charges from each member; (iii) the administration, management and operation of the reservation system of the Program; (iv) providing members with an opportunity to review the Program Documents; and (v) keeping a record of receipts and expenditures relating to the Program. Since the Program Operator is an affiliate of the Developer, certain conflicts of interest may arise. For instance, since the Program Operator must prepare a budget for the Program, it will be faced with making decisions on which items are properly allocable to the Program and which are not. The Program Operator will, however, always seek to allocate costs properly and in accordance with the Program Documents. In addition, since the Program Operator operates the reservation system for the Program and the Developer will be an Owner of Ownership Interests, a potential conflict of interest may arise with respect to the priority of reserving and confirming Use Periods between the Developer and other Owners. However, the Developer does not possess any greater priority with respect to reservation than any other Owner, and the Program Operator will always seek to assign Use Periods on an equitable basis among all Owners, including the Developer.

3. **TIME SHARE PLAN (VACATION OWNERSHIP PROGRAM).**

A. **TYPE OF PROGRAM: THIS IS A VACATION OWNERSHIP PROGRAM; WHEN AND HOW IT WAS ESTABLISHED.** In time share or vacation ownership programs generally, the right to use property circulates each year from one person to another and so on, and this cycle repeats itself year after year. In ownership plans, people who have this right to use also have an ownership interest in the property.

This Program is an ownership type of plan. The initial properties in this Program are certain parcels of real property with Improvements including Units and various amenities. The Developer has the reserved right to add other property and Units to the Program from time to time, but has no obligation to do so.

The Program is created, and Units listed in Exhibit "1" were committed to time sharing, by a set of legal documents called the "Program Documents." They include the Declaration of Covenants, Conditions and Restrictions for Ko Olina Beach Club Vacation Ownership Program, as the same may be amended ("Program Declaration") which is the basic document governing the Program. It is dated March 7, 2001 and is officially recorded in the Office of the Registrar of the Land Court of the State of Hawaii ("Land Court") as Document No. 2739367. Said Declaration was amended by that certain First Amendment to Ko Olina Beach Club Vacation Ownership Program Declaration of Covenants, Conditions and Restrictions dated January 8, 2002, recorded in said

Office as Document No. 2770259; that certain Second Amendment to Ko Olina Beach Club Vacation Ownership Program Declaration of Covenants, Conditions and Restrictions dated May 30, 2002, recorded in said Office as Document No. 2822729; that certain Third Amendment to Ko Olina Beach Club Vacation Ownership Program Declaration of Covenants, Conditions and Restrictions dated May 15, 2003, recorded in said Office as Document No. 2950993; and that certain Fourth Amendment to Ko Olina Beach Club Vacation Ownership Program Declaration of Covenants, Conditions and Restrictions dated October 3, 2005, recorded in said Office as Document No. 3355521.

**B. GENERAL DESCRIPTION OF AN OWNERSHIP INTEREST.** An Ownership Interest in this Program consists of: (1) an ownership share ("Ownership Share") in the Property; plus (2) the right to reserve and then use: (a) a Unit in the Program of the same "Unit Type" purchased by the Owner; (b) every year (if an Every Year Ownership Share is purchased) or every odd or even year (if an Odd Year Ownership Share or an Even Year Ownership Share is purchased); on (c) a fixed or floating basis for an approximate one week period; plus (3) a membership in the Ko Olina Beach Club Vacation Owners Association (the "Association").

**C. SPECIFICS ABOUT AN OWNERSHIP INTEREST.**

(1) **THE NATURE OF ONE OWNERSHIP SHARE.** For each Ownership Interest purchased, a Buyer will receive an Undivided Interest, as a tenant in common, in the Property. The Undivided Interest may be either a 1/78,000 Undivided Interest for each Odd Year Ownership Share or Even Year Ownership Share, or a 1/39,000 Undivided Interest for each Every Year Ownership Share. Each Buyer will have a "fee simple" ownership, which is the most absolute form of property ownership recognized by law. The type of Ownership Share each Buyer chooses (i.e., Every Year, Odd Year or Even Year), will be in the deed ("First Deed") that will be recorded to transfer the Ownership Interest to that Buyer. A Buyer becomes an Owner when his First Deed is recorded.

(2) **RESERVATION AND USE RIGHTS.** For each Ownership Interest owned, an Owner will have, during the Use Period he reserves and confirms: (a) the exclusive right to occupy and use the Unit he is assigned and confirms and its Common Furnishings; and (b) the non-exclusive right to use with others the Common Areas of the Property subject to the provisions of the Program Declaration. The specific Use Period which may be reserved and confirmed and the manner of reserving and confirming that Use Period as well as the assignment of a Unit depends upon which reservation and use rights a Buyer selects from the alternatives explained below. To understand these alternatives, Buyers should first understand the following basic terms and concepts for reservation and use purposes:

(a) Units in the Program are divided into four (4) "Unit Types" as stated in the attached Exhibit "1," subject, however, to the right in the Developer to add other or different Unit Types to the Program from time to time; and

(b) Each Unit is divided into fifty-two (52) "Time Periods" (or, in some years, 53 Time Periods) during each Use Year. Each Use Year is the approximate one (1) year period beginning on the first "check-in" day for each Unit in a calendar year and ending on the first "check-out" day for that Unit the following calendar year. 52 (or, in some Use Years, 53) of these Time Periods will be "Use Periods." A Use Period is the one week period starting at "check-in" time in the afternoon and ending at "check-out" time in the morning one week later. Each Use Period is identified by the number of its corresponding Time Period (In those Use Years having 53 Time Periods instead of 52 Time Periods, the Developer will have a non-exclusive easement over the Common Areas of the Property for ingress, egress, use and enjoyment thereof during Time Period 52 at no extra cost, except an amount equal to (i) the actual expenses incurred by the Association in maintaining and rendering services to the Unit and to the Occupants of the Unit during Time Period 52; and (ii) a reasonable amount, to be set by the Board, as a contribution to the Operating Reserve Account and the Replacement Reserve Account). The check-in/check-out day for each Use Period will be scheduled each Use Year by the Program Operator. The exact time of day for check-in and check-out will be stated in the Program Rules, which now state that check-in time will be 4:00 p.m. and check-out time will be 10:00 a.m.

The times between Use Periods (i.e. between check-out and check-in) and the Time Periods, if any, transferred to the Association in accordance with Section 13.11 of the Declaration, are called "Major Service Periods." The Program Operator will use Major Service Periods to prepare the Unit for the next person to use and to

do maintenance and repairs. If an Owner has an assigned time for two or more consecutive Use Periods, however, his Use Periods will run continuously from check-in for his first Use Period to check-out for his last Use Period. There will be no Major Service Periods in between. If the Owner so requests, however, the Association must service his Unit at the end of each Use Period at no extra expense to the Owner.

(3) **FLOATING UNIT RIGHTS.** Buyers will have "Floating Unit Rights," which means that a Buyer will not be guaranteed the use of any particular Unit. Instead, for each Use Year, the Program Operator will assign to an Owner the use of one of the Units in the Program of the identical Unit Type as the Unit Type purchased by the Owner. The Unit thus assigned is called the Owner's "Assigned Unit," and may vary from Use Year to Use Year.

The recorded First Deed transferring an Ownership Interest to each Buyer will identify each Buyer's Unit Type.

(4) **EVERY YEAR, ODD YEAR OR EVEN YEAR RIGHTS.** Each Ownership Interest will provide for reservation and use rights "Every Year" or "Every Other Year" in the odd or even numbered years ("Odd Year" or "Even Year"). The type of yearly rights, "Every Year," "Odd Year" or "Even Year," which each Buyer chooses will be indicated in the First Deed transferring an Ownership Interest to that Buyer.

(5) **FIXED OR FLOATING TIME USE RIGHTS.** For each Ownership Interest, a Buyer will have either "Fixed Time Rights" or "Floating Time Rights."

"Fixed Time Rights" are the rights of an Owner to reserve and use a Unit only during a specifically numbered Use Period ("Fixed Use Period") as set forth in the First Deed. A Fixed Use Period entitles an Owner to a "permanent reservation" to use during the specifically confirmed Use Period without further action. However, the check-in/check-out day will not be fixed. Instead, for each Use Year in which an Owner has Fixed Time Rights, the Owner must request, as required by the Program Rules, a specific check-in/check-out day. Once an Owner with Fixed Time Rights requests the specific check-in/check-out day to use such Owner's Fixed Use Period for that particular Use Year, and the Program Operator confirms the reservation, the Fixed Use Period thus reserved will be such Owner's "Confirmed Use Period" for that particular Use Year. In the event an Owner fails to request and obtain a confirmation of a specific check-in/check-out day, such Owner shall not be entitled to exercise such Owner's Fixed Time Rights for such Use Year, but shall be entitled to exercise Floating Time Rights for such Use Year. The Program Operator shall assign a specific check-in/check-out day depending on availability. There is no guarantee that the specific check-in/check-out day assigned will be the day requested by the Owner. In the event of any conflict between the Program Rules and the Declaration regarding reservations and confirmations, the Declaration controls and must be obeyed. The Fixed Use Periods currently in the Program are also known as the "Platinum Plus-Holiday Use Periods" and the "Platinum Plus-New Years Use Periods." Platinum Plus-Holiday Use Periods shall be the Time Periods which include Christmas Day and the Platinum Plus-New Years Use Periods shall be the Time Periods which include New Year's Day. In the event that the foregoing holidays fall on a change day (i.e., the day on which a Time Period commences or ends), the Platinum Plus-Holiday Use Period shall be that Time Period ending on the Christmas Day holiday and the Platinum Plus-New Years Use Period shall be that Time Period ending on the New Year's Day holiday. The Developer has the right, but not the obligation, to implement additional Fixed Use Periods to be known as "Platinum Plus-Golden Use Periods" and "Platinum Plus-Obon Use Periods." The Platinum Plus-Golden Use Period shall be the Time Periods which include at least two of the following dates: April 29<sup>th</sup>, May 3<sup>rd</sup> and May 5<sup>th</sup>, and the Platinum Plus-Obon Use Periods shall be the Time Periods which include at least two of the following dates: August 13<sup>th</sup>, August 14<sup>th</sup> and August 15<sup>th</sup>.

The Owner of a Platinum Plus-Holiday, Platinum Plus-New Years and, upon implementation, Platinum Plus-Golden or Platinum Plus-Obon Ownership Interest, shall have the right to occupy a Unit and to use the Common Areas during the annually recurring Time Period that he owns. For the purpose of describing the Platinum Plus-Holiday Use Periods and Platinum Plus-New Years Use Periods in deeds, mortgages and other documents, the Platinum Plus-Holiday Use Period shall be designated as Time Period 51 and the Platinum Plus-New Years Use Period shall be designated as Time Period 52. Notwithstanding such description, in years in which there is a Time Period 53 (as defined in Paragraph 3.3.B.3 of the Declaration), the actual date of occupancy for Owners of Platinum Plus-Holiday Use Periods during Time Period 51 shall be Time Period 52, and for Owners of Platinum Plus-New Years Use Periods during Time Period 52 shall be Time Period 53, so that the periods of occupancy in

such years include Christmas Day and New Year's Day. For the purpose of describing the Platinum Plus-Golden Use Periods and Platinum Plus-Obon Use Periods in deeds, mortgages and other documents, if implemented, the Platinum Plus-Golden Use Period shall be designated as Time Period 17 and the Platinum Plus-Obon Use Period shall be designated as Time Period 32.

Further, with the exception of the 51<sup>st</sup> and 52<sup>nd</sup> Time Periods in each Unit in the Program, the Developer may not grant Fixed Time Rights for more than sixty-five percent (65%) of the total number of weeks of a particular Time Period in any one Use Year of a particular Unit Type.

"Floating Time Rights" are the rights of an Owner to reserve and use a Unit during an unspecified Use Period in his Use Year. These Use Periods are also referred to as the "Platinum Use Periods". In each such Use Year, an Owner with Floating Time Rights has the right to reserve and confirm one (1) Use Period for each Ownership Interest, including the specific check-in/check-out day. To give a Buyer these rights, the Developer will expressly state in the First Deed transferring an Ownership Interest to that Buyer, that a Buyer has Floating Time Rights. For every Odd Year or Even Year, whichever applies, an Owner with Floating Time Rights must reserve and confirm one Use Period with a specific check-in/check-out day in accordance with the Program Rules. This reserved and confirmed Use Period with a specific check-in/check-out day is also called the Owner's "Confirmed Use Period."

(6) **HOW RESERVATIONS WILL BE REQUESTED AND CONFIRMED.** The reservation and use of Units in the Program shall be governed by Chapter 3 of the Program Declaration which, among other things, describes Fixed and Floating Time and Floating Unit Reservation and Use Rights. These provisions will be supplemented by the following provisions of the Program Rules:

(a) For each Ownership Interest with Floating Time Rights, the Owner must reserve and have confirmed a Unit and a check-in/check-out day according to the following rules:

(i) Owners with Floating Time Rights must make a reservation request and receive a reservation confirmation from the Program Operator, or someone designated by the Program Operator, before occupying any Unit. Reservation requests may be made and confirmed by telephone, and all requests will be processed on a first-come, first-served basis. Reservation requests will also be accepted by mail and/or facsimile with the date received by the Program Operator used in prioritizing requests.

(ii) A Buyer of an Ownership Interest with Floating Time Rights becomes eligible to make a reservation request in accordance with, and as soon as, the Purchase Contract is accepted by the seller for the Use Period purchased; however, an Owner will not be allowed to use such reservation unless the Purchase Contract has closed, or such contract allows by its terms for such reservation to be used, the conveyance of the Ownership Interest has been recorded, and the Developer has determined that the Unit is ready for occupancy.

(iii) Owners will have the ability to request a reservation for a seven (7) night stay for an accommodation for a check-in day on a first-come, first-served basis, with other Owners, beginning twelve (12) months in advance of the requested check-in day. An Owner's request shall be timely if received no later than seventy-five (75) days prior to the first day of a Use Period. Owners who own more than one Ownership Interest may reserve concurrent, meaning two (2) or more Units during the same Use Period, or consecutive Use Periods, meaning one (1) or more Units for two (2) or more Use Periods in a row, for Owner occupancy only, thirteen (13) months in advance of the first requested check-in day for the first Use Period reserved. Owners who own an Ownership Interest and an interest in any other resort managed by Program Operator or an affiliate of Program Operator (the "Affiliated Resort") may reserve concurrent use periods, meaning two (2) or more Units during the same Use Period, or consecutive Use Periods meaning one (1) or more Units for two (2) or more Use Periods in a row, for Owner occupancy only, thirteen (13) months in advance of the first requested check-in day for the first Use Period reserved. Owners who own interests at the Property and an Affiliated Resort and reserve usage thirteen (13) months in advance in accordance with the previous sentence shall occupy their weeks either concurrently or consecutively at the Property and the Affiliated Resort. However, no more than fifty percent (50%) of the available non-Developer inventory for each Use Period can be reserved more than one (1) year in advance in this manner. Any cancellation for a Use Period reserved in this manner must include all concurrent or consecutive Use Periods reserved with the Use Period canceled.

(iv) Owners with Floating Time Rights are entitled to request seven (7) nights of occupancy during each Use Year in which they have the right to reserve and use a Unit for each Use Period owned. The requested Use Period shall be limited to (i) a Use Period which corresponds to the Ownership Interest owned, as reflected on the deed conveying the Ownership Interest to the Owner, and (ii) a check-in day in effect for the Use Period in question. All seven (7) nights must be used in the same Use Year. Unused or unreserved nights may not be carried over into subsequent Use Years.

(v) An Owner may cancel a reservation without penalty by giving notice at least sixty (60) days before the check-in date, but is not guaranteed another reservation for that Use Year. An Owner who cancels his or her reservation less than sixty (60) days before the check-in date, may not be allowed another reservation for that Use Year. An administrative fee may be assessed for each change of reservation.

(vi) Owners desiring to exchange their right to use a Unit through a company whose principal business is the facilitation of exchanges for time share interests (an "exchange company") must first obtain a confirmed reservation in accordance with the Program Rules prior to seeking to trade within any exchange system. If designation of a specific Unit is required to effectuate an exchange, the Program Operator, upon notification of this fact by the Owner, will provide the Owner with an exchange identification number to effectuate an exchange.

(b) The Developer has the right to reserve and use any unreserved Use Periods beginning seventy-four (74) days prior to the first day of the Use Period. If the Developer makes use of such Use Period, that Use Period may not be available for reservation or use by Owners. If the Developer exercises this right, or if an Owner fails to make a reservation request or is unwilling to accept any available Use Periods and if the Owner's request cannot be confirmed, an Owner could lose the opportunity to use a Use Period in a given Use Year.

(c) Each owner with Floating time Rights will have the option to request a reservation for "split week" occupancy, electing in any Use Year to occupy a Unit during one Weekend Occupancy Period and one Weekday Occupancy Period instead of an entire Use Period. Each such occupancy will be called a "Split Week Use Period."

For purposes of this paragraph, a "Weekend Occupancy Period" means a period of three (3) consecutive nights commencing on a Saturday (or another starting day designated by the Program Operator) at 4:00 p.m. and ending on the next following Tuesday (or another day, three (3) days later, in the event a different starting day is designated) at 10:00 a.m. A "Weekday Occupancy Period" means a period of four (4) consecutive nights commencing on Tuesday (or another starting day designated by the Program Operator) at 4:00 p.m. and ending on the next following Saturday (or another day, four (4) days later, in the event a different starting day is designated) at 10:00 a.m.

At the time an Owner requests a reservation for split-week occupancy, only occupancy of the period which will be used first (either a Weekend Occupancy Period or a weekday Occupancy Period) will be confirmed. Owners can request a reservation of the remaining portion of the split week one (1) year in advance of the first requested check-in day of the remaining occupancy period. The Program Operator may restrict the availability of split week occupancy in order to fulfill the maximum number of Owner requests for requests for occupancy which may result in the Owner's request being denied and the Owner losing the use of the remaining split week Use Period.

Additional charges may be imposed on Owners who utilize split-week occupancy. This charge is to pay for such additional costs as may be incurred by the Program Operator as a result of the use of split week occupancy option.

(d) In lieu of occupying the entire Unit during a Use Period, each Owner with Floating Time Rights may make a request (i) to occupy a part of the Unit for a Use Period, with the remaining part of the Unit being "locked off" and being subject to exclusive use by others, and (ii) to occupy the other part of a Unit during a different Use Period, with the remaining part of the Unit being "locked off" and being subject to exclusive use by others. Each such occupancy will be called a "Lock Off Period" and must consist of seven (7) consecutive nights.

Thus, an Owner may make a reservation request to occupy either the master suite or the guest suite of the Unit for a Use Period and to occupy the other part of the Unit during a different Use Period.

At the time an Owner requests a reservation for a Lock Off Use Period, only occupancy of the part of the Unit which will be used first will be confirmed. Owners can request a reservation of the remaining Lock Off Use Period one (1) year in advance of the requested check-in day of the remaining Lock Off Use Period. The Program Operator may restrict the availability of Lock Off Occupancy in order to fulfill the maximum number of Owner requests for occupancy which may result in the Owner's requests being denied and the Owner losing the use of the remaining Lock Off Use Period.

Additional charges may be imposed on Owners who utilize Lock Off Use Rights. This charge is to pay for such additional costs as may be incurred by the Program as a result of the use of a Lock Off Use Period

Each Owner is advised to request a reservation far enough ahead of time to be sure he will get a Confirmed Use Period and to have a better chance of getting his first choices. Since reservations will be generally on a first-come, first-served basis, an Owner is not guaranteed his preferences.

There is no guarantee that an Owner will be able to confirm a reservation for use of a Lock-Off Unit. The Program Operator from time to time, in its sole discretion, may cease usage of Lock-Off Units by certain Owners based on numerous factors, including, but not limited to, the volume of Owner usage of Lock-Off Units and availability of the Lock-Off Units. Furthermore, the ratio of Lock-Off Units to non-Lock-Off Units will decrease over the course of development of the Property, subject to the sole discretion of the Developer. Accordingly, the availability of Lock-Off Units will decrease in relation to the total number of Owners. The Program Operator reserves the right to grant precedence to certain Owners (i.e. those who purchased an Ownership Interest prior to May 1, 2007) over other Owners in connection with obtaining confirmation of reservations for Lock-Off Units."

(e) The Board, with the consent of the Program Operator, has the right to establish a priority list in an effort to insure the fair reservation and use of Units during high demand periods (i.e. holidays, special events, etc.). If implemented, access to certain Use Periods and the availability of certain check-in/check-out days by an Owner may be restricted in a given year based upon the Owner's ranking in a lottery or some other allocation methodology. An administrative fee may be established for this service.

#### **(7) OTHER RULES ABOUT RESERVATION AND USE RIGHTS.**

(a) Owners who own one Ownership Interest together, may make only one reservation for that Ownership Interest and may not reserve separate Use Periods for each Owner.

(b) The right to reserve and use shall not be carried over from one Use Year to the next or later Use Years.

(c) Notwithstanding any provision contained in the Program Documents to the contrary, each Owner must pay all of the Basic Charges and Special Charges (as such terms are defined in Paragraphs 12.D and 12.E below) assessed to such Owner's Ownership Interest for the entire fiscal year of the Association in advance before such Owner may use or exchange during such Use Year.

(d) If a Unit is not available for an Owner's use due to an error by the Association or Program Operator, the Association or the Program Operator, as the case may be, at its expense must find alternative accommodations of similar quality on the Island of Oahu for such Owner during his Confirmed Use Period.

(e) Reservation requests will not be accepted from Owners who have outstanding Charges, and Owners or others claiming a right to use through them will not be assigned or allowed to use a Unit until all outstanding Charges, to include interest and late charges, if any, have been paid in full.

(f) Failure to request a reservation for a Use Period in a Use Year does not relieve the Owner from the obligation to pay all Charges for each Ownership Interest owned.



(g) Owners may have their reservation and use rights suspended, or may be fined, for a violation of the Program Documents and will not be allowed to exercise their reservation and use rights if they are in default in any way under any mortgage and promissory note given to the Developer to secure their obligations to repay any funds extended by the Developer to them which enabled them to purchase their Ownership Interest.

(h) If necessary, in the event of an Owner's violation of any provision of the Program Declaration, the Developer may do such things as may be necessary to keep an Owner from exercising his use and exchange rights, and all Owners agree that they will not hold the Developer responsible for any such actions which it takes in pursuing these rights.

(i) The Developer has special reservation and use rights as disclosed in Paragraph 3.D.(4) below.

(j) Members of exchange programs who desire to exchange their Use Period through the exchange company should consult their exchange company directory and membership material for the trading rules which govern reservation exchange requests.

(k) If an Owner purchases an Every Other Year Ownership Share, all of the rules in Article 10 of the Program Rules apply for each Use Year in which he is entitled to exercise his rights.

#### D. OTHER RIGHTS AND RESPONSIBILITIES OF OWNERS AND THE DEVELOPER UNDER THE PROGRAM

(1) **SOURCE OF, AND CHANGES TO, THESE RIGHTS AND RESPONSIBILITIES - THE PROGRAM DOCUMENTS.** Every Owner, Exchange User and Occupant must obey the "Program Documents" which govern the Program. The Program Documents include the "Program Declaration," the "Charter," the "By-Laws" referred to in Paragraph 15.E, the "Program Rules" and all changes and additions legally made to these documents. The Program Documents may not be amended to change an Owner's Ownership Share, Fixed Time Rights or voting rights (except in the case of annexation or deannexation of Units to the Program), unless such Owner agrees to the change. The Developer has special rights to change the Program and the Program Documents, and the Program Documents may not be amended to change or delete these or the other special rights the Developer has, called "Reserved Rights." These rights include, but are not limited to, those contained in Paragraphs 3.10, 6.12 and Chapter 13 of the Program Declaration. Changes to the Program Rules may also be made by the Board with the concurrence of the Program Operator. By signing his purchase documents (i.e., Ko Olina Beach Club Purchase Agreement ("Purchase Contract"), Buyer's Acknowledgments and First Deed), each Buyer accepts and agrees to obey the Program Documents.

(2) **EXCHANGE USE.** Exchange means the temporary exchange by Owners of the use of their Use Periods: (a) among themselves, which is called a "Program Exchange" or (b) with people in other vacation ownership projects or other real estate (which is not a vacation ownership project), including exchanges by Owners for use periods or times at other resorts owned, managed or affiliated with the Developer or an affiliate of the Developer, within or without the State of Hawaii, which is called an "External Exchange." **Each Owner will have the right, at his own risk and expense, to take part in any Program Exchange or External Exchange program.** The Program Operator may (but does not have to) provide a Program Exchange program in the Program Rules, unless Owners of at least a majority of Ownership Interests decide not to do so. It may charge fees to defer the cost of this service.

The Program is participating in an External Exchange program. The name and address of the exchange company presently offering this exchange program is Interval International, Inc., ("II"), 6262 Sunset Drive, Miami, Florida 33143. Neither the Developer nor any developer of any II resort is an agent for a joint venture with II. II does not sell, lease or otherwise convey an interest in any real property. The Developer has paid the Developer's application fee, and for each Owner, **the Developer will pay the Owner's initial membership fee at the time of closing.** Thereafter, membership in an External Exchange program is at the option and expense of the Owner. Although the Developer has entered into a multi-year agreement with II with respect to the offering of exchange services, the Developer reserves the right, in its sole discretion, to change its affiliation to another exchange company at a future date or to develop its own separate exchange program to be managed and operated by



itself or another Developer affiliated entity. The Program Operator, on behalf of the Association, has adopted and agreed to comply with the Exchange Agreement made by the Developer with II. The Association must exercise reasonable efforts to maintain an External Exchange program at all times, unless a majority of all Owners vote not to do so.

Unless not required by the Developer, all reservations must first be received and confirmed by the Developer or the Developer's designee prior to requesting an Exchange with any exchange facilitator.

So long as he complies with all of the Program Documents and pays all charges and amounts assessed against him or his Ownership Interest, an Owner may participate in an Exchange Program, but the participation by each Owner in any Exchange Program is at his own option, risk and expense. Any charges and rules imposed by an Exchange Program will not change or suspend the charges and duties imposed on each Owner by the Program Documents. Each Owner must notify the Program Operator in writing if he participates in an Exchange. Each Owner is responsible for all costs of his own exchange and other fees charged to him by II.

(3) **GENERAL USE RIGHTS AND RESPONSIBILITIES UNDER THE PROGRAM.** Each Owner will have the right to use a Unit of a particular type during his Confirmed Use Period. No Owner other than the Developer may implement a commercial rental program or a time sharing plan within the Property. An Owner may, however, let other people, including Tenants, use a Unit during his Use Period. Except for people using through a Program Exchange or an External Exchange, each Owner will be responsible for every person, including Tenants, that he lets use his confirmed Use Period in his place. Each Owner may rent his Use Period on his own, but may not join any rental pool until December 31, 2026 or until the date that the Developer sells the last Ownership Interest in the Program, whichever occurs first. There will be no rental pool arrangement ("RPA"), as that term is defined in the Securities and Exchange Commission's ("SEC") Securities Act Release No. 33-5347 (17 CFR § 231.5347 (Jan. 18, 1973)), or any other similar arrangement in the Program, and the Developer makes no representation to Buyer that any such RPA or other arrangement will be transferred to Buyer upon the purchase of his Ownership Interest. Buyer is purchasing only an Ownership Interest in the Property, which Ownership Interest is not coupled with any RPA. The Developer further makes no representation to Buyer as to the prospective availability of any RPA, nor does it make any representation as to the potential rental value of the Ownership Interest that Buyer may purchase, nor any representation as to any expectation of profit that can be derived with respect to purchasing any Ownership Interest in the Program. Accordingly, Buyer should not have any expectation of profit from purchasing an Ownership Interest.

The Program Rules will state the maximum number of Occupants that may occupy each type of Unit, which cannot exceed the maximum allowed by law. The limits now are as stated on Exhibit "1." Except with respect to the reservation and use rights of the Developer, each Unit in the Program must be used only for residential, transient vacation, time share and other rental purposes, but, except with respect to Ownership Interests owned by the Developer, rental activity which indicates that (i) the activity is being conducted as a business rather than merely incidental to a primarily personal use, and (ii) the Owner has assigned the Ownership Interest to pursue a business as opposed to personal use, is prohibited. **No Unit may be used to conduct any other trade or business, except for the Units which are not part of the Program and are used by the Developer for commercial purposes. No pets are allowed in any Unit,** except that visually impaired persons, hearing impaired persons and physically impaired persons will be allowed to keep certified seeing-eye dogs, certified signal dogs and certified service dogs, respectively, in their Assigned Units. Further, nothing will hinder full access to the Assigned Units and/or other portions of the Property by persons with disabilities.

The Board and, to the extent its authority is delegated, the Program Operator, and not the individual Owners, have the exclusive right to make all decisions relating to, and are responsible for, the normal and other maintenance and repair of the Property. Each Occupant has the duty, however, not to damage, beyond normal wear and tear, any part of the Property, and to keep the Unit occupied by the Occupant (and the Common Furnishings in that Unit) in good order and condition (except for ordinary wear and tear). Each Occupant must also remove all personal effects from the Assigned Unit at check-out time. Personal effects that are not removed will be considered abandoned. No one will be responsible for them, and if they are not claimed, the Association may sell them and keep the sales proceeds. Each Owner and Occupant must maintain the assigned Unit in good order and condition. Each Owner is responsible for all damage, normal wear and tear excepted, to a Unit and its Common Furnishings caused by the Owner, or an Occupant or Tenant of the Owner, during the Owner's Confirmed Use

Period. All unpaid charges for damage or loss will be billed to the Owner at check-out time or directly to the Owner.

The Board and, to the extent its authority is delegated, the Program Operator, and not the individual Owners, have the exclusive right to make all decisions relating to, and are responsible for, the color, decor and Common Furnishings for the Units, and all changes, additions and other improvements to the Property. In addition, the Association is responsible for the maintenance and repair of the Common Areas and the rebuilding and restoration of the Buildings and other Improvements, including the Units. All decisions of the Association with respect to the above made in accordance with its Program Documents are binding on all Owners.

To the extent addressed in the Program Documents, all costs incurred in maintaining and repairing the Common Areas will be assessed to each Ownership Interest as part of the common expenses and each Owner must pay his share of these costs. In the event that the Association does not possess sufficient funds to pay the costs of rebuilding, each Ownership Interest will be assessed by the Association to raise the necessary funds. The Association will, in turn, assess a Special Charge to each Owner who must then pay his share.

An Owner may not use or let others use: (i) at any time except during his Confirmed Use Time; or (ii) any Unit, except his Assigned Unit. Any Owner, Exchange User or Occupant who interferes with someone else's use, for example, by using a Unit he is not supposed to or making a Unit unusable by damaging it, is subject to sanctions. He may be evicted at once, and must pay for all damage and costs involved. These damages and costs include (but are not limited to) costs of alternative living arrangements and additional travel costs, and all collection and Enforcement Costs.

(4) **THE RIGHTS AND RESPONSIBILITIES OF THE DEVELOPER UNDER THE PROGRAM.** As an Ownership Interest Owner, the Developer has generally the same rights and duties as an Owner under the Program Documents to reserve and have confirmed Use Periods for Ownership Interests it owns on the same basis as other Owners with Fixed or Floating Time Rights, but will have special use and other rights, called the "Reserved Rights," that other Owners do not.

Each Buyer should understand, and by signing his Purchase Contract, Buyer's Acknowledgement and First Deed, accepts and agrees, that the Developer has and may exercise and assign its Reserved Rights. Specifically, under the Program Documents, the Developer has Reserved Rights, described in Paragraph 6 below, as well as the following: (a) The Developer may operate, lease and/or utilize all or any part of the Developer Controlled Areas of the Property, for any purpose permitted by law, including, without limitation, for purposes related to the sale, rental or leasing of time share interests or other real estate, or providing services and amenities conducive to a first-class resort destination. The Developer may contract with various providers of goods and services, such as food and beverage operators, retail stores and other vendors, to provide goods and services at the Property, and may retain any compensation paid to the Developer in consideration of the Developer permitting any such vendor to utilize space at the Property. The Developer shall be responsible for all expenses attributable to the maintenance and upkeep of the Developer Controlled Areas and shall be entitled to any and all revenue, profits and all benefits derived from the use of the Developer Controlled Areas. Developer shall be responsible for a pro-rata share of the non-occupancy related common expenses attributable to the Program based upon a formula of the square footage of the Developer Controlled Areas in relation to the total square footage of the Units in the Program; (b) the Developer may (i) use Unused Use Periods, any other Use Periods owned by the Developer and its own Confirmed Use Periods for any purpose, including for rental, sales, leasing and other commercial activities permitted by law, free from the restrictions imposed by the Program Documents, in which event the Developer will, under certain conditions, be solely entitled to the proceeds from the rental, sales, leasing and other commercial activities; and (ii) use the Common Areas of the Program at all times for any purpose permitted by law and the Program Documents, if that use does not unreasonably interfere with the use of the Property by the other Owners; (c) the Developer also may pay a subsidy instead of the share of Program Expenses that other Owners must pay; (d) the Developer has the right to add to or withdraw Units from the Program as stated later in Paragraph 4.B; (e) the Developer also (i) before the first annual meeting of Owners, may arrange an External Exchange Program with an Exchange Agent, which may be an affiliate of the Developer and may choose the initial Program Operator; (ii) may select and has selected an affiliated company to act as the initial Program Operator and may have the Program Operator's contract assigned to any other subsidiary or affiliate; and (iii) has special rights in setting up and running the Association prior to the first meeting of owners; (f) the Developer may change the name of the Program; (g) the Developer may exercise the

Reserved Rights or assign one or more of them to someone else without the consent, approval or joinder of any Buyer or Owner; and (h) the Developer (and only the Developer) will have the right, but not the obligation, to convey Ownership Interests to the Association for the purpose of establishing a bank of time which may be utilized as Major Service Periods, and if the Developer elects to do this, the Association must accept the conveyance and must cooperate to have the conveyance be effective. Upon the completion of any such conveyance, the obligation to pay all Charges and other sums and amounts attributed to the Ownership Interest will cease, and the attributed Charges will be allocated among the other Ownership Interests in the Program which are subject to assessment. Further, such Ownership Interests as may have been conveyed to the Association shall cease to have voting rights after such conveyance.

**E. ENFORCEMENT OF BUYER'S RESPONSIBILITIES.** The Association and the Program Operator have the right to enforce the Program Documents. The Association may take specific enforcement actions without having to go to court first. For example, it may try to stop any activity that is in violation. It may also fine an Owner or suspend his rights to reserve, confirm, use and exchange and vote and other privileges as a member of the Association. It may advance funds on behalf of a defaulting Owner to correct or compensate for any violation and then require the defaulting Owner to pay back these advances. If an Owner's default is his failure to pay his share of Program Expenses or Charges (or interest, late charges and collection costs on them), he may be suspended or fined without a hearing, or the Program Operator may notify the Owner in writing (1) of the amount of the deficiency, including any per diem interest that may be accruing (2) that the Owner will not be permitted to use an assigned Use Period in any manner (e.g. occupy, exchange or rent) until the total amount of the delinquency is satisfied in full; and (3) that the Program Operator intends to rent the delinquent Owner's Use Period and to apply the proceeds of such rental, net of any rental commissions, cleaning charges, travel agent commissions or any other commercially reasonable charges incurred by the Program Operator in securing the rental, to the delinquent Owner's account. In other cases, the Owner must be given notices and an opportunity to appear and defend himself before the Board. Unless specifically permitted by the Program Documents, however, no Owner individually or with any other Owner or through the Association may enforce compliance or seek any relief or remedy in its own name.

The Association may also take legal action. For example, it may file a lawsuit to collect money or to get an order from a court that the Owner stop his violation or an order requiring that the Owner do what he is supposed to do, or to any other legal redress or remedy. Perhaps the most serious action the Association can take to collect is to foreclose on an Owner's Ownership Interest or Ownership Interests, as discussed below.

#### **4. DESCRIPTION OF TIME SHARE UNITS, BUILDINGS, LOCATION, ETC.**

**A. LOCATION OF THE PROGRAM.** The Units now in the Program are located within the Kona Building, the Moana Building and the Naia Building situated on the Property. It is anticipated that the Property will consist of one (1) more Building in addition to the Kona Building, the Moana Building and the Naia Building to be known as the Oahu Building. "Units" consist of the Units identified in the attached Exhibit "1" and in addition, includes each unit which may be subsequently added to the Program by the Developer. It is anticipated that up to 750 Units will be constructed within the four (4) Buildings. The attached Exhibit "1" also indicates the Unit Types of each Unit. It is anticipated that construction of the initial Units will be completed by January 2003 and all remaining Units by December 2016. It is anticipated that the Units in the Naia Building annexed by the Third Declaration of Annexation shall be available for occupancy in January of 2009. Buyers are advised that the foregoing dates are estimates only, and the Developer makes no representation or warranty whatsoever that any of the Units will be completed by such dates. Further, Paragraph 10 below sets forth the procedure for asserting claims for defects in construction.

**B. THE DEVELOPER MAY ADD OTHER UNITS TO THE PROGRAM.** Without the consent of any Owners or other person, the Developer may add to the Program any of the units that presently exist or that are created in the future. The Developer may do this as many times as it wants until December 31, 2026. The Developer may also remove Units which it owns from the Program at any time.

**C. HAZARD AND LIABILITY INSURANCE.** Buyers should refer to Chapter 11 of the Program Declaration for a discussion of insurance coverages the Association is supposed to maintain. Although the Association will attempt to obtain these coverages, it may obtain less insurance if certain coverage is unavailable, too expensive, or would conflict with what is stated in the Program Declaration about insurance. The insurance

obtained by the Association shall have such deductibles, uninsured retentions and such normal and standard exclusions as the Board shall determine in its business judgment. The following is a brief summary of the coverages required by the Program Declaration:

(1) **PROPERTY INSURANCE.** A policy covering all Improvements of the Property and the Common Furnishings, for such hazards as fire, lightning, windstorm, hail, smoke, explosion, riot, civil commotion, aircraft, vehicles and so on, is required. If possible to obtain at a reasonable cost, the insurance must cover the full cost of replacing the insured buildings, other improvements and all Common Furnishings, subject to such deductibles as the Board, in its business judgment, deems prudent.

(2) **LIABILITY INSURANCE.** Also required is a comprehensive policy or policies of public liability insurance protecting the Association, the Board, the Program Operator, all officers, directors and employees of the Association, and each Owner, against claims for personal injury, death and property damage due to the condition of, and activities and construction on, the Property.

(3) **DIRECTORS AND OFFICERS INSURANCE.** If elected by the Program Operator, an insurance policy or policies to protect the Program Operator and all officers and directors from liability for claims based upon their errors and omissions, negligence, or breach of duty.

(4) **FIDELITY BONDS.** A fidelity bond in compliance with the Time Share Law which covers all directors, officers, employees, agents and volunteers of the Association who handle or are responsible for funds must be maintained with the Association and all Owners and the obligees.

Buyers should understand that under any mortgage given by the Buyers to Marriott Ownership Resorts, Inc., Buyers must obtain hazard insurance satisfying certain requirements if the Association does not maintain such insurance.

5. **(MULTIPLE LOCATION TIME SHARE PLAN).** Not applicable because no units outside of the Property are currently a part of the Program.

6. **TIME SHARE PLAN IN A CONDOMINIUM.** The Program is not located within a condominium. The Program is situated on the Property which is currently comprised of four (4) separate lots. It is anticipated that the amenities of the Program will include swimming pools and appurtenant deck areas, whirlpool spas, a health club and landscaping areas of the Property.

The Program Declaration contains additional provisions which each Buyer should be aware of, including certain rights which have been reserved in favor of the Developer such as:

A. The right of the Developer until December 31, 2026, to, among other things, utilize the Developer Controlled Areas of the Property, in accordance with Paragraph 3.10 of the Program Declaration.

B. The right of the Developer until December 31, 2026, to, among other things, change the exterior color and façade of Buildings and other Improvements on the Property as well as the interior configuration of Units, in accordance with Paragraph 13.1 of the Program Declaration.

C. The right of the Developer, to provide for the sharing of the facilities and other Common Areas of the Property or any Developer Controlled Areas with owners of interest in other resorts, projects or hotels located adjacent to, or in close proximity to, the Property, in accordance with Paragraph 14.1 of the Program Declaration.

D. The right of the Developer until December 31, 2026, among other things, to convert the status or nature of Developer Controlled Areas, or any part of them, into separate Units or Common Areas and to change the physical aspects of the Developer Controlled Area at the Developer's expense in connection with such a conversion, including Buildings and structures that may be necessary or appropriate, in accordance with Paragraph 13.3 of the Program Declaration.

E. The right of the Developer until December 31, 2026, to grant, among other things, easements over the Property, in accordance with Paragraph 13.4 of the Program Declaration.

F. The right of the Developer until December 31, 2026, to accomplish, among other things, all modifications to Units, Developer Controlled Areas and Common Areas of the Property deemed necessary or appropriate by the Developer in its sole discretion, or to ensure full compliance by the Property, the Program, the Association or by the Developer, with laws which apply to the Property or the Program, including the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, including all rules and regulations adopted under it, and the Americans With Disabilities Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, including all rules and regulations adopted under it, or as may be required by any governmental entity, in accordance with Paragraph 13.5 of the Program Declaration.

G. The right of the Developer to, among other things, operate, lease and/or utilize all or any part of the Common Areas of the Property for any purpose permitted by law, including, without limitation, the sale, rental or leasing of timeshare interests or other real estate, or the provision of services and amenities conducive to a first-class resort destination, in accordance with Paragraph 13.8 of the Program Declaration.

H. The right of the Developer until December 31, 2026, to amend the Program Declaration, to enter into any agreements and to do all things necessary and convenient to satisfy the requirements of the Special Management Area Use Permit 85/SMA-89, Shoreline Setback Variance 85/SV-14 and that certain Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) for Joint Development of TMK: 9-1-57; Parcels 13, 14 and 15 dated March 12, 2001, and recorded in the Office of the Registrar of the Land Court as Document No. 2690022, and any other permit or entitlement required for the construction and development of the Property, in accordance with Paragraph 13.9 of the Program Declaration.

I. The right of the Developer until December 31, 2026, to amend the Program Declaration, to enter into any agreements and to do all things necessary and convenient to effect the subdivision and/or consolidation and resubdivision, withdrawal and conveyance of all or a portion of the Property and/or any Unit, in accordance with Paragraph 13.10 of the Program Declaration. A map showing a proposed subdivision line for the Property is shown on a map of the Property on file with the Department of Commerce and Consumer Affairs.

J. The right of the Developer until December 31, 2026, to convey Ownership Interests that are owned by the Developer and free of liens to the Association, in accordance with Paragraph 13.11 of the Program Declaration.

K. It may be necessary to recalculate the Undivided Interests upon the exercise of certain of Developer's reserved rights set forth above. The principles and formulae by which the Undivided Interests will be recalculated are set forth in Paragraph 13.7 of the Program Declaration.

L. Paragraph 13.12 of the Program Declaration provides that "Marriott", "Marriott Vacation Club International" and "Marriott Resorts" are registered service marks and trademarks of Developer and/or Marriott International, Inc. ("Marriott International"), and no unauthorized use of, or reference to, such service marks or trademarks may be made by the Association, any Owner or any other party without the prior written consent of the Developer and/or Marriott International, as appropriate. In the event that the Property is no longer managed by Developer or any affiliate of the Developer, the name of the Property must be immediately changed by the Board of Directors of the Association, or if it fails to do so, by Developer, to a name that does not use, or make reference to, the name "Marriott" or any other Marriott registered trademark. In addition, the Developer has reserved the right to change the name of the Property at any time even if Developer may not be affiliated with the Property at the time of the name change or may not own any Ownership Interests at that point.

Each buyer should read and fully understand the terms and provisions of the Program Documents.

#### **7. RESTRAINTS ON TRANSFER OF PURCHASER'S INTEREST.**

A. **UNDER THE PROGRAM DECLARATION.** Each Owner may transfer or mortgage his Ownership Interest. If he owns more than one Ownership Interest, he can treat each Ownership Interest separately. An Owner

is not required to do with all of his Ownership Interests what he does with any one of them. However, he may not transfer or mortgage less than his entire Ownership Interest, provided that he may own an entire Ownership Interest together with others. Buyers should remember that there is a lien on each Ownership Interest (subject to the terms of the Program Declaration) to secure the payment of the Owner's debts to the Association. All instruments attempting to transfer any Ownership Interest should identify the transferor's Unit Type, Ownership Share and reservation and use rights (i.e. Every Year, Odd Year or Even Year, Fixed or Floating Time Rights) for the Ownership Interest being transferred, and, to the extent set forth in Exhibit "D" attached to the Program Declaration, the identification number assigned to such Ownership Interest; provided that if the identification number is set forth in any instrument of conveyance such as a deed, or in any mortgage or other document, the Ownership Interest which is identified by such identification number and all rights incident to ownership of such Ownership Interest shall be deemed to be covered and conveyed by such document even though the Ownership Interest or any of its attributes are not described, in such document or may be inaccurately described, in such document.

**B. WHEN THE DEVELOPER'S CONSENT IS REQUIRED.** The Developer's consent is required if a Buyer wishes to transfer his Purchase Contract before closing or to transfer an Ownership Interest that is mortgaged to the Developer. If the Developer assigns the mortgage to someone else, that person's consent will also be necessary.

**C. NOTICE TO THE ASSOCIATION.** The Program Declaration requires that notice of any transfer must be given to the Association. If notice is not given, the Association and the Program Operator do not have to recognize the transfer or the person receiving the transfer as an Owner for any purpose, and may continue to recognize the person making the transfer (the seller) as the Owner who will remain liable to the Association for charges for the Ownership Interest. **The Association may assess a transfer fee as stated in the Program Rules.**

**D. RIGHT OF FIRST REFUSAL TO PURCHASE.** **In the event an Owner desires to sell, convey or lease (or enter into other agreements relating to the use of a Unit if not designated as a "lease") for a term of three (3) years or more in the aggregate (and whether or not consecutive), or otherwise transfer ownership of such Owner's Ownership Interest in the Program and for so long as Developer has Ownership Interests to sell in the Program or the Developer or an affiliate of Developer manages the Program, whichever shall be later, Developer shall have the right-of-first-refusal to purchase or lease, as applicable, the Ownership Interest under the same terms and conditions (including financing terms) as may be offered to or by a bona fide third party. Accordingly, each Owner desiring to sell or lease his Ownership Interest must notify Developer in writing of his intent to list, sell or lease his Ownership Interest.** The Owner's written notice to the Developer must include the proposed listing, offer price or rental rate and general terms of the proposed listing, sale or lease. Upon receipt of such written notice, the Developer shall have fifteen (15) days within which to notify the Owner in writing as to whether the Developer elects to exercise its right of first refusal set forth herein. If Developer elects to exercise its right of first refusal, closing shall occur no later than sixty (60) days after Developer notifies the Owner in writing (within such fifteen (15) day period) of its decision to purchase the Ownership Interest. If Developer elects not to exercise its right of first refusal or fails to notify the Owner in writing of Developer's election to exercise its right of first refusal within such fifteen (15) day period, the Owner shall be entitled, for a period of seven (7) months thereafter, to list Owner's Ownership Interest with a third party resale agent or sell the Ownership Interest to a third party for a price equal to or greater than the price offered to Developer without further notice to Developer. In the event, however, that such third-party buyer is an entity other than natural persons or such persons' personal trust (such as a corporation, partnership, limited liability company or partnership or other business entity), the Owner shall then reoffer the Ownership Interest to Developer under the procedure set forth above to provide Developer with the option to exercise its right-of-first-refusal once again.

**8. MUTUAL RESCISSION PROVISION.** Both the Developer and any Buyer may cancel any contract to buy an Ownership Interest without penalty by giving the other party written notice within seven (7) calendar days after: (a) signing the contract; or (b) the Buyer receives this Disclosure Statement, whichever is later. The seven (7) day period is called the "mutual rescission period." Each Buyer will be given a form of Notice of Cancellation (Form TS-10 of the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA")), together with all pertinent information completed at the time that Buyer signs the Purchase Contract. If a Buyer exercises this right to cancel, then, within fifteen (15) days, the Developer must return all payments made and the Buyer must return all sales materials received in good condition, except for reasonable wear and tear, or the Developer may deduct their reasonable value (but not more than \$25.00).



9. **TITLE DEFECTS OR ENCUMBRANCES.** "Encumbrances" are interests in or claims on a person's property which someone else has. They also include duties imposed by certain documents that affect the property and its owner.

The encumbrances which currently affect the Property and which will remain on each Buyer's Ownership Interest include those listed in the attached Exhibit "2", including the Program Documents, but excluding any mortgage and financing statements; the agreements contained in each First Deed which are described later in this Paragraph 9; and, if a Buyer purchases on credit, a mortgage made by the Buyer in favor of the Developer or a lender. Ownership Interests will be transferred to a Buyer subject to these encumbrances and to other encumbrances, if any, that do not materially affect the use or value of a Buyer's Ownership Interest, and which do not constitute "blanket liens."

Any mortgage given or assumed by the Developer, or any agreement of sale made by the Developer as "buyer" which is an encumbrance on any Buyer's Ownership Interest, to the extent that it encumbers or affects more than one Ownership Interest, is called a "blanket lien." Blanket liens MAY NOT be an encumbrance on a Buyer's Ownership Interest at closing, and must and will be released before or when title to that Ownership Interest is transferred from the Developer to the Buyer. At this time, there is no blanket lien, as that term is defined under the Time Share Law (Hawaii Revised Statutes Chapter 514E), which affects more than one Ownership Interest.

By signing his First Deed, each Buyer consents to and makes an agreement about the Developer's Reserved Rights. These consents and agreements will be encumbrances on each Buyer's Ownership Interest. For example, by signing his First Deed, each Buyer (a) consents to the reservation, exercise and assignment by the Developer of the Reserved Rights contained in the Program Documents and First Deed without the necessity of any consent or joinder from the Buyer or any other person; (b) agrees, at the request of the Developer, to join in and execute such documents and instruments, and to do such other acts or things as may be necessary or convenient to effect any exercise of the Reserved Rights; (c) appoints the Developer as the Buyer's attorney-in-fact with full right and power to do anything which the Developer decides is needed or helpful to do any of such things (this attorney-in-fact is coupled with the interest and is irrevocable, and will not be affected by any disability of a Buyer or by the Buyer's death. This means that the power of attorney appointment is permanent. Each Buyer also gives the Developer the power to substitute anyone else for it as the Buyer's attorney-in-fact); and (4) agrees to stay out of all areas that are fenced or posted to exclude access and to comply with all other access restriction and controls, and waives and releases all rights, claims and causes of action which a Buyer may have against the Developer, its contractors and subcontractors, and the Developer's lenders, and all of their respective agents and employees, resulting from any failure to stay out of such areas or to obey other access restrictions or other controls or resulting from any on-going development, construction or sales activities.

Buyers should read these provisions of the Deed, and similar provisions in the Buyer's Acknowledgements, with care.

10. **CONSTRUCTION DEFECTS.** Paragraph 13.13 of the Program Declaration sets forth the procedures that are to be followed with regard to any construction defect claims pertaining to the Improvements on the Property. In the event any alleged defect is detected, the claimant must, within one-hundred twenty (120) days of discovery of the alleged defect, deliver a written notice to the Developer that shall include the information required under such Paragraph 13.13. The procedures and guidelines pursuant to Paragraph 13.13 must be followed in an effort to resolve any dispute over alleged construction defects before the claimant is permitted to take any other action against the Developer pertaining to such alleged defects.

11. **PENDING OR ANTICIPATED SUITS.** Not applicable. There are currently no suits pending or anticipated that are material to the Ownership Interests or this Program of which the Developer has or should have knowledge.

12. **FINANCIAL OBLIGATION OF PURCHASER.** Each Buyer must pay the sales price stated in his Purchase Contract. For initial Developer sales only (versus sales of Ownership Interests that have been reacquired by the Developer for resale), the sales price includes Hawaii general excise tax at the rate of 4.166% (or any revised rate imposed by the State of Hawaii in the future) on the portion of the sales price allocable to the Common Furnishings in the Units. At Closing, such undivided prorata interest in the Common Furnishings shall be transferred to Buyer,

and Buyer will in turn, concurrently transfer such interest to the Association to allow the Association to administer such Common Furnishings on behalf of Buyer. A Buyer must pay the sales price at once in cash. Buyer promises that he has the financial resources to pay for his Ownership Interest or to get a loan to do so. The Developer is not arranging and has no duty to arrange outside financing for any Buyer, however, the Developer does have available to qualified Buyers, purchase money financing. A Buyer must also pay closing costs. Current sales prices and closing costs are stated in Exhibit "3" attached to this Disclosure Statement. All amounts are in United States dollars. Based upon the estimated closing costs described in Exhibit "3", the Buyer agrees to pay all closing costs not to exceed the amount referenced in Paragraph 8 of the Purchase Contract and the Developer will pay any amount of closing costs in excess of the amount Buyer is required to pay. The Developer keeps the right to make changes to Exhibit "3" and its obligation to pay any such excess closing costs at any time it chooses.

Whether he makes a cash or credit purchase, a Buyer also must pay his share of Program Expenses after the date scheduled for the closing of his purchase, even if he does not close on time.

Each Buyer should be aware that if he does not pay or keep the other promises he makes in his Purchase Contract (and if he buys on credit, in his note and mortgage), the Developer can take any action against the Buyer that is stated in the Purchase Contract (and note and mortgage), the Declaration, this Disclosure Statement and allowed by law, including, but not limited to, the suspension of Buyer's reservation and use rights. Buyers should read these documents with care.

### 13. ESTIMATE OF DUES, MAINTENANCE FEES, REAL PROPERTY TAXES, ETC.

A. **PROGRAM EXPENSES.** Each Owner must pay to the Association his share of the Program Expenses. "Program Expenses" is a very broad term which includes all costs of maintaining the Property and operating the Program, including all charges imposed on all Units, whoever is billed for the charges. Consequently, all such charges billed to the Association, the Developer, the Program Operator or any Owners are Program Expenses and are shared among all Owners as stated in the Declaration. Details of the items which constitute Program Expenses are set forth in the Declaration. The estimated Program Expenses and the share of these Program Expenses that each Buyer must pay are described in the Assessment Budget for the Program attached as Exhibit "4" to this document. The portion of Program Expenses you must pay is based upon the budget for each fiscal year prepared by the Program Operator in accordance with the Declaration. Each Buyer must pay a "Share" of the Program Expenses for each Ownership Interest owned by the Owner upon the request of the Program Operator, whether or not he exercises his use rights in any particular Use Year. If the Owner does not pay, he may lose his use rights and privileges. Without limiting the generality of the foregoing, Program Expenses include:

- (1) The cost of all insurance purchased by the Association or the Program Operator;
- (2) All uninsured liabilities and damages;
- (3) All amounts necessary for any permitted purchase or lease of an Ownership Interest by the Association or the Program Operator;
- (4) All application, renewal and cancellation fees;
- (5) Amounts for contingencies and reserves, including the following:
  - (a) Unpaid charges to Owners (including unpaid Personal Charges) which the Program Operator determines to be uncollectible;
  - (b) Any deficiency for any reason in funds to pay costs on a current basis;
  - (c) Sums collected for Operating Reserve Expenses which are deposited in the Operating Reserve Account described in Paragraph 8.4 of the Program Declaration, and

(d) Sums collected for Replacement Reserve Expenses which are deposited in the Replacement Reserve Accounts described in Paragraph 8.5 of the Program Declaration.

- (6) All common expenses of the Program, including any Special Charge;
- (7) All real property and other governmental taxes and charges on the Property;
- (8) The cost of all utilities charged to the Units;
- (9) The cost of housekeeping service on all Units;
- (10) The cost of professional fees and expenses of third parties providing services to the Association; and
- (11) All other costs incurred by the Association or the Program Operator, except for Personal Charges; provided, however, that all Personal Charges which the Program Operator or the Board determines to be uncollectible, may, at the discretion of the Program Operator or the Board, become Program Expenses.

B. **UNIT TYPES.** The Units currently in the Program are configured as two and three bedroom Units. The Units and the type of each are identified on Exhibit "1" as such.

C. **SHARES.** "One Share" means for each Every Year Ownership Interest, the quotient of one (1) divided by the number of all Every Year Ownership Shares in the Program at any given time excluding those that are owned by the Association (51.5 Every Year Ownership Shares per Unit), and for each Every Other Year Ownership Interest, the quotient of one (1) divided by the number of all Every Other Year Ownership Shares in the Program at any given time (103 Every Other Year Ownership Shares per Unit), as applicable.

D. **BASIC CHARGE.** Each Owner must pay to the Association a "Basic Charge" which is the regular charge for each Ownership Interest equal to One Share of Program Expenses, as estimated in the Budget, plus any applicable late charges and interest and all costs of collecting unpaid Basic Charges, which include, court costs and attorneys' fees.

E. **SPECIAL CHARGE.** In addition, each Owner must pay to the Association a "Special Charge" which is an additional charge assessed on an as-needed basis for each Ownership Interest equal to One Share of the amount necessary to pay Program Expenses on a current basis, as estimated in a Supplemental Budget, plus any applicable late charges and interest and all collection costs on unpaid Special Charges.

F. **PERSONAL CHARGES.** In addition to his share of Program Expenses, each Owner must pay the Association for his "Personal Charges." These are expenses that result from the act or omission of the Owner, Exchange User or Occupant (except the failure to pay any Basic Charge or Special Charge). Buyers should remember that, as Owners, they are financially responsible for their guests and Tenants. Personal Charges include:

- (1) Any expense resulting from the act or omission of any Owner or Occupant, including, without limitation:
  - (a) the cost of long distance telephone charges or telephone message unit charges and other special services or supplies attributable to the occupancy of such Owner's Assigned Unit during such Owner's Use Period and the expense of additional housekeeping services requested by such Owner or Occupant during such Owner's Use Period;
  - (b) the cost to repair any damage to any portion of the Property, or to repair or replace any Common Furnishings on account of loss or damage caused by such Owner or Occupant; or

(c) the cost to satisfy any expense to any other Owner(s) or to the Association due to any intentional or negligent act or omission of such Owner or Occupant, or resulting from the breach by such Owner or Occupant of any provisions of the Program Documents.

(2) Any transient occupancy tax levied pursuant to the laws of the State of Hawaii and payable by any Owner which the Association is or shall be required or entitled to collect on behalf of the levying authority; and

(3) A charge to Owners residing in countries other than the United States and Canada, and/or Owners who reside in the United States or Canada but who have mail addresses, telephone numbers or fax numbers outside of the United States and Canada, to offset the additional costs incurred in supporting and communicating with international Owners, as more fully described below. In amplification of the foregoing, the act or negligence of any Occupant shall be deemed to be the act or negligence of the Owner who permits such Occupant to use and occupy any portion of the Property.

Personal Charges are not assessments and the remedies available to the Association against any Owner for nonpayment of such Owner's Personal Charges are those remedies provided in Paragraph 8.14 and Paragraph 8.19 of the Program Declaration.

Owners who reside in countries other than the United States and Canada, and/or Owners who reside in the United States who have mail addresses, telephone numbers or fax numbers outside of the United States or Canada, in addition to other charges assessed pursuant to the Program Declaration, shall be charged an annual fee (the "International Owner's Surcharge"), which relates to the added costs for postage, personal delivery, increased frequency of and costs associated with long-distance telephone calls, translation costs, additional costs for telefacsimile communications and labor costs for additional, special support staff. The initial International Owner's Surcharge shall be thirty dollars (\$30.00) U.S., but the International Owner's Surcharge may, from time-to-time, be increased to reflect any increase in the cost of providing these services; provided, however, any such increase shall not exceed one hundred and twenty percent (120%) of the International Owner's Surcharge in the immediately preceding year, unless approved in advance by a majority of all Owners who are subject to the International Owner's Surcharge.

The Personal Charges of each Owner, Exchange User and Occupant shall also include all Personal Charges against his Tenants and/or Visitors.

G. **RESERVE ACCOUNTS.** The Association will also collect money for future use. These reserves are placed in either an "Operating Reserve Account" so money is available to pay Program Expenses (other than capital investments) or a "Replacement Reserve Account" so money may be saved over a period of years to pay for needed capital improvements. Capital improvements are not daily or routine items of maintenance and repair. They are things that have to be done periodically in order to keep up the Units, and include major remodeling of the Units, replacing appliances, furniture and furnishings and so forth. The capital reserves for the Program are stated in Exhibit "4".

H. **ENFORCEMENT OF AN OWNER'S FINANCIAL DUTIES.** To collect all moneys owed by an Owner, the Association has a lien on each Owner's Ownership Interest, subject, however, to the terms of the Program Declaration. It may foreclose on that lien, either by a lawsuit or under a power of sale without going to court first. If the Association exercises this remedy, the Owner's Ownership Interest will be sold to someone else. If the foreclosure sale does not produce enough money to pay all of his debts, the Owner is still liable for the deficiency. An Owner cannot avoid his debts by giving up his Ownership Interest, his use or ownership rights, or by giving his Ownership Interest to someone else.

I. **SECURITY DEPOSIT.** The Program Operator has the right to require advance payments by way of monthly installments into an escrow account, or a security deposit, from any Owner, Exchange User or Occupant for the payment of all Charges of such Owner, Exchange User or Occupant. In the case of Basic Charges, the Program Operator has the right to establish an advance escrow procedure to assure the payment of Basic Charges by all Owners on commencement of the Association fiscal year.

J. **INITIAL PROGRAM EXPENSES.** The amount of Program Expenses to be paid by Buyers who purchase Ownership Interests and whose reservation and use rights occur in 2007 will be ONE THOUSAND THREE HUNDRED TWELVE DOLLARS AND 62/100 (\$1312.62) for each Two Bedroom Every Year Ownership Interest, SIX HUNDRED FIFTY SIX AND 31/100 (\$656.31) for each Two Bedroom Every Other Year Ownership Interest, ONE THOUSAND FOUR HUNDRED FORTY TWO AND 76/100 (\$1,442.76) for each Three Bedroom Every Year Ownership Interest and SEVEN HUNDRED TWENTY ONE AND 38/100 (\$721.38) for each Three Bedroom Every Other Year Ownership Interest. Owners will be required to pay the prevailing Share of Program Expenses for their Ownership Interests, as determined by the prevailing budget in future years.

K. **COMMENCEMENT OF CHARGES.** Charges shall commence upon the inception of the Program. The Developer may, however, elect to pay a subsidy ("Subsidy") on its Ownership Interests, including all Time Period 53 interests, in lieu of Basic Charges and Special Charges, and may enter into a subsidy agreement with the Association with respect to such matters.

The Developer, the Association, the Board and Program Operator will not be responsible for any unpaid Personal Charges, however, if not paid, such Personal Charges may become Program Expenses. Each Owner, Exchange User and Occupant must pay his Personal Charges whether or not he made an advance payment, a security deposit, or received a refund of any amount paid in advance or deposited.

14. **ESCROW ACCOUNT.** Hawaii's Time Share Law requires: (a) that Buyer's funds and notes must be put in escrow before closing; and (b) that closing cannot occur until the Buyer is protected from blanket liens. "Funds and notes" means not only money, but all negotiable instruments (for example, a note or check), purchase money contracts and any other document which contains a promise from the Buyer to pay money. A "negotiable instrument" generally is a document that the Developer could give to someone else who could then force the Buyer to keep his promise to pay free from any claim or defense the Buyer might have against the Developer. "Closing" means completing a Buyer's purchase and transferring ownership of an Ownership Interest to him by recording the First Deed, and if he is purchasing on credit, also recording the Buyer's mortgage to the Developer. "Blanket liens" are certain kinds of encumbrances as defined in the Time Share Law that affect two or more Ownership Interests. The Developer has established a special escrow account in compliance with the Time Share Law as described in the next paragraph and Paragraph 15 below.

An escrow account for the Developer has been established with First American Title Company, Inc., called the "Escrow Agent." Its address is 333 Queen Street, Suite 700, Honolulu, Hawaii 96813 and its telephone number is (808) 536-3866. This special account is intended to serve as the Developer's special escrow account required by the Time Share Law and Section 16-106-34 of the Time Share Rules (Hawaii Administrative Rules Chapter 106). The Developer or the sales agent must give each Buyer's funds and notes to the Escrow Agent to hold in this account. As permitted by Hawaii's Time Share Law, however, the Developer or a sales agent may initially hold (a) a Buyer's check, if it is made out to the Escrow Agent, and (b) all notes that are not negotiable, until the seven (7) day mutual rescission period and any longer cancellation period stated in the Purchase Contract in which a Buyer may cancel expires.

15. **ESCROW AGREEMENT.** The escrow agreement with the Escrow Agent is dated July 24, 2002. It and the Purchase Contract contain the escrow instructions of both the Developer and each Buyer. These are the instructions to the Escrow Agent for the handling of each Buyer's funds and notes and other papers and for the closing of the sale. By signing the Purchase Contract, each Buyer accepts and agrees to the escrow agreement and the escrow instructions, so it is important for the Buyer to read these documents carefully.

A. **CLOSING PROCEDURES AND TITLE INSURANCE.** Closing will not occur until: (1) the mutual rescission period expires; (2) all other rights the Buyer has to cancel under the Purchase Contract also expire; (3) there are no blanket liens on the Buyer's Ownership Interest or protection against any such blanket liens has been provided in accordance with the Time Share Law and approved by the DCCA; and (4) there are no other encumbrances affecting the Owner's Ownership Interest, except those identified in Paragraph 9, if any, unless the Buyer puts on a mortgage or other lien. The Escrow Agent must close as soon as possible as long as these conditions, and all other conditions in the Purchase Contract, are met and it has received all of the Buyer's money and sales and closing documents. The Escrow Agent must then notify the Association, the Developer and the Buyer

of the closing and provide each of them with an executed copy of the First Deed. The Escrow Agent will pay all closing costs from the Buyer's money, and give the rest of the money to the Developer.

Proof that there are no encumbrances on the Buyer's Ownership Interest will be in the form of a title insurance policy in the Buyer's name from a title company authorized to do business in Hawaii. The Buyer is free to buy insurance from any licensed title company in the State of Hawaii. Unless a Buyer tells the Escrow Agent differently in writing, however, the Escrow Agent will issue the title policy through a related company, or on its own, make other arrangements for each Buyer. Before the Escrow Agent may close, it must receive a written commitment from the title company to issue the policy to the Buyer after closing.

B. **GENERAL ESCROW PROVISIONS.** Among other things, the escrow agreement and instructions also state that:

- (1) Any interest earned on funds placed with the Escrow Agent will belong to the Developer;
- (2) A Buyer's money will be released by the Escrow Agent if one of these things occurs:

(a) If a Buyer or the Developer delivers to the Escrow Agent a valid notice of cancellation of the Purchase Contract under HRS Section 514E-8, all funds deposited by the Buyer will be returned to the Buyer within fifteen (15) days after the notice of cancellation is received;

(b) If a Buyer or the Developer properly terminates the Purchase Contract in accordance with its terms, all funds deposited by the Buyer will be delivered in accordance with the Purchase Contract; and

(c) If the Buyer defaults in the performance of the Buyer's obligations under the Purchase Contract, all funds deposited by that Buyer under the Purchase Contract will be delivered in accordance with the Purchase Contract.

(3) If there is a cancellation as specified above, the Escrow Agent may be entitled to a fee commensurate with the amount of work performed, but in no event more than the normal escrow fee;

(4) Both the Developer and the Buyer agree to protect and pay (or in legal terms, "indemnify") the Escrow Agent for losses it suffers as a result of performing its duties, however, this indemnity does not include losses due to the Escrow Agent's negligence or misconduct; and

(5) The Seller may close sales for Ownership Interests prior to completion of construction thereof.

(6) There are certain additional protections contained in the escrow agreement and instructions for the benefit of the Escrow Agent.

C. **ESCROW ARRANGEMENTS IN OTHER STATES AND COUNTRIES.** The Developer or the Escrow Agent may set up an escrow arrangement with a bank, licensed escrow company or trust company doing business in a state or country other than Hawaii; provided that Hawaii's Time Share Law is always complied with.

**16. ESTABLISHMENT OF A NON-PROFIT CORPORATION, CLUB (PROGRAM) MEMBERSHIP OR ASSOCIATION.**

A. **FORMATION OF THE ASSOCIATION.** The Timeshare Law requires that each time share or vacation ownership plan have an association, which must be a nonprofit corporation whose members include each Owner. The Association was established for the Program as a Hawaii non-profit corporation by articles of incorporation ("Charter") filed with DCCA on June 13, 2001. Under the documents creating and governing the Association, each Owner, including the Developer to the extent that it continues to own Ownership Interests, will automatically become a voting member of the Association.



**B. ASSOCIATION ADMINISTRATION.** The Association will administer its affairs through its Board and through the Program Operator.

**C. ASSOCIATION FUNCTIONS.** The Association's functions are to administer its own affairs as provided for in the Charter and the Program Documents and manage, operate or control the Program. The Association, through its Board, acts on behalf of its members generally. Initially, because the Developer will own the majority of Ownership Interests in the Program, the Board will be controlled by the Developer. The Board, on behalf of the Association, must retain a Program Operator at all times, and may, but is not required to, delegate to the Program Operator all of the Association's powers and duties, unless the Program Documents expressly require the Association or the Board to exercise or perform a particular power or duty. The Association may also act on such specific matters as are expressly provided for in the Program Documents.

**(1) THE BOARD OF DIRECTORS.** At the Association's annual meetings, its members will elect Directors to govern the affairs of the Association and administration and management of the Program. Except for matters delegated to the Program Operator, the Board of Directors may act for the Association. The Association or Program Operator, if authorized by the Board, may represent the Association (or any two (2) or more Owners of any Ownership Interest who are in the same situation as a class) in any lawsuit, arbitration or other legal proceedings about the Program, and may start, defend, join in, or settle any of these proceedings. For this purpose, each Owner appoints the Board and the Program Operator as his special attorney-in-fact to do all things and perform all acts in connection with these proceedings. Any Owner may, however, pursue or defend any such legal proceedings on his own behalf, or in the name of the Association or any other Owners, if the law generally gives the Owner this right or if he is directly affected. The Board must also keep and supervise a Program Operator for the Program.

**(2) DELEGATION OF RESPONSIBILITIES, DUTIES AND AUTHORITIES TO THE PROGRAM OPERATOR.** Subject to the direction of the Board, many of the rights and responsibilities of the Association (and the Board) may (but are not required to) be given to the Program Operator to do. Some of these duties are to organize and conduct meetings of the Association; collect each Owner's share of Program Expenses and Personal Charges; as agent only, pay bills for the Program Expenses; make sure that books and records are kept; handle bank accounts; prepare the Budget for review by the Board; make arrangements to have financial statements prepared and sent to Owners if required by the By-Laws; make sure that periodic reports on insurance coverage are prepared and purchase insurance as directed by the Board; repair the Units and Common Furnishings; supervise use of the Units and enforce the Program Documents; make arrangements for and supervise housekeeping service to get the Units ready for the next Occupant; make arrangements for additional services, including optional housekeeping service during a Use Period, as directed by the Board. The Board may delegate other matters to the Program Operator.

The contract with the Program Operator will last a maximum of five (5) years. The contract may provide that it will automatically be renewed for a period of three (3) years on each termination date (including the date each renewal period ends), unless written notice of non-renewal is given by either party at least ninety (90) days before the end of the then-current term in accordance with such contract. The Program Operator may resign at any time upon ninety (90) days notice if it turns all books and records over to the Association.

**D. MEMBERSHIP AND VOTING IN THE ASSOCIATION.** Owners of Ownership Interests participate in the administration and management of the Program through their membership and voting in the Association, and their electing of Directors to govern it.

Each Owner of an Ownership Interest (including the Developer for unsold Ownership Interests) is automatically a member ("Member") of the Association, and only Owners are members. Upon the recognition of the acquisition of an Ownership Interest by any person, such person (the "New Owner") becomes the Owner and a Member for such Ownership Interest, and the person from whom the New Owner acquired the Ownership Interest ceases to be the Owner and a Member with respect to such Ownership Interest.

Generally, the vote of Owners of a majority of Ownership Interests will control, unless a higher percentage is required by the Program Documents, and, unless such a higher percentage is required in any particular case, Owners of a majority of all Ownership Interests in the Program may veto or direct action by the Board or Program Operator. A "majority (or other specified percentage)" means a majority or other specified percentage of votes attributed to the Ownership Interests involved, including those owned by the Developer, unless it is expressly

stated that the Developer is not included. For example, Paragraph 13.05 of the By-Laws provides that the By-Laws may not be amended without the written consent of at least twenty-five percent (25%) of the Owners, exclusive of the Developer. Each member who owns an Every Other Year Ownership Share has one (1) vote for each Ownership Interest he owns and each member who owns an Every Year Ownership Share has two (2) votes for each Ownership Interest he owns. When more than one (1) person owns an Ownership Interest, they are all members. However, only one (1) vote may be cast per Ownership Interest in the case of an Ownership Interest having an Every Other Year Ownership Share, and only two (2) votes may be cast per Ownership Interest in the case of an Ownership Interest having an Every Year Ownership Share. How their votes may be cast is controlled by the By-Laws.

E. **THE "BY-LAWS" OF THE ASSOCIATION.** The By-Laws are a part of the Program Documents. Generally, their purpose is to establish procedures for running the Association. They contain rules: (1) on how voting will be done and election and appointment of Directors and officers and other decisions made; (2) on how Owners' and Directors' meeting must be run; (3) governing the actions of Directors, officers and committees; and (4) on how to handle books and records. The By-Laws also provide Directors, officers and other Association agents protections on claims made against them because they acted for the Association.

17. **DEVELOPER IS ALSO ACQUISITION AGENT OR SALES AGENT OR PLAN MANAGER.** The Developer is not the acquisition agent or the plan manager for the Program. The Developer is, however, the sales agent for the Program. Among other things, Ownership Interests will be offered for sale by contacting visitors to the Property and through advertising. A description of the sales program for the Program is attached as Exhibit "5" to this document. Ownership Interests will be offered for sale as real property by way of sales presentations and other advertising and promotions. As stated in Paragraph 2 above, the Program Operator is Marriott Resorts Hospitality Corporation, a South Carolina corporation ("MRHC"), an affiliate of Developer.

At this time, there is no acquisition agent for the Program. The exchange agent for the Program is Interval International, Inc. MRHC will also function as a rental agent for the Program and in connection therewith, will be entitled to a commission on all rent collected.

18. **COMPLIANCE WITH COUNTY REQUIREMENTS.** The City and County of Honolulu has confirmed that the Property is located within an area zoned for timesharing and vacation rentals under Section 21-5.640 of the Land Use Ordinance of the Department of Planning and Permitting of the City and County of Honolulu and thus, may be used for time sharing pursuant to Section 514E-5 of the Hawaii Revised Statutes, as amended.

19. **SALES IN VIOLATION OF HAWAII TIME SHARE LAW.** The Time Share Law governs sales and sales activities made in the State of Hawaii. With respect to these sales, Section 514E-11.3 provides that every sale or transfer made in violation of Chapter 514E of the Hawaii Revised Statutes is voidable at the election of the Buyer. The sales activities and contracts made in another state or country will be governed by the law of that state or country. These matters, include, but are not limited, to the validity of any Purchase Contract made outside of Hawaii. Hawaii law governs the Property, the Program, the Program Documents, First Deed, and note and mortgage, if any, even if the sale was made outside of Hawaii.

20. **SERVICE OF PROCESS.** PHCS Hawaii, Inc. is hereby designated as the agent to receive service of process until such time as the Board and officers of the Association are elected, at which time and thereafter, process may be served upon any officer of the Association. The principal place of business and post office address of the agent is 1001 Bishop Street, Suite 1600, Pauahi Tower, Honolulu, Hawaii 96813.

21. **ADDITIONAL DISCLOSURES.**

A. **OWNERSHIP INTERESTS ARE OFFERED AS REAL PROPERTY; RISK OF LOSS, REBUILDING AND INSURANCE.** Ownership Interests in the Program are being offered and sold as real estate and not as a security. Purchases should be made for personal use and enjoyment, not as an investment. As stated previously, the Developer makes no representation to Buyer that a rental pool arrangement ("RPA"), as that term is defined in the Securities and Exchange Commission's ("SEC") Securities Act Release No. 33-5347 (17 CFR § 231.5347 (Jan. 18, 1973)) or any other similar arrangement will be transferred to Buyer upon the purchase of his Ownership Interest. Buyer is purchasing only an Ownership Interest in the Property, which Ownership Interest is not coupled with any RPA. The Developer further makes no representation to Buyer as to the prospective availability of any RPA, nor

does it make any representation as to the potential rental value of the Ownership Interest that Buyer may purchase, nor any representation as to any expectation of profit that can be derived with respect to purchasing any Ownership Interest in the Program. A rental pool arrangement is an arrangement under which Ownership Interests are put together for rental purposes and in which proceeds are shared. These arrangements, when coupled with the sale of Ownership Interests, may be deemed a security. Because the Developer does not intend to sell a security, and does not want to appear to be selling a security, you are prohibited from entering into such rental pool arrangements.

**THE PURCHASE OF AN OWNERSHIP INTEREST SHOULD BE BASED SOLELY UPON ITS VALUE; AND THAT VALUE IS IN THE USE OF THE OWNERSHIP INTEREST.**

Since an Ownership Interest is an interest in real estate, the RISK OF TEMPORARY AND PERMANENT LOSS OR DAMAGE OF THIS INTEREST IS ON A BUYER AFTER CLOSING. If a Buyer purchases on credit, he still has to pay his note and mortgage, and all net proceeds, if any, from insurance (or from the government, if the loss is because the government takes the property through exercise of its power of eminent domain) must be applied first to the payments due under the note and mortgage, unless the Program Documents require rebuilding. If available proceeds from insurance, condemnation or other funds are not sufficient to pay for the costs of restoring or rebuilding, each Owner must pay his share of the difference.

These Program Documents also require the Association to obtain property, liability and other kinds of insurance, if obtainable or if in the Board's judgment, they are obtainable at a reasonable cost. Each Buyer should review (or have a qualified insurance agent review) these requirements, as well as the policies obtained by the Association, to decide whether or not to purchase added insurance for himself. Each Buyer is free to obtain more insurance for himself. Each Buyer (and the Association) are also free to purchase insurance from any company licensed to do business in the State of Hawaii. Since insurance is the responsibility of the Association and the individual Buyer, the Developer makes no guarantee that insurance will be available, or available at a reasonable cost, or adequate.

**B. SALESPERSONS MUST BE LICENSED HAWAII SALES AGENTS.** All salespersons in Hawaii must be licensed real estate salesmen or brokers. Marriott Kauai Ownership Resorts, Inc., an affiliate of the Developer will act as the sales agent for the Program. If other sales agents are added later, they will be listed in another exhibit to this document. Salespersons in any other state or country must meet all licensing requirements, if any, imposed by that state or country in order to sell real estate.

**C. DEVELOPER'S RIGHT TO AMEND PROGRAM DOCUMENTS.** Under the Program Declaration, the Developer has certain rights to amend the Program Documents without obtaining anyone's consent. The Developer may exercise its right at any time and for all purposes, before it transfers any Ownership Interests in the Program.

**D. MARRIOTT REWARDS® PROGRAM.** The Developer is offering an additional vacation privilege to Buyers, namely, participation in the "Marriott Rewards Program" (the "Marriott Rewards Program"). Under the Marriott Rewards Program, guests and owners of Marriott Hotels and Resorts may accumulate points redeemable for benefits at participating Marriott Hotels and Resorts worldwide, and with Marriott's participating partners. Owners who desire to participate in the Marriott Rewards Program will be able to assign the use of their Ownership Interest to the Developer in trade for award points in the Marriott Rewards Program which are purchased by Developer from Marriott International, Inc. on an Owner's behalf. The rules and regulations for the Timeshare/Marriott Rewards Program are contained in a separate description packet delivered to Owners at the time of execution of the Purchase Agreement. The Marriott Rewards Program packet, sets forth a full description of the Marriott Rewards Program procedure, the awards and participating partners. An Owner's participation in the Marriott Rewards Program is voluntary.

**THE MARRIOTT REWARDS PROGRAM MAY BE TERMINATED OR AMENDED AT ANY TIME IN THE SOLE DISCRETION OF THE DEVELOPER OR MARRIOTT INTERNATIONAL, INC. MARRIOTT INTERNATIONAL, INC. RESERVES THE RIGHT TO ADD, MODIFY OR DELETE ANY OF THE RULES, CONDITIONS, AWARDS OR AWARD LEVELS PERTAINING TO THE MARRIOTT REWARDS PROGRAM WITH OR WITHOUT PRIOR NOTICE. PROGRAM POINTS MAY NOT BE ASSIGNED TO THIRD PARTIES BY OWNERS. FURTHER, ALL REQUESTS TO PARTICIPATE IN THE MARRIOTT REWARDS PROGRAM BY OWNERS MUST BE ACCOMPANIED BY PAYMENT OF A PROCESSING FEE TO THE DEVELOPER.**

TRANSFEREES OF ELIGIBLE OWNERS IN THE PROGRAM WILL BE ELIGIBLE TO PARTICIPATE IN THE MARRIOTT REWARDS PROGRAM ONLY UPON A LIMITED BASIS AS DESCRIBED IN THE RULES AND REGULATIONS FOR THE TIMESHARE/MARRIOTT REWARDS PROGRAM. ONLY OWNERS OF OWNERSHIP INTERESTS IN THE PROGRAM WHO ACQUIRE THEIR INTERESTS DIRECTLY FROM THE DEVELOPER OR UPON REALES BROKERED BY A SUBSIDIARY OR AFFILIATED COMPANY OF THE DEVELOPER, OR TRANSFEREES OF SUCH OWNERS BY WILL OR INTESTATE SUCCESSION, OR PRESENT OR FUTURE CHILDREN OF SUCH OWNERS WHO HAVE OTHERWISE SUCCEEDED TO THEIR PARENTS' OWNERSHIP INTEREST ARE ELIGIBLE TO PARTICIPATE IN THE MARRIOTT'S REWARDS PROGRAM. THE DEVELOPER, IN ITS SOLE DISCRETION, WITH OR WITHOUT PRIOR NOTICE, HAS THE UNILATERAL RIGHT TO EXPAND OR CONTRACT THE LIST OF PERSONS ELIGIBLE TO PARTICIPATE IN THE MARRIOTT'S REWARD PROGRAM AT ANY TIME IN THE FUTURE.

22. **OTHER RIGHTS TO CANCEL.** The following rights to cancel are in addition to the mutual rescission provision explained in Paragraph 8 and the right to void sales explained in Paragraph 19. On sales in any other state or country, a Buyer will also have the rights to cancel, if any, given by the laws of that state and country and made a part of the Buyer's purchase contract. This applies even if the right is for a longer time or is of a different kind than the mutual rescission right. Further, any Units added to the Program will be completed so as to permit normal occupancy of such Units within two (2) years from the date the Purchase Contract becomes binding as to Ownership Interests in the Property that will entitle Owners to occupy such additional Units. Said two-year period shall be extended during any period during which Developer is actually and necessarily delayed in commencing or completing construction, if such delay is caused by fire, earthquake, or other acts of God, war or civil disturbance, litigation or threats of litigation, strikes or labor trouble, the imposition of economic controls making it impossible to obtain the necessary labor or materials, or other matters or conditions beyond Developer's control. In the event that construction of the Unit(s) to which a Buyer's Ownership Interest(s) correspond are not completed by the date prescribed in the Purchase Contract, or the corresponding Common Furnishings for such Units are not provided by such date, Buyer shall be entitled to a refund of payments made to Developer under the Purchase Contract within thirty (30) days from Developer's receipt of Buyer's request for repayment. In the event of Developer's failure to refund such monies to Buyer on a timely basis, Buyer may request such refund directly from Escrow Agent by providing Escrow Agent with a written request therefor.

23. **THIS DISCLOSURE IS A SUMMARY ONLY. FOR MORE INFORMATION, READ ALL OF THE OTHER DOCUMENTS CAREFULLY.** This document contains disclosures required by Section 514E-9 of the Time Share Law and Section 16-106-3 of the Time Share Rules. It also contains information which the Developer believes will be of general interest to Buyers. Buyers should understand that it is not possible or practical to include in this Disclosure Statement all points which each Buyer may consider important, or a summary of all the documents involved. In addition, this document has been written in plain language. However, since the Program Documents are written in legal language, the language of this document may not be identical with the Program Documents. Each Buyer is, therefore, cautioned to read carefully the Program Documents, the escrow agreement, the form of Purchase Contract, Buyer's Acknowledgments, the First Deed, note and mortgage, if any, to be sure that the purchase will satisfy his own personal requirements and expectations. Each Buyer is also cautioned that by signing a Purchase Contract, he accepts and agrees to obey all of these documents.

## EXHIBIT "1"

### UNIT TYPES

A. **Unit Types.** The Units in the Ko Olina Beach Club Vacation Ownership Program are divided into five (5) basic types, as follows:

**Makai Penthouse.** Two (2) bedrooms, with sleeping accommodations for eight (8) persons, having an ocean view, which have higher ceilings than the Makai Units.

**Mauka Penthouse.** Two (2) bedrooms, with sleeping accommodations for eight (8) persons, having a mountain view, which have higher ceilings than the Mauka Units.

**Two Bedroom Makai.** Two (2) bedrooms, with sleeping accommodations for eight (8) persons, ocean view.

**Two Bedroom Mauka.** Two (2) bedrooms, with sleeping accommodations for eight (8) persons, mountain view.

**Three Bedroom Makai.** Three (3) bedrooms, with sleeping accommodations for ten (10) persons, ocean view.

The Mauka Penthouse and Mauka view categories can be a view of mountains, gardens or other views that are not ocean views. Owners should consult the Program Documents available at the offices of the Developer for more particular descriptions of the Units.

B. **Total Number of Units in the Program by Unit Type.** The total number of Units of each type in the Program, and their Unit numbers, are as follows:

<b>Makai Penthouse Units</b>	<b>Two Bedroom Makai Units</b>	<b>Two Bedroom Mauka Units</b>
<u>Total - 11</u>	<u>Total - 183</u>	<u>Total - 180</u>
820, 826, 1013, 1017, 1211, 3610, 3618, 3622, 3626, 5610, 5614	301, 307, 411, 412, 413, 414, 417, 420, 421, 427, 511, 512, 513, 514, 517, 520, 521, 527, 611, 612, 613, 614, 617, 620, 621, 627, 711, 712, 713, 714, 717, 720, 721, 726, 811, 812, 813, 814, 817, 821, 911, 912, 913, 914, 917, 919, 1011, 1012, 1014, 1019, 1111, 1112, 1113, 1115, 1212, 1213, 2202, 2206, 2210, 2214, 2218, 2222, 2226, 2230, 2302, 2306, 2310, 2318, 2322, 2326, 2330, 2402, 2406, 2410, 2418, 2422, 2426, 2430, 2502, 2506, 2510, 2518, 2522, 2526, 2530, 2602, 2606, 2610, 2618, 2622, 2626, 2630, 2702, 2706, 2710, 2718, 2722, 2726, 2730, 2802, 2806, 2810, 2818, 2822, 2826, 2830, 2902, 2906, 2910, 2918, 2922, 2926, 3002, 3006, 3010, 3018, 3022, 3026, 3030, 3102, 3106, 3110, 3118, 3122, 3126, 3130, 3206, 3210, 3218, 3222, 3226, 3406, 3410, 3418, 3422, 3426, 3510, 3518, 3522, 3526, 4218, 4306, 4310, 4314, 4406, 4410, 4414, 4502, 4506, 4510, 4514, 4602, 4606, 4610, 4614, 4702, 4706, 4710, 4714, 4802, 4806, 4810, 4814, 4902, 4906, 4910, 4914, 5002, 5006, 5010, 5014, 5102, 5106, 5110, 5114, 5206, 5210, 5214, 5406, 5410, 5414, 5510, 5514	302, 308, 403, 404, 405, 406, 422, 428, 503, 504, 505, 506, 522, 528, 603, 604, 605, 606, 622, 703, 704, 705, 706, 722, 803, 804, 805, 806, 822, 903, 904, 905, 906, 920, 1003, 1004, 1005, 1006, 1020, 1103, 1104, 1105, 1106, 1116, 1203, 1204, 1205, 1206, 2119, 2123, 2127, 2131, 2219, 2223, 2227, 2231, 2303, 2307, 2311, 2315, 2319, 2323, 2327, 2331, 2403, 2407, 2411, 2415, 2419, 2423, 2427, 2431, 2503, 2507, 2511, 2515, 2519, 2523, 2527, 2531, 2603, 2607, 2611, 2615, 2619, 2623, 2627, 2631, 2703, 2707, 2711, 2715, 2719, 2723, 2727, 2731, 2803, 2807, 2811, 2815, 2819, 2823, 2827, 2831, 2907, 2911, 2915, 2919, 2923, 2927, 3007, 3011, 3015, 3019, 3023, 3027, 3111, 3115, 3119, 3123, 3211, 3215, 3219, 3223, 3415, 3419, 3423, 3515, 3519, 4206, 4210, 4214, 4303, 4307, 4311, 4315, 4319, 4403, 4407, 4411, 4415, 4419, 4503, 4507, 4511, 4515, 4519, 4603, 4607, 4611, 4615, 4619, 4703, 4707, 4711, 4715, 4719, 4803, 4807, 4811, 4815, 4819, 4907, 4911, 4915, 4919, 5007, 5011, 5015, 5019, 5111, 5115, 5119, 5211, 5215, 5219, 5415, 5419, 5515, 5519
<b>Three Bedroom Makai Units</b>		
<u>Total - 26</u>		
2314, 2414, 2514, 2614, 2714, 2814, 2914, 3014, 3114, 3214, 3414, 3514, 3614, 4318, 4418, 4518, 4618, 4718, 4818, 4918, 5018, 5118, 5218, 5418, 5518, 5618		
<b>Mauka Penthouse Units</b>		
<u>Total - 12</u>		
628, 2903, 3107, 3127, 3411, 3615, 3619, 4903, 5107, 5411, 5615, 5619		

## EXHIBIT "2"

### ENCUMBRANCES AGAINST TITLE

1. Shoreline setback lines as they may be established by the State Land Use Commission or by the County pursuant to Sections 205A-41 to 205A-43.6 inclusive of the Hawaii Revised Statutes.
2. Certificate of Authorization dated October 8, 1985, recorded at the Bureau of Conveyances of the State of Hawaii on October 11, 1985 in Book 19004 at Page 123, and also recorded in said Office as Document No. 1328029, as amended by that certain instrument dated July 3, 1994, recorded at said Bureau on July 20, 1994 as Document No. 94-120723. (Said amendment is not recorded in Land Court.)
3. Terms and provisions contained in that certain Unilateral Agreement and Declaration for Conditional Zoning dated February 21, 1986, recorded in said Office as Document No. 1354687, as amended by that certain instrument dated November 12, 1993, recorded at said Bureau as Document No. 93-195382 and in said Office as Document No. 2090355.
4. Terms and provisions contained in that certain Unrecorded Amended and Restated Ko Olina Resort Development Agreement, effective July 1, 1980, a Short Form of which is dated December 1, 1986, recorded in said Office as Document No. 1419770.

Short Form First Amendment to Amended and Restated Ko Olina Resort Development Agreement dated April 7, 1994, recorded in said Office as Document No. 2141539.

Assignment of Development Agreement dated August 20, 1998, recorded in said Office as Document No. 2479691, to Ko Olina Company, LLC, a Delaware limited liability company.

Short Form of Second Amended and Restated Ko Olina Resort Development Agreement dated December 21, 1999, recorded in said Office as Document No. 2600070.

5. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Declaration of Ko Olina dated December 1, 1986, recorded in said Office as Document No. 1419771, as amended by that certain instrument dated December 7, 1989, recorded in said Office as Document No. 1702235, and undated instrument recorded August 7, 2002 in said Office as Document No. 2829644, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes.
6. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Trustee's Limited Warrant Deed dated December 1, 1986, recorded in said Office as Document No. 1419772, as amended by those certain instruments dated May 8, 1991 and October 1, 1991 and recorded in said Office as Document Nos. 1821776 and 1857006, respectively, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes.
7. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Declaration for Ko Olina Community Association dated December 1, 1986, recorded in said Office as Document No. 1419773, as amended by those certain instruments dated June 27, 1995, April 16, 1997 and September 24, 1999 and recorded in said Office as Document Nos. 2249998, 2377790 and 2583045, respectively, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of



income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes.

Assignment of Declarant Rights dated August 20, 1998, recorded in said Office as Document No. 2479692, to Ko Olina Development, LLC, a Delaware limited liability company.

Estoppel Certificate dated November 9, 1999, recorded in said Office as Document No. 2589246, by Ko Olina Community Association, Inc. (Certifies that no breaches of covenants exist in Declaration with regard to the property).

8. Terms and provisions of that certain Agreement of Water Usage dated December 1, 1986, recorded at said Bureau in Book 20098 at Page 424, and also filed on June 29, 1994 in said Office as Document No. 117137.

Assignment of Water Rights dated August 20, 1998, recorded at said Bureau as Document No. 98-123804, to Ko Olina Intangibles, LLC, a Delaware limited liability company. (Said Assignment is not recorded in Land Court.)

9. Designation of Easement 1922, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for electrical and communication line purposes (affects Lot 4615 only).
10. Designation of Easement 1941, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for communication lines purposes (affects Lot 4615 only).
11. Designation of Easement 1942, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for shoreline access purposes (affects Lot 4615 only).
12. Designation of Easement 1943, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for roadside access purposes (affects Lot 4615 only).
13. Designation of Easement 1944, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for electrical purposes (affects Lot 4615 only).
14. Designation of Easement 1945, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for communication lines purposes (affects Lots 4615, 4616 and 4617 only).
15. Designation of Easement 1946, as shown on Map No. 451 (amended), with said Application No. 1069, as set forth by Land Court Order No. 92806, filed on March 6, 1989 in said Office; for electrical purposes (affects Lot 4617 only).
16. Designation of Easement 2130, as shown on Map No. 474 (amended), with said Application No. 1069, as set forth by Land Court Order No. 93926, filed on June 7, 1989 in said Office; for shoreline parkway purposes (affects Lots 4615, 4616 and 4617 only).
17. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Declaration dated July 24, 1990, recorded in said Office as Document No. 1751904, , but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to

the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes. (Affects Lot 4615 only.)

18. A Grant of Easement in favor of the City and County of Honolulu, a Hawaii municipal corporation, dated December 16, 1993, recorded in said Office as Document No. 2099737; for public access over Easement 2130 (affects Lots 4615, 4616 and 4617 only).
19. A Grant of Easement in favor of Ko Olina Community Association, a Hawaii non-profit corporation, dated June 6, 1994, recorded in said Office as Document No. 2173046; for shoreline access over Easement 1942 (for Lot 4615); roadside access over Easement 1943 (for Lot 4615); electrical purposes over Easements 1922 and 1944 (both for Lot 4615); shoreline parkway over Easement 2130 (for Lots 4615, 4616 & 4617); and Lagoon Easement Area (for Lot 4614).
20. Designation of Easement 5255, as shown on Map No. 783, with said Application No. 1069, as set forth by Land Court Order No. 120342, filed on April 24, 1995 in said Office; for public access purposes (affects Lot 4614 only).
21. A Grant of Easement in favor of Hawaiian Electric Company, Inc., a Hawaii corporation, dated March 14, 1996, recorded in said Office as Document No. 2334946; for electrical purposes over Easements 1944 and 1946 (affects Lots 4615 and 4617 only).
22. Survey matters shown on that certain map dated September 10, 1999, prepared by James R. Thompson, with Walter P. Thompson, Inc.
  - A. Planter with concrete bench lies on the boundary between Lots 4613 and 4615.
  - B. HECO box lies on the boundary between Lots 4613 and 4615.
  - C. Concrete sidewalk crosses into Lot 4615 from Lot 4633.
  - D. Planter with concrete bench lies on the boundary between Lots 4615 and 4616.
  - E. Planter lies on the boundary between Lots 4615 and 4616.
  - F. 40-ft. shoreline setback affecting Lots 4616 and 4617.
  - G. 200-ft. shoreline setback affecting Lots 4615, 4616 and 4617.
  - H. 300-ft. shoreline setback affecting Lots 4615, 4616 and 4617.
  - I. The following matters lie within the 40-foot shoreline setback:
    - (1) Lamp within Lot 4616.
    - (2) Electrical boxes and panel boxes within Lot 4617.
    - (3) Signs within Lots 4616 and 4617.
  - J. The following matters lie within the 200-foot shoreline setback:
    - (1) Shower and utility boxes within Lot 4616.
    - (2) Concrete control box within Lot 4617.

(3) Steps, planters with concrete benches, planters and concrete benches within Lots 4615 and 4616.

(4) Electrical boxes, panel boxes, lamps and signs within Lots 4615, 4616 and 4617.

K. The following matters lie within the 300-foot shoreline setback:

(1) Two one-story concrete buildings, pond, filter and concrete wall within Lot 4615.

(2) Shower and utility boxes within Lot 4616.

(3) Concrete control box within Lot 4617.

(4) Steps, planter with concrete benches, planters and concrete benches within Lots 4615 and 4616.

(5) Electrical boxes, panel boxes, lamps and signs within Lots 4615, 4616 and 4617.

23. Rights or claims of persons or entities other than the insured involving or arising out of: mineral or metallic mines; geothermal resources; water; fishing; navigation; wetlands; creation or loss of the land or any portion thereof by accretion, avulsion or artificial means; persons residing on or otherwise in possession of the land or any portion thereof; trails, roadways, or other rights of way, including without limitation any rights or claims under Chapter 264, Hawaii Revised Statutes; claims arising out of customary or traditional Hawaiian rights including but not limited to those for access or gathering purposes protected by the Constitution of the State of Hawaii or the laws of Hawaii. (Affects Lot 4614 only.)
24. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Limited Warranty Deed dated January 6, 2000, recorded in said Office as Document No. 2600071, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes. (Affects Lots 4615, 4616 and 4617 only.)
25. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Limited Warranty Deed dated January 6, 2000, recorded in said Office as Document No. 2600072, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes. (Affects Lot 4614 only.)
26. Agreement for Issuance of Conditional Use Permit under Section 21-5.380 of the Land Use Ordinance (LUO) for Joint Development of TMK: 9-1-57: Parcels 13, 14 and 15 dated March 12, 2001 and recorded in said Office as Document No. 2690022. (Affects Lots 4615, 4616 and 4617.)
27. Terms, covenants, conditions, restrictions, and reservations as contained in that certain Declaration of Ko Olina Beach Club Vacation Ownership Program dated March 5, 2001, recorded in said Office as Document No. 2739367, as amended by that certain instrument dated January 8, 2002, recorded in said Office as Document No. 2770259, that certain instrument dated May 30, 2002, recorded in said Office as Document No. 2822729, and that certain instrument dated May 15, 2003, recorded in said Office as Document No. 2950993, and further amended by that certain instrument dated October 3, 2005, recorded in said Office as Document No. 3355521, but deleting any covenant, condition or restriction indicating a

preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes. (Affects 103 Units – Kona Building.)

Said Declaration was annexed by that certain Ko Olina Beach Club Vacation Ownership Program First Declaration of Annexation dated October 20, 2003, recorded in said Office on November 6, 2003 as Document No. 3022457.

Said Declaration was annexed by that certain Ko Olina Beach Club Vacation Ownership Program Second Declaration of Annexation dated October 3, 2005, recorded in said Office on November 16, 2005 as Document No. 3355522.

Said Declaration was annexed by that certain Ko Olina Beach Club Vacation Ownership Program Third Declaration of Annexation dated February 20, 2007, recorded in said Office on April 18, 2007 as Document No. 3589821.

28. Easement 7962, as shown on Map No. 1157, filed with Application No. 1069, as set forth by Land Court Order No. 154915, recorded on February 5, 2004; for water meter purposes.

# EXHIBIT "3"

## CURRENT SALES PRICES SCHEDULE OF ESTIMATED CLOSING EXPENSES

### I. UNIT TYPE CURRENT SALES PRICE\*

Makai Penthouse View (Weeks 1-50)	\$55,700.00
Makai Penthouse View (Weeks 51 and 52)	\$87,500.00
Mauka Penthouse View (Weeks 1-50)	\$38,000.00
Mauka Penthouse View (Week 51)	\$44,700.00
Mauka Penthouse View (Week 52)	\$54,500.00
Two Bedroom Makai View (Weeks 1-50)	\$44,700.00
Two Bedroom Makai View (Week 51)	\$50,100.00
Two Bedroom Makai View (Week 52)	\$64,600.00
Two Bedroom Mauka View (Weeks 1-50)	\$34,500.00
Two Bedroom Mauka View (Week 51)	\$39,200.00
Two Bedroom Mauka View (Week 52)	\$46,300.00
Three Bedroom Makai View (Weeks 1-50)	\$60,900.00
Three Bedroom Makai View (Week 51)	\$70,500.00
Three Bedroom Makai View (Week 52)	\$74,500.00

\*Sales prices are subject to change by the Developer without notice. For initial Developer sales only (versus sales of ownership interests that have been reacquired by the Developer for resale), such sales prices include Hawaii general excise tax at the rate of 4.166% (4.703% for sales made on Oahu only) (or any revised rate imposed by the State of Hawaii in the future) on the portion of the Purchase Price allocable to the Subject Common Furnishings in Units. TAPP is 2.5%.

### SCHEDULE OF CLOSING EXPENSES

#### Title Insurance Fees:

Owner Policy with Mortgagee Policy – FLAT FEE	\$ 95.00
Mortgagee Policy: (concurrent issue)	Included
Escrow Fee (FLAT FEE)	\$ 80.00

#### Recording Fee on Deed and Mortgage

Land Court (Deed)	\$ 50.00
Land Court (Mortgage)	\$ 25.00

#### Deed Conveyance Tax

Purchase Price x (1 - 2.5%) x 0.1%

#### Document Preparation Fee

\$ 97.00

#### Lender Document Preparation Fee

\$100.00

#### Tax on Common Furnishing

Purchase Price x 2.5% x 4.703%

#### First Year Assessment for Common Expenses and Maintenance Fees (see current Estimated Operating Budget)

BUYER TO PAY

#### First Year Expenses for Ad Valorem Taxation And Special Assessments (see current Estimated Operating Budget)

BUYER TO PAY

# EXHIBIT "3"

# EXHIBIT "4"

## 2007 ASSESSMENT BUDGET FOR KO'OLINA BEACH CLUB VACATION OWNERS ASSOCIATION (VACATION OWNERSHIP BUDGET) 15,347 OWNERSHIP INTERESTS IN 298 (ANNUALIZED) UNITS

	TOTAL BUDGET PER YEAR	--Per Ownership Interest-- 14,677 670	
		2 BEDROOM	3 BEDROOM
ACCOUNTING	\$ 377,630	\$ 24.50	\$ 26.93
ACTIVITIES	512,646	33.26	36.55
ADMINISTRATION	766,510	49.73	54.66
AUDIT FEE	14,954	0.97	1.07
BAD DEBT EXPENSE	46,235	3.00	3.29
BILLING AND COLLECTIONS	135,797	8.81	9.69
BOARD OF DIRECTORS	12,024	0.78	0.86
CABLE TELEVISION	54,877	3.56	3.92
FEES - ASSOCIATION (KOCA/KORA)	409,692	26.58	29.22
CREDIT CARD FEE	129,938	8.43	9.27
DEVELOPER CONTROLLED AREAS REIMBURSEMENT (OPERATING)	(594,324)	(37.91)	(41.67)
ELECTRICITY	2,030,571	131.74	144.81
FRONT DESK	1,309,369	84.95	93.37
GAS	212,086	13.76	15.12
HIGH SPEED INTERNET	15,721	1.02	1.12
HOUSEKEEPING	2,857,341	185.38	203.76
HUMAN RESOURCES	210,091	13.63	14.99
INCOME TAX	84,930	5.51	6.06
INSURANCE	1,565,542	101.57	111.64
LANDSCAPING	484,747	31.45	34.56
LOSS PREVENTION / SECURITY	635,958	41.26	45.35
MAINTENANCE	1,549,507	100.53	110.49
MANAGEMENT FEE	1,792,428	116.29	127.82
OTHER INCOME	(265,108)	(17.20)	(18.90)
OWNER SERVICES	399,049	25.89	28.45
PEST CONTROL	46,549	3.02	3.32
POOL MAINTENANCE	226,579	14.70	16.16
POSTAGE AND PRINTING	34,058	2.21	2.42
PRE-OPENING EXPENSE	108,051	7.01	7.71
REFUSE COLLECTION	122,845	7.97	8.76
TAXES - GENERAL EXCISE	924,960	60.01	65.96
TAXES - PROPERTY	1,566,309	101.62	111.69
TELEPHONE	76,756	4.98	5.47
WATER AND SEWER	325,689	21.13	23.23
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 18,190,007</b>	<b>\$ 1,180.14</b>	<b>\$ 1,297.15</b>
RESERVES FOR REPLACEMENT	2,041,968	132.48	145.61
<b>TOTAL OPERATING EXPENSES &amp; RESERVES</b>	<b>\$ 20,231,975</b>	<b>\$ 1,312.62</b>	<b>\$ 1,442.76</b>
INTERNATIONAL OWNER'S SURCHARGE		\$ 34.50	\$ 34.50



**KO'OLINA BEACH CLUB VACATION OWNERS ASSOCIATION**  
**2007 ESTIMATED OPERATING BUDGET NOTES**  
**FOR PERIOD FROM DECEMBER 30, 2006 TO DECEMBER 28, 2007**

1) This budget has been prepared on an accrual basis.

2) International Owners of Ownership Interests, in addition to other charges assessed pursuant to the Declaration, shall be charged an annual fee, as a part of their Personal Charges, (the "International Owner's Surcharge"), which relates to the added costs for postage, personal delivery, increased frequency of and costs associated with long distance telephone calls, translations costs, additional costs for teleconferencing communications and labor costs for additional special support staff. Currently, the International Owner's Surcharge is Thirty Four dollars and 50 cents (\$34.50 U.S.). The International Owner's surcharge may, from time to time be increased to reflect any increase in the cost of providing these services; provided, however, any such increase shall not exceed twenty percent (20%) of the International Owner's Surcharge in the immediately preceding year, unless approved in advance by a majority of all Owners.

3) Although this site is located in Hawaii, it has been registered in California. California Law requires the association board to disseminate to members an annual report of the provisions relating to methods and procedures for funding reserves pursuant to Section 2613.5 & 1365 of the California Code of Regulations. Planned replacement reserves are the moneys that the association's board of directors has identified to be used to defray the future repair or replacement of, or additions to, those major components, which the association is obligated to maintain.

4) The itemized estimate of the remaining life and estimated replacement of the major components are listed below:

Components	Estimated Current Replacement Cost	Estimated Useful Life	Estimated Remaining Useful Life	Anticipated Beginning Balance as of 12/30/2006	% of Fund Bal Over Replacement Cost	Age in Years as of 12/30/2006
Furniture, Fixtures, and Equipment	\$ 27,216,355	03-25	00-24	\$ 1,950,689	7.19%	1-3
External Building Maintenance	3,761,355	08-30	03-20	257,670	6.85%	1-5
Common Area Rehabilitation	5,974,737	04-25	00-24	575,743	9.64%	1-4
Roof Replacement	2,983,800	15-30	14-28	170,268	5.75%	1-4
Building Painting	918,590	01-07	00-03	128,234	13.78%	1-4
Pavement Resurfacing	152,400	06-20	02-16	11,989	7.87%	4
<b>TOTAL</b>	<b>\$ 40,984,237</b>			<b>\$ 3,098,613</b>	<b>7.56%</b>	

5) The cash flow method is being used, which is based on a minimum twenty-year projection of the association's future income and expenses to fully fund its replacement reserve requirements each year during that twenty-year period. The cash flow method requires the association to assess and collect from its owners to fully fund 100% of the estimated replacement reserves, in order to establish a full replacement reserve for the association by the end of each budget year.

6) The remaining life of a component can be estimated by subtracting the current age of the component from the useful life of such component. Each year, the association board may adjust the amount of the estimated replacement reserve for an asset based on reasonable projections for inflation and for interest which will be earned during the estimated useful life of the asset.

7) The Board of Directors has determined that no special assessment will be required this year for either the maintenance or repair of any major component of the Resort or the funding of additional reserves other than those included in the budget.

8) The Developer may convey to the Association, to be used exclusively for maintenance purposes, an Ownership Interest in up to one-half of the Units in The Program. The Basic Charges related to these Ownership Interests will be borne by the non-Association Owners of Ownership Interests collectively and have been reflected in the line items set forth in the above Budget.

## **EXHIBIT "5"**

### **MARKETING PLAN FOR KO OLINA BEACH CLUB**

The developer, Marriott Ownership Resorts, Inc. ("MORI"), intends to advertise within the Hawaiian market utilizing media typical to the industry (i.e. newspapers, magazines, brochure racks, radio, and possibly television); to solicit broker referral; to direct mail to select target markets, including existing Marriott owners and referrals; and possibly utilize telemarketing in conjunction with other advertising campaigns. In addition, MORI intends to solicit guests staying in Marriott hotels through printed materials located within the hotels and their rooms and onsite guest services. It is anticipated that MORI may use outside acquisition agents for soliciting customers for the purpose of sales tours at the Property.

MORI will be operating several sales offices within the state. The main office will be located on the Island of Kauai at 2249 Poipu Road, Koloa, Kauai, Hawaii 96756, and a branch office will be established on the Property. MORI currently operates additional branch offices on the islands of Maui and Oahu and may establish additional branch offices in the future on one or more of the Hawaiian Islands. Solicited guests will be invited to attend a sales presentation at one of these locations.

A prize gift or other incentive may be offered to prospective purchasers who attend a sales presentation concerning the Program. Typically, the promotional item(s) are predetermined and definite, not from a list of several to which the disclosure of odds of receiving would be applicable. Typical incentives would include a lodging package, dining certificates and/or gift certificates applicable to the market.

At this time, it is contemplated that MORI will be the sales agent for the Program. In addition, sales collateral and advertising materials are being developed and will be submitted prior to use.