

## RENTAL AGREEMENT

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Thank you for choosing our home for your vacation. We hope that you have pleasant stay. The Property is located at:

Honua Kai Resort & Spa  
Konea Building (North Building), Unit # 106  
130 Kai Malina Parkway, Lahaina, HI 96761

### Local Contact:

Richmond Consulting, Inc.  
28 Aea Place, Lahaina HI 96761  
Monty Richmond 808-393-5787 [montylr@hotmail.com](mailto:montylr@hotmail.com)

He will be your contact while you are on the island. Please feel free to reach out to me at my information above as well.

You are renting a:

2 Bedroom, 1 Bath Unit (Sleeps up to 6 Guests)

To keep our condo looking new, we ask that you please remove your shoes upon entering and please no smoking in the condo or on the lanai. This is a non-smoking resort. PETS are not permitted in rental units under any conditions. Mahalo.

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This RENTAL AGREEMENT is made as of the Effective Date as defined below, between Brandon Mullenberg (hereinafter called "Owner") and the renter(s) whose name(s) appear on the reservation or whom accepted the Rental Agreement (hereinafter called "Principal Guest") for rental of the Konea 106 (hereinafter, "Condo") at Honua Kai Resort & Spa ("Resort"). Condo and Resort collectively may be referred to as the "Property". The Property is governed by the Honua Kai Condo Association ("HKCA"). Owner and Principal Guest may collectively be referred to as the "Parties" or individually as a "Party".

### EFFECTIVE DATE

This Rental Agreement is effective as of the Effective Date, which is the later of the date this Rental Agreement is accepted by Owner and Principal Guest or the date the reservation deposit is received. Until the Effective Date, the offer to rent is not guaranteed and Owner will continue to respond inquiries, can raise price or lower prices, and may offer the vacation rental to other parties for the same dates that you have requested. To guarantee your reservation it is important that you accept the terms of this Rental Agreement and pay your reservation deposit as soon as possible.

### CHECK-IN TIME IS AFTER 4:00PM HST AND CHECKOUT IS 10:00AM HST

Please assume no early check-in or late checkout due to turn around time. We do try to accommodate guest requests when possible but it is not guaranteed. No refund is provided for early departures or late arrivals.

### BED CONFIGURATION

There are two (2) bedrooms in the Condo, the master has a hotel king (72x80), and the second bedroom has a king (76x80). The living room has a pull-out queen plus size sofa bed (66x80). Bed sizes and configurations are subject to change if furniture is replaced. One pack n play is also available to use free of charge in the Condo.

### MODIFICATION OF CONDO

This Condo was a 1 bed + 1 den / 1 bath. It has been converted to a 2 bed / 1 bath by adding a door to the den and replacing the pull out sofa in the den with a King bed. Disclosure: The den converted to bedroom does not have a window and only has one means of emergency egress via the interior door to the room.

### GENERAL TERMS AND CONDITIONS OF RENTAL

By entering into this Rental Agreement Principal Guest on its own behalf and on behalf of all of its guests, invitees, co-occupants, agents and others under its control (herein known as "Invitees") agrees to the rental of the Subject Property on the terms and

conditions herein (above and below) for use as a private vacation residence. The term "Subject Property" includes the interior of the Condo and its limited common elements, including its lanai, and garden area. Locked areas for which Principal Guest is not provided with a key, such as Owner's personal storage closet, are not included within the property covered by this Rental Agreement.

The common elements including but not limited to the pools, gym, landscaping, hallways, pathways, lobby, etc. shall be available for your non-exclusive use as a guest of the Owner, however Owner makes no guarantees as to their condition, functionality or availability and you agree to hold Owner harmless and refunds will not be given in the event that their condition, functionality or availability is impaired.

#### **RESERVATION DEPOSIT AND TOTAL RENTAL AMOUNT**

A reservation deposit must be received at the time the reservation is booked ("Reservation Deposit"). Payment may be in full at the time of the booking or in several periodic payments. This is stated during the booking process. The total amount due under a reservation that is paid to Owner shall hereinafter be referred to as "Total Rent". Any third-party fees such as booking fees, service fees, or fees for optional insurance plans are not part of the Total Rent, and may not be refundable.

#### **DELINQUENT PAYMENTS, NSF, CHARGEBACKS:**

Principal Guest agrees to pay to Owner a fee that is the greater of the fees imposed on Owner by any third-party or \$30.00 on any reversed or returned payment, or chargeback. In addition, any delinquent amount due under this Rental Agreement shall be subject to a late charge of 1% per month, or the maximum amount permitted by law, whichever is less.

#### **PARKING & RESORT FEES**

Currently there is a \$15 fee + GET tax (4.16%) for parking per car per night. This fee unless specifically specified in your quote is not included in the Total Rent and must be paid separately.

There is currently no resort charged fees. However, Resort charged fees are subject to change prior to the date of your stay. These fees if put in place in the future may be directly collected from Principal Guest by HKCA or passed through by the Owner resulting in additional invoice being added to your reservation. Principal Guest agrees to pay these fees. Principal Guest understands and acknowledges that Owner does not determine the resort charged fees that will be in place at the time of their stay, rather it is determined by HKCA. These charges, if any, are not included in your rate and must be paid separately.

#### **TAX ADJUSTMENT**

The Total Rent is based on the state and local taxes in place at the time of the reservation. Taxes are paid to the state of HI based on the rate in force at the time the reservation payment(s) are collected. The tax rate is subject to change. Should taxes increase or decrease, Owner shall pass along any increase or decrease to Principal Guest as an additional amount owed or a credit. The tax increase or decrease will only be re-calculated on the unpaid portion of the stay.

Notice of Tax Increase: In Sept 2017 Senate Bill No. 4 was enacted which raised the Transient Accommodation Tax ("TAT") from 9.25 to 10.25 percent effective January 1, 2018. The TAT makes up a portion of the total 13.416% room night tax. Principal Guest reservation is based on the lower 9.25 percent TAT tax since that is when the reservation deposit was received and all payments received on or prior to 12/31/2017 are at the 9.25 percent tax. Any payments made on or after 1/1/2018 will be re-calculated with the additional 1 percent added. To avoid the 1 percent tax hike, Principal Guest may make their final payment prior to 1/1/2018.

#### **ADDITIONAL GUESTS**

Our Condo is for up to (6) six guests including all adults and children / infants of all ages. Additional guests will be charged at a rate of \$25 per night. However, if Principal Guest discloses prior to the acceptance of their reservation in writing that more than (8) eight guests will stay in the Condo, and Owner accepts the reservation with that clear and undisputable knowledge then no additional charges will be billed to Principal Guest. Under no circumstances however shall more than (8) eight guests be allowed to stay overnight in the Condo. The number of Adults and children / infants must be disclosed prior to your stay to be added the HKCA guest roster. Sneaking or smuggling in of additional undocumented guests is a breach of this Agreement that will result in this Agreement being terminated by Owner pursuant to the Falsified Reservation clause below.

#### **CANCELLATION POLICY**

Any full cancellation at the request of the Principal Guest, or a cancellation by Owner as a result of the Principal Guest or its Invitees actions including but not limited to (a) delinquent payment, (b) chargeback, (c) breach of this Rental Agreement, or (d) threatened breach of this Rental Agreement, will be subject to the following cancellation policy:

1. Fully Refundable Cancellation Period. The Total Rent is 100% refundable if canceled within the first 24 hours after entering into this Rental Agreement and canceled more than 90 days before arrival (more than 120 days before arrival for the Christmas / new year holiday period and any bookings for 14 nights or longer).

2. Early Cancellation Period. The Total Rent is 100% refundable minus 1-night cancellation fee if canceled after the first 24 hours of entering into this Rental Agreement and if canceled more than 90 days before arrival (more than 120 days before arrival for the Christmas / new year holiday period and any bookings for 14 nights or longer)

3. Late Cancellation Period. If Principal Guest desires cancellation 90 days or less prior to arrival (120 days or less for the Christmas / new year holiday period and for any bookings 14 nights or longer), all monies, other than the damage deposit, are forfeited, until the Condo is re-rented. If the Condo is re-rented Owner shall refund the Principal Guest all monies paid minus a 1-night cancellation fee and minus the difference in nightly rent over Principal Guest reservation dates. For avoidance of doubt, if (a) Principal Guest has paid \$3,500 and the reservation was 7 nights at \$400/n avg. (b) Owner re-books 6 nights of the reservation dates at \$380/n avg and the 7th night remains empty. (c) HI GET tax 4.16%. The refund is calculated using the following formula:  $\$3,500 - ((\$400 + ((\$400 * 7) - (\$380 * 6))) * 1.0416) = \$2,541.67$

Principal Guest shall remain booked and shall continue to make all payments due under this Rental Agreement to Owner unless the Owner instructs them otherwise due to re-rental. If a payment due is not paid on time the terms of the Cancellation for Non-Payment policy shall prevail and be given priority.

Cancellation requests may be submitted by phone, email direct to the Owner, or through the website contact forms or communication platform from which you booked your reservation. Owner will provide a cancellation number upon receiving your cancellation that is your confirmation that your cancellation request has been received by Owner and processed. Please do not assume your cancellation has been received after leaving a voice mail, sending an email, or other website communication. Principal Guest must receive a cancellation number as proof that your cancellation has been received by Owner and processed.

If Principal Guest books this Condo using an instant booking feature, Owner reserves the right, for any reason, to cancel the reservation and refund 100% of the Total Rent paid at any time within the first 24 hours after entering into this Rental Agreement.

#### **CHANGE POLICY**

Any reservation change by the Principal Guest will be subject the following change policies:

1. Owner reserves the right to deny any requested reservation change for any reason.
2. There shall be no change fees for adding on additional nights.
3. The canceled nights are subject to the Cancellation Policy provisions above including but not limited to the cancellation fee in both the Early and Late Cancellation Periods and the re-rent policies if the nights are canceled in the Late Cancellation Period.
4. Owner reserves the right to waive or reduce any reservation change fees without invalidating its policies for future reservation changes by Principal Guest.

For these reasons, it is recommended that you book your flights as soon as possible after making your reservation.

#### **REFUNDS**

Refunds shall be issued in the manner in which they are paid to Owner (credit card back to credit card, etc.). Any electronic checks or physical checks received by Owner shall be held for as long as necessary for Owner to ensure he does not receive a bounce; however, this time period shall not exceed 30 days. Instead of issuing a physical check back to Principal Guest Owner may, at its option, use direct deposit to make an electronic refund back to same bank account & routing number from which the Principal Guests check was paid from.

#### **CANCELLATION FOR NON-PAYMENT**

If any payment is past due and unpaid, with forty-eight (48) hour notice by electronic mail to Principal Guest, Owner may cancel this Rental Agreement for non-payment (hereinafter, "Non-Payment Cancellation"). Non-Payment Cancellation shall result in all payments previously made becoming non-refundable. The non-refundable payments shall be used to cover the 1-night cancellation fee, difference in rent between this reservation and any re-rental booking, HI taxes paid by Owner, and other expenses related to re-rental including but not limited to: re-rental marketing costs, etc. In the event that the non-refundable payments plus re-rental are not enough to make Owner whole (plus the 1-night cancellation fee), Principal Guest shall pay to Owner the difference as if Principal Guest had completed all payments under their reservation plus the 1-night cancellation fee.

#### **TRIP INSURANCE**

Please note that we are very small operation with only a few vacation homes and cannot easily write off lost income from cancellations, as do large hotels. If you are concerned about the possibility of a weather or travel related event, illness, death, family emergencies, or other health issues, etc. that could prevent or affect your travel, or result in a late arrival or early departure, etc. we strongly suggest that you take responsibility for this risk and obtain trip cancellation/interruption insurance.

## **WEATHER AND TRAVEL RELATED EVENTS**

Unless a mandatory evacuation is in effect, we do not refund for weather or travel related events that may occur during which the condo remains available for your occupancy. No refunds will be given for storms, hurricanes, bad weather, flight delays, canceled flights, or road conditions, etc. If concerned about these possibilities, we recommend Principal Guest obtain trip cancellation/interruption insurance. If a mandatory evacuation is issued, Principal Guest shall be entitled to a refund of pro rata portion of the un-used nightly rental rate payable hereunder during the nights in which the mandatory evacuation is in affect and in which the unit is unoccupied by Principal Guest.

## **VOIP 911 DISCLOSURE / EMERGENCY SERVICES**

Principal Guest acknowledges and understands that this Condo may be equipped with a VOIP telephone service that relies on a broadband connection for service. In the event of a loss of electricity, internet connectivity, or for any reason whatsoever, Principal Guest(s) ability to call 911 will not work or may become intermittent. If Principal Guest reaches 911 you may have to provide the address of the Condo to the operator. A power failure or disruption may require the equipment to be re-set or reconfigured prior to using the service. Principal Guest represents and warrants to Owner that they have considered these things and Principal Guest and its Invitees have additional means by which they can access emergency services if necessary.

## **INCLUDED SERVICES**

Included in the Total Rent are the following services

### **TELEPHONE, INTERNET ACCESS AND CABLE TELEVISION**

The telephone in the Condo has local and long distance telephone service to US, and Canada at no charge. Calls outside of the US and Canada are blocked, you will need to use your cell phone or an Internet telephone service such as skype to make these calls. Unlimited use of local service is included in the Total Rent. The Condo has Wi-Fi Connections for Internet, which guests may use during occupancy. During the period of occupancy, the Owner is not responsible for poor quality television service or any interruption or loss of telephone service, poor quality Internet access, data loss or distortion or any interruption or loss of Internet access. There will be no refund or reduction in the Total Rent for direct or indirect damages due to interruption, loss or quality of service mentioned herein.

### **UTILITIES**

Including, without limitation, electricity, plumbing, gas, water, air conditioning, sewage system.

## **EXCLUDED SERVICES**

Unless specifically included in this Rental Agreement as included services, Principal Guest acknowledges that all other services are excluded. Specifically; dry cleaning and/or laundry service, food and beverages (both alcoholic and non-alcoholic) are not included as part of the Total Rent. In addition, all Resort recreational and amenity charges incurred by Principal Guest and its Invitees; i.e. restaurants, rental cars, spa charges, parking, etc. are excluded and the payment for such services and amenities is the responsibility of the Principal Guest. Also excluded is the following

### **NO DAILY MAID SERVICE**

Cleaning is pre-scheduled prior to your arrival and at post-check out only. While an initial supply of linens and bath towels are included in the Condo rental, daily maid service is not included in the Total Rent. Any other housekeeping services during your stay must be arranged through Owner or Owners Agent at Principal Guest expense.

### **NO POOLSIDE TOWEL SERVICE**

Resort poolside towel service is not available for Principal Guest use. Owner supplies towels for use at the pools and the Condo comes equipped with a washer and dryer for cleaning.

## **EXTRA SERVICES (provided by Honua Kai's Concierge and not by Owner)**

At the option and additional expense of the Principal Guest, the following are extra services provided by Honua Kai's Concierge Service and not by the Owner. Principal Guest authorizes Honua Kai Resort to bill all charges for these items directly to the Principal Guest's credit card. Further information is available by Honua Kai's Concierge upon request. Honua Kai's Concierge phone number is 801.523.0300

Pre-arrival grocery shopping (please provide shopping list)

Child care needs - rental (please indicate crib, stroller, high chair, etc.)

\* One (1) Pack N Play is available in the room for your use at no charge. \*

\* One (1) Booster with table is available in the room for your use at no charge. \*

Dry cleaning: pick-up and delivery to Property.

Errand running

Business Services, copying and mailing services

## **HOUSE RULES**

The Principal Guest shall comply, and will cause all of its Invitees to comply, with all Resort rules and regulations. HKCA has adopted house rules which are listed at the following URL: <http://go.visitmaui.com/hkca-house-rules/>. Failure to abide by these rules could lead to eviction. If penalties, fines, or other actions are taken for a violation of these rules, Principal Guest shall be responsible for the payment of any penalty or fine assessed on the Owner and no refunds shall be given for evictions, etc. This reservation is for quiet residential vacation accommodations only. Therefore, parties, receptions, luaus, events, and gatherings of any kind are strictly prohibited. These rules include quiet hours, pool hours, wet towel and wet bathing suit rules (neither may be hung outside on outdoor furniture) and similar regulations. All rules described in this Section are a part of this Rental Agreement and incorporated by reference. The house rules may be updated from time to time. Guest is responsible for abiding by the house rules that are posted to the URL above at the time of their stay.

We do not permit room towels or linens to be taken from the Condo. There are 6 beach towels in the Condo that we allow tenant to take to the beaches. If these towels are lost there is a replacement charge of \$20 per towel.

## **RESTRICTIONS ON USE AND OCCUPANCY**

The Property shall be used solely for personal vacation purposes. The Property shall not be used in any manner for commercial or other purposes, including, without limitation, conducting parties, weddings or receptions, unless such activities have been specifically approved in writing by the Owner and the Resort.

## **MAINTENANCE**

Principal Guest is required to report any deficiency or damage in the Condo immediately after checking in (within 24 hours). Principal Guest may be held responsible for not reporting any issues in a timely manner. Principal Guest may be held responsible for neglecting to operate appliances in the proper manner and use for which they are intended. Principal Guest shall inspect and be familiar with proper use and application of all items of personal property in the Condo prior to using them. Owner will do everything possible to keep all equipment in satisfactory working condition; however, it is impossible to guarantee that all equipment will be in working order 100% of the time. Any deficiencies will be corrected as soon as humanly possible. Refunds or discounts will not be provided for any maintenance issues that occur in the Condo.

## **PROPERTY DAMAGE, THEFT**

The Condo is individually owned and decorated. Please do not remove linens, dishes or other items from the Condo. Guests are liable for additional charges resulting from any damage, lost items or excessive check out cleaning. Principle Guest is responsible for ensuring that the Condo is left upon departure in the same (or better) condition and repair as it was on the Check in Date. Principle Guest agrees to be responsible for all damages and theft to the Property caused in any part by the Principle Guest and/or Principal Guest's Invitees. Principal Guest agrees to be responsible for the repair or replacement cost (at Owner's option) of all damage done to the Subject Property during the occupancy of the Subject Property, including and without limitations; walls, carpet, doors, windows, floor and window coverings, furniture, cabinets, plumbing, furnishings, appliances, equipment, decorations, personal property and fixtures, lanai finishes and furnishings, etc. Ordinary wear and tear of the Subject Property, which does not include staining, chipping, scratching and marking up the walls or floors, is excluded. Principal Guest hereby specifically acknowledges and agrees that Owner and its agents each have the right to take legal action against Principal Guest, and/or Principal Guest's Invitees for all damages to the Property, or for any portion of unpaid resort fees, resort services, parking or unpaid Total Rent.

Owner may require the purchase of Property Damage Protection Insurance Plan ("PDP") or a Prop. Damage Protection Damage Waiver ("PDP-DW") through Owner or a refundable damage deposit ("Damage Deposit"). One is not included unless specified. If no Damage Deposit, PDP, or PDP-DW is in place, or the damage amount exceeds the Damage Deposit, or the damage is not covered by or exceeds the coverage of the PDP or PDP-DW; Principal Guest agrees to promptly remit payment to Owner.

PDP covers accidental damage of items such as broken lamps, re-keying locks due to lost keys, lost towels, windows and glass; damaged doors, walls and furniture; cracked / broken refrigerator handle, stained bedding or linens and more. For a full list of inclusions / exclusions please review the plans coverage documents. To the extent that PDP reimburses owner, Principal Guest shall not be liable. However, for items that are not covered, or should the damages to owner exceed that of the PDP plan purchased, Principal Guest agrees to be responsible for any overages. The PDP-DW plan which is invoiced as line item "Prop. Damage Protection" is a guarantee by Owner that Owner will not hold you responsible for up to \$1,000 in accidental damage to the inside of the Condo. It is generally more inclusive than the PDP insurance plan as there is no third party to rely on for payment of claims. In the event that both the PDP and PDP-DW plan are purchased, the PDP plan shall be used as the primary plan and the PDP-DW plan shall be secondary. Both the PDP plan and the PDP-DW plan do not cover non-accidental damage including but not limited to damages due to negligence, damage due to willful misconduct, damages due to a breach of this agreement, or theft.

## **NO SMOKING; NO UNAUTHORIZED ANIMALS; NO PETS**

The Property, is designated as a non-smoking area and smoking is prohibited at all times. Pets, other than those assisting disabled

persons or needed for legitimate medical purposes, are not allowed. Regardless of the purpose, all animals must be pre-approved by Owner in writing prior to booking. Principal Guest agrees to these policies. Principal Guest further agrees that if a violation occurs during their stay to immediately cease the violation and to be charged \$500 plus tax for additional cleaning, etc. Any damages resulting from the violation are not included in this amount and shall be billed separately. If a security deposit has been provided, Owner may take from the security deposit this amount. If upon arrival, Principal Guest or its Invitees' have an animal that has not been pre-approved, you will not be allowed to check-in until an alternate home is found for the animal for the duration of your stay. Proof of alternate accommodation for the animal shall be required prior to check-in. No refunds will be provided if you are evicted or not allowed to check-in timely due to a violation related to this paragraph.

#### **ENTRY OF PREMISES**

During business hours, Owner its agents may enter the Condo with or without permission to investigate disturbances, check occupancy, check or restock supplies, check damages, make repairs, alterations, improvements, and otherwise enforce the terms of this Rental Agreement. In emergency cases, Owner or its agents may enter at any time without permission of the Principal Guest.

#### **PERSONAL PROPERTIES**

Principal Guest assumes full responsibility for Principal Guests' and its Invitees' personal properties and vehicles during occupancy and acknowledges and agrees that Owner and its agents are not responsible for such personal properties and vehicles and do not provide insurance for any loss of or damage to Principal Guest's or its Invitees' personal properties or vehicles. Principal Guest is responsible to lock the doors and windows of the Subject Property when not present and/or actively monitoring the Condo. Owner, and its agents assume no responsibility for any damage or loss of any Guest's or its Invitees' personal properties left in the Condo during or after occupancy. Valuables should not be left unattended at any time. Principal Guest and its Invitees must make arrangements for the safekeeping of valuables during occupancy of Condo. Owner has no responsibility for providing any security services with regards to the use and occupancy of the Condo, Resort, or any adjacent property and Principal Guest, on behalf of itself and its Invitees assumes all risks in that regard.

#### **CONSTRUCTION ACTIVITIES**

Principal Guest acknowledges that construction activities and/or outside ground maintenance such as pool maintenance and cleaning, lawn cutting, raking, pruning may be in progress and may occur during occupancy, and acknowledges and agrees that Owner and its agents shall not be responsible for any construction noise or any related inconvenience that may occur during occupancy. No refund or reduction in the Total Rent will be made in connection with any such matters.

#### **KNOWN CONSTRUCTION ACTIVITIES DISCLAIMER**

Starting ~ Sept 18, 2017 the Family pool and Konea pools will be shut down for needed repair work. Both pools will go down at the same time leaving only the main pool in front of Hokulani open for use. The Family pool is considered less work and is scheduled to be completed in 5 weeks at which point it will be reopened for full use, the Konea pools will take approximately 3 weeks longer with an expected completion no later than Nov 18. HKCA will do everything possible to minimize the disruptions and noise to a minimum. The information, dates, and timelines have been provided to Owner by HKCA as of Aug 18, 2017. Owner makes no guarantee as to whether these dates will be met or its impacts.

#### **ILLEGALLY PARKED VEHICLES**

Illegally parked vehicles may be towed; applicable fines/towing fees are the sole responsibility of the vehicle owner or renter.

#### **POOL / SPA / TIKI TORCHES / LANAI**

Principal Guest, on behalf of itself and its Invitees, acknowledges that in and around the pond, lanai, pool, and spa areas requires special care be taken to avoid injury. In particular, children and elderly persons should be accompanied at all times when using the pools and/or spas or near the koi ponds. The Condos' interior tile and lanai have been treated with non-slip treatment, however tile is not slip proof and precautions should still be taken when wet or when returning from a wet surface. Tiki torches, if any, must not be lit by Principal Guest or its Invitees on or within the Property or Resort area.

#### **NON-LIABILITY / INDEMNITY OF OWNER / ASSUMPTION OF RISK**

Principal Guest hereby specifically acknowledges and agrees that Owner, its insurance, and its agents are not and will not be liable to Principal Guest or its Invitees for any injuries, death, damages and/or losses occasioned by or from the use of Property, or any excluded area on the land or in the Property, or due to any design, code violation, mechanical or construction defects, if any, of the Property, or due to any property or service provided or made available by Owner or its agents under this Rental Agreement or by any utility service including, without limitation, electricity, plumbing, gas, water, air conditioning, sewage system, fire sprinklers, or the loss, interruption or stoppage thereof, or by the bursting, leaking, overflowing or running over any tank, sink, washstand, closet, fire sprinklers, waste or other pipes in or on the Property, or for any injury or damaged occasioned by water coming into the Property from any source whatsoever, or for any damage or injury arising from any acts or neglect of the other occupants of, or any other persons in, on or adjacent to the Condo or Property or of any adjacent Condo or Property occupants, or of the public unless, and then only to the extent that such damage or loss results from a wanton and willful act of Owner or Owner's gross negligence. Any swimming or other

recreational activity (including but not limited to canoeing, boogie boarding, surfing) shall be solely at the risk of the Principal Guest or Invitees of the Principal Guest. Principal Guest, on behalf of its self and its Invitees, expressly waives and releases Owner, its insurance, and its agents from liability for all such claims. In the event Owner and/or its insurance, and/or any of its agents is made a party to a claim or a suit, Principal Guest agrees to release, hold harmless, indemnify and defend Owner, its insurance and its agents from all claims, liabilities, damages, actions, losses, costs and expenses (including reasonable attorney's fees) arising out of such matters. **PRINCIPAL GUEST, ON BEHALF OF ITSELF AND ITS INVITEES, AGREES AND ACKNOWLEDGES THAT UNDER NO CIRCUMSTANCES SHALL OWNER'S, ITS INSURANCE, OR ITS AGENTS' LIABILITY IN CONNECTION WITH THIS RENTAL AGREEMENT OR ANY CLAIM ARISING IN CONNECTION WITH THIS RENTAL AGREEMENT EXCEED THE TOTAL RENT.**

#### **ASSIGNMENT AND SUBLETTING**

This Rental Agreement may not be assumed, assigned, or transferred by Principal Guest unless permitted in a signed writing by Owner. The Principal Guest shall not re-let or sublet all or any part of the Condo unless permitted in signed writing by Owner. This Rental Agreement may be transferred or assigned by Owner in whole or in part in the event of a sale or transfer of the Condo. This Rental Agreement shall be binding upon both Parties and their respective heirs, executors, administrators, successors, transferees, assigns, agents and attorneys.

#### **FALSIFIED RESERVATIONS**

Any reservation obtained under false pretense will be subject to forfeiture of the Total Rent and the Principal Guest will not be permitted to check in or if already checked-in, will be evicted.

#### **TERMINATION OF RENTAL DUE TO VIOLATION OF TERMS**

If Principal Guest or its Invitees violates any of the terms of this Rental Agreement or violates restrictions contained in the House Rules, Owner may terminate this Rental Agreement and, upon such termination, Principal Guest and its Invitees shall vacate the Condo immediately and shall forfeit all monies paid to Owner.

#### **FORCE MAJEURE / UNFORSEEN CIRCUMSTANCES**

There may be circumstances beyond our control and contemplation, in which the Condo might not be available for your occupancy or may become unavailable mid-stay. In the event of one of these unforeseen circumstances, we will do our best to make alternative comparable arrangements for you when possible. If we cannot, or if the alternative arrangements are not acceptable to you we will issue you a refund. If the Condo becomes unavailable, prior to your arrival, Owner will refund all monies paid. If the Condo becomes unavailable mid-stay Principal Guest shall be entitled to a refund of pro rata portion of the un-used nightly rental rate payable hereunder. The refund is our full extent of our liability to you in such circumstances, and we will not be responsible for any other costs or losses.

#### **PEST CONTROL, PESTS AND BED BUGS**

Insects and rodents are pests. HKCA schedules quarterly pest control of the Property to prevent infestations. Principal Guest agrees to cooperate with pest control efforts. Should Principal Guest deny entry and/or refuse the treatment, Principal Guest agrees to reimburse Owner for any additional expenses related to re-scheduling.

Despite HKCA best efforts, pests are prevalent on Maui and may be seen in the Condo or around the Property. Principal Guest understands this and agrees that they shall not be entitled to a refund as a result of pests. However, Bed Bugs are a serious issue. In the event of an alleged bed bug infestation, Principal Guest shall first allow Owner to have the Condo inspected. If a bed bug infestation is discovered, the foregoing Force Majeure clause shall apply and Principal Guest shall be entitled to a refund.

#### **CLEANLINESS OF THE CONDO**

The Condo is cleaned between each guest stay by professional cleaners. They are people, so undeniably, from time to time, something may be missed. While unacceptable, it happens. The level of cleanliness is in the eye of the beholder. Principal Guest agrees that if the Condo not up to their standards of cleanliness it is not a breach of this Agreement and shall not entitle them to a refund or termination of this Agreement. If you feel that the Condo is not up to your standards, please let us know and we will have the issues specifically addressed, including a full second cleaning of the unit if necessary.

#### **NOTICE AND OPPORTUNITY TO CURE DEFAULT**

It shall be a condition precedent to the Principal Guest's right to a refund or termination of this Agreement by default of Owner, that Principal Guest shall first have given the Owner written notice stating with specificity (i) a statement they are alleging a breach of this Agreement by the Owner, and (ii) reason for the termination ("breach"). If such breach is capable of cure or remedy, Owner will have a period of ten (10) days after the notice is given to remedy the breach. Notwithstanding the foregoing, if the alleged breach occurs during Principal Guest occupancy of the Condo, time shall be of the essence and the right to cure period shall be shortened to 48 hours.

## **CLAIMS AND NOTICE OF CLAIMS**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief. Claims by either Party must be initiated by written or e-mail notice to the other Party. Claims by either Party must be initiated within 21 days after occurrence of an event giving rise to such claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The responsibility to substantiate Claims shall rest with the Party making the claim. A timely notice of claim is required as a condition precedent to the commencement of an action against the other Party.

## **ATTORNEY'S FEES**

Concerning attorney fees and costs, the provisions of RCW 4.84.250 through 4.84.300 shall apply, except as provided herein. The maximum dollar limitation in RCW 4.84.250 shall not apply. In applying RCW 4.84.280, the time period for serving offers of settlement on the adverse Party shall be the period not less than 30 days and not more than 120 days after completion of the service and filing of the summons and complaint. An offer of settlement shall expire 10 days after service of the offer of settlement, unless accepted before then. For the plaintiff to be eligible for an award of attorney fees and costs, the recovery to plaintiff, after the netting of claims and counterclaims, and exclusive of costs, must be more than the amount offered in settlement by the plaintiff. For the defendant to be eligible for an award of attorney fees and costs, the recovery to plaintiff, after the netting of claims and counterclaims, and exclusive of costs, must be either zero or less than the amount offered in settlement by the defendant. The parties hereby waive any and all other rights to attorney fees and costs that they may have whether from statute or common law.

## **CONTROLLING LAW, VENUE, JURISDICTION**

The parties' rights and obligations are governed by, and this Rental Agreement shall be construed and enforced under, the laws of the State of Washington. Each Party irrevocably (a) consents to the jurisdiction of all federal and state courts in Washington State for all matters relating to or arising out of this Rental Agreement; (b) agrees that venue for any proceeding arising under this Rental Agreement shall be the county of King, State of Washington; and (c) agrees not to seek, and hereby waives the right to request any change of venue or transfer.

## **ENTIRE AGREEMENT; INTEGRATION; AMENDMENT**

This Rental Agreement and the documents incorporated herein by reference constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all previous agreements between the parties. There are no representations, warranties or agreements between the parties other than those in, or incorporated into, this Rental Agreement. There are no dealings, statements, verbal or other agreements which add to, affect or modify the terms of this Rental Agreement. This Rental Agreement may not be modified or amended except by written agreement signed by Owner and Principal Guest.

## **WAIVER OF TERMS**

No waiver or any breach of any of the terms, covenants and conditions of this Rental Agreement shall be taken or construed to be a waiver of any other term, covenant or condition of this Agreement.

## **SEVERABILITY**

If any clause or any other portion of this Rental Agreement shall be determined to be void or unenforceable for any reason, such determination shall not affect the validity or enforceability of any other clause or portion of this Rental Agreement, all of which shall remain in full force and effect.

## **COUNTERPARTS; VALID SIGNATURE METHODS**

This Rental Agreement may be executed in counterparts, all of which shall constitute one and the same instrument. Facsimile, photocopied, and electronically transmitted signatures or electronic acceptance is equivalent to original signatures for all purposes of this Rental Agreement and shall be binding upon all Parties.

## **EXECUTION OF RENTAL AGREEMENT**

As of the Effective Date, Principal Guest, jointly and severally, and Owner agree to all of the terms and conditions of this Rental Agreement. Owner and Principal Guest each for itself agrees that, (a) it had a full and fair opportunity to consult with its independent legal advisor; (b) it has read, considered and understands this Rental Agreement; and (c) that each person has the right and all authority necessary to execute this Rental Agreement.