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and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

Association of Apartment Owners of
Kauai Beach Villas,

Debtor and
Debtor-in-possession

Bk. No. 25-01103
(Chapter 11)
(Subchapter V)

Hearing:

Date: March 9, 2026

Time: 9:30 a.m.

Judge: Hon. Robert J. Faris

**DEBTOR'S MOTION FOR ORDER FOR RELIEF FROM STAY
AS TO ESCROW ACCOUNT; DECLARATION
OF LARRY D. WARNER; EXHIBITS "A" – "C"**

The Association of Apartment Owners of Kauai Beach Villas, debtor and
debtor-in-possession herein (the "Debtor" or "Association"), by and through

undersigned counsel, hereby files this Motion for Relief from Automatic Stay as to Escrow Account (the “Motion”). This Motion is made pursuant to sections 105, 362 and 541 of the Bankruptcy Code, Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-1 of the Local Rules of the Bankruptcy Court, and is based on this Motion and attached declaration and exhibits filed support hereof, the pleadings and records in this proceeding, and such order and further matters as may come before the Court upon the hearing of this Motion.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

3. By this Motion, the Debtor seeks an order determining that the automatic stay does not apply to, or alternatively granting relief from the automatic stay, to permit the continued disbursements from, and deposits into, an interest-bearing escrow account designated file KBVSA2024 (the “Escrow Account”) held by First American Vacation Ownership Title and Escrow (“Escrow Company”) for invoices that the parties to the Escrow Agreement made on January 30, 2024 (the “Escrow Agreement”) intended be paid from the Escrow Account..

BACKGROUND

4. On December 5, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Subchapter V of title 11 of the United States Code in the United States Bankruptcy Court for the District of Hawaii (the “Court”)

5. Prior to the Petition Date, the Debtor made a special assessment of its members for the purpose of paying for repairs and remedial work at Buildings G and H at the Kauai Beach Villas (the “Property”), and entered into an Escrow Agreement on January 30, 2024 to . *See* ECF 11 at ¶ 57 (“First Day Declaration”).

6. The First Day Declaration describes “Project Reoccupy” which requires Buildings G and H of the Property to be vacated for critical post-tension repairs to the Buildings. *Id.* at ¶¶ 24 to 26.

7. As of the Petition Date, Escrow Company held approximately \$1,986,145 pursuant to the Escrow Agreement. *Id.* at ¶ 57. A true and correct copy of the Escrow Agreement is attached to the Declaration of Larry D. Warner as Exhibit “A.”

8. As of the Petition Date, the primary contractor, Sealtech, Inc. dba Seal Masters of Hawaii (“Seal Masters”) and other vendors and professionals (collectively, the “Reoccupy professionals”) had not been paid for work and services performed in November and December of 2025. *See* Exhibit “B” and “C” (draw

requests for November work and December work on Buildings G and H, without backup).

9. Due to substantial unanticipated cost overruns for Project Reoccupy, after payment of all outstanding invoices from Reoccupy Professionals, the amount held in the Escrow Account is estimated to diminish to approximately \$452,000. Upon receiving written notice of the bankruptcy, Seal Masters “paused” work on Project Reoccupy.

10. The Association continues to receive special assessment payments (“SPAs”) from its members which the Association is obligated to deposit into the Escrow Account.

11. Pursuant to a *Stipulated Order Authorizing Payment of Pre-Petition Invoice from Escrow Account at [Escrow Company]* (the “Stipulated RFS Order”) entered on January 16, 2026, the Court granted “[t]o the extent necessary” relief from the automatic stay to “permit Escrow Co. to pay Seal Masters’ November Invoice.” *See* ECF 60, at ¶ 1.

12. Pursuant to the Stipulated RFS Order, Escrow Company has paid Seal Masters \$673,979.71 for its “November Invoice.”

13. The Stipulated RFS Order also provides that “[t]he stay under 11 U.S.C. § 362(a), to the extent applicable, shall remain in place as to the Escrow Account for all other purposes.” *Id.* at ¶ 2.

ARGUMENT

14. The Association believes that funds in the Escrow Account are subject to contractual restrictions that limit its interest in the Escrow Funds to a contingent, residual right under Section 541(a), at best. *See* Escrow Agreement at ¶ 7 (“This Escrow is established for the sole and singular purpose of guaranteeing sufficient funds to pay the contractors and other professionals . . . for the repairs . . . and expenses of the Property, and no other Association purpose, and the AOA shall have no claim, or contingent claim, to the funds in Escrow.”).

15. While relief from stay is arguably not required, Escrow Company has requested the Association seek the entry of an order granting relief from the automatic stay, to the extent it applies, to allow Escrow Company to pay Reoccupy Professionals for pre-petition (and post-petition) invoices as may be approved by the Board, and to permit the Debtor to continue depositing SPAs into the Escrow Account.

16. Section 362(d) of the Bankruptcy Code provides that,

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; . . .

11 U.S.C. § 362(d)(1).

17. While the Bankruptcy Code does not define “cause” for relief from the automatic stay under section 362(d)(1), it should be analyzed on a case-by-case basis. *See In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

18. Cause exists for the entry of an order granting relief from the stay as requested. First, where escrow funds are held by a third party for the benefit of others and the debtor lacks unfettered control, such funds are not property of the estate, and actions to disburse those funds do not implicate the automatic stay. *See, e.g., In re Pettit*, 217 F.3d 1072, 1078–79 (9th Cir. 2000) (estate succeeds only to debtor’s limited interest in escrowed funds); *In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091, 1099 (9th Cir. 1997) (property held in trust or escrow for another is excluded from the estate). The Escrow Agreement at issue identifies “individual owners” as the “third-party beneficiaries of the Escrow Agreement.” *See* Escrow Agreement at ¶ 15.

19. Second, the Owners (i.e., members of the Association) have paid their SPAs for Project Reoccupy with the understanding that the funds would be held in an Escrow Account and used to pay Reoccupy Professionals. The Association’s failure to do so could expose it to potential liability.

CONCLUSION

The Debtor requests the entry of a “comfort order” granting relief from the automatic stay, to the extent it is applicable, to permit the payment of all

authorized costs associated with Project Reoccupy pursuant to the terms of the Escrow Agreement, and such other relief as may be appropriate.

DATED: Honolulu, Hawaii, February 6, 2026

/s/ Chuck C. Choi

CHUCK C. CHOI

ALLISON A. ITO

Attorneys for Debtor

and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re

Association of Apartment Owners of
Kauai Beach Villas,

Debtor and
Debtor-in-possession

Bk. No. 25-01103
(Chapter 11)
(Subchapter V)

DECLARATION OF LARRY D. WARNER

I, LARRY D. WARNER, hereby declare that:

1. I am the President of the Board of Directors of the Apartment Owners of Kauai Beach Villas, and have served in that capacity since 2021. I am competent to testify to the matters set forth herein, and I have personal knowledge of those matters except and unless stated to be upon information and belief.

2. This declaration is submitted in support of the foregoing *Motion for Relief from the Automatic Stay as to Escrow Account* (the “Motion”). Terms used herein and not otherwise defined shall have the meanings given them in the Motion.

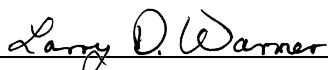
3. I have reviewed the Motion and the factual allegations made therein are true and correct to the best of my information, knowledge and belief.

4. Attached to the Motion as Exhibit “A” is a true and correct copy of the Escrow Agreement.

5. Attached to the Motion as Exhibits “B” and “C” are true and correct copies of the draw requests for the months of November and December, 2025 (without voluminous detail), as prepared by the Hardy Group, the Construction Manager for Project Reoccupy.

In accordance with 28 U.S.C. § 1746(2), I declare under penalty of perjury and under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: Johnburg, Illinois, February 6, 2026.



LARRY D. WARNER

EXHIBIT A

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS OF
KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

This Escrow Agreement made on January 30, 2024, ~~2023~~ (the "Escrow" Agreement), between and among First American Vacation Ownership Title & Escrow Services, a Hawaii corporation, whose address is 1099 Alakea Street, Suite 2430, Honolulu, HI 96813, hereinafter the ("Escrow Co.") and the Association of Apartment Owners of Kauai Beach Villas (AOAO or Association), whose address is 4330 Kauai Beach Drive, Lihue, Hawaii 96766, and the individual unit owners listed on Exhibit A attached hereto, and hereinafter collectively "Owners."

RECITALS

1. Escrow is established at the Escrow Co. for the sole purpose of paying for any repairs, remedial work and all costs, professional fees and expenses regarding Buildings G and H at the Kauai Beach Villas (the Property) and as outlined in that Association of Apartment Owners of Kauai Beach Villas Board Resolution on Special Assessment attached hereto as Exhibit B (the Resolution). Therefore, any funds deposited in Escrow shall not be used for any other repairs, remedial work, general expenses and/or renovations in connection with the Kauai Beach Villas, including, but not limited to, Buildings A through F.

2. The Board of Directors of the AOAO has, by the Declaration, By-Laws and HRS Section 514-148(e), held a Special Board Meeting on December 4, 2023, and approved the Special Assessment as reflected in the Resolution.

3. To ensure payment of the repairs and remedial work only for the Property, as per the Resolution, the AOAO and the Owners listed on Exhibit A, have agreed to create an escrow

(the Escrow) to deposit the special assessment payments made pursuant to the Resolution and to guarantee that such funds are only used to pay for the repairs, remedial work and all costs, professional fees and expenses regarding the Property as noted in the Resolution, including the costs of the Escrow Company.

4. Upon execution of this Escrow Agreement, the Owners will make the special assessment payments per the Resolution to the Association's Managing Agent via the Association's lockbox, and then to the Association's Managing Agent who will deposit all such special assessments into the Escrow. Such special assessment amounts represent the Owner's pro rata or percentage of common interest (PCI) share for the repairs, remedial work and all costs, professional fees and expenses regarding the Property.

5. The Escrow Co. will verify that all funds are deposited into the Escrow, which will be an interest-bearing account, and held until the disbursement of the funds to the AOA-approved contractors and other professionals (e.g., architects, engineers and/or construction managers) has been approved by the Association's Board of Directors and Construction Manager for payments to such contractors and other professionals for work performed on the Property.

6. The Escrow Co. will be authorized to make the disbursements as per this Agreement upon presentation by the contractors and other professionals for request of payment, either as progress payments or final Payment provided that such request is approved in writing by the Association's Board of Directors and Construction Manager.

7. This Escrow is established for the sole and singular purpose of guaranteeing sufficient funds to pay the contractors and other professionals (estimated at \$4.1 million in total) for the repairs, remedial work and all costs, professional fees and expenses of the Property, and no other Association purpose, and the AOA shall have no claim, or contingent claim, to the

funds in the Escrow. Once all claims for the repairs and remedial work of the Property have been satisfied, including evidence of the satisfaction of any potential mechanic's or materialmen's liens, any funds remaining in Escrow will be returned to the Owners in proportion with their PCI.

DISBURSEMENT FROM THE ESCROW

8. Upon the execution of this Agreement by the AOA and the Escrow Co. for the repair and remedial work of the Property, the Owners listed on Exhibit A will deposit into Escrow (as noted above by making payment to the Association's lockbox), the amounts required by their proportionate share or PCI of the costs of repairs, remedial work and all costs, professional fees and expenses as indicated on Exhibit A and Exhibit B, for a total escrow fund of \$4.1 million.

9. Once the total escrow fund of \$4.1 million has been deposited into the Escrow account, the Escrow Co. shall make the Disbursements as periodic requests for payments are made by the contractors and other professionals, however, such payments must first be approved in writing by the Association's Board of Directors and Construction Manager, and payment requests shall be evidenced by statements and other supporting documents..

10. If the total collected escrowed funds do not reach \$4.1 million, and/or the repair and remedial work for the Property cannot proceed, the Association's Board of Directors will inform the Escrow Co. in writing, and upon receipt of such information, Escrow will return all funds held in escrow to the Owners listed on Exhibit A in the same amount of their paid PCI share of the costs of repairs, remedial work and all costs, professional fees and expenses.

11. The Escrow Co. may make final payment to the contractors and other professionals upon the submission to the Escrow Co. of all documents related to final completion

of the contract, including signed material and subcontractor lien releases, completion of all punch list items as certified by the Association's Board of Directors and Construction Manager.

12. Dispute Resolution. If (a) any dispute, difference or controversy shall arise between or among the AOA and contractor concerning this Agreement; or (b) any conflicting demands shall be made upon the Escrow Co., or (c) Escrow Co. shall be uncertain as to Escrow Co.'s duties hereunder in any circumstance hereafter arising, then and in any such event, Escrow Co. will submit any dispute to Dispute Prevention and Resolution (**DPR**) in Honolulu for the purpose of having the respective rights of the Parties and any other claimant or claimants adjudicated, or Escrow Co.'s duties hereunder determined through binding arbitration before a single neutral arbitrator to be selected by the Parties to such dispute.

13. Exculpation. It is understood and agreed that:

a. Escrow Co. shall have no duty to inquire into, or responsibility for, the form, content, due execution, genuineness, validity, sufficiency or enforceability of, or any other matter or thing concerning, any contract, agreement, certification or other document, instrument, or paper referred to herein or received by or delivered to Escrow in connection herewith;

b. Escrow Co. may assume, and shall be fully protected in assuming, for all purposes hereof, that all papers received by or delivered to Escrow in connection herewith have been signed by the proper persons, that such persons are the persons whose signatures purport to appear thereon, and that such persons are duly authorized to execute such papers;

c. Escrow Co. shall not be liable for any act Escrow Co. may do or omit to do in good faith or in accordance with the advice of Escrow's counsel;

d. Escrow Co. shall have no responsibility for the accuracy of the Recitals hereinabove set forth, all of which Recitals are the Recitals solely of the parties; and

e. Escrow Co. shall have no duties or responsibilities hereunder of any kind or nature whatsoever, save and except as herein expressly set forth.

14. Notice. All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, sent by certified or registered mail, postage prepaid, addressed to the parties at the addresses set forth above. Any communication so mailed shall be deemed delivered four (4) business days after mailing.

15. Counterparts. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original and said counterparts together shall constitute one and the same instrument.

16. Third-Party Beneficiaries. The individual owners identified in Exhibit A attached hereto are intended by the Parties hereto to be third-party beneficiaries of this Escrow Agreement.

By DocuSigned by:
Dave Womer
86CBAA63E132429...
Its President

Escrow

ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS

By Larry D. Warner
Its President

AOAO

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS

By _____

Its _____

AOAO

Individual Unit Owners

[Exhibit B – List of the amount to be paid and
identification of each owner that is a third-
party beneficiary of this Agreement]

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

Association of Apartment Owners of Kauai Beach Villas
Board Resolution on Special Assessment

Whereas, the Association of Apartment Owners of Kauai Beach Villas (the "Association") is governed by the Condominium Property Act, as codified in Hawaii Revised Statutes ("HRS") Chapter 514B, as amended, the Restated Declaration of Condominium Property Regime of Kauai Beach Villas, as amended (the "Declaration"), and the Restated Bylaws of the Association of Apartment Owners of Kauai Beach Villas (the "Bylaws");

Whereas, Section A of the Declaration, on page 3, notes the following description of the residential apartment buildings in the Kauai Beach Villas Project (the "Project"):

Residential Apartment Buildings. The Project shall contain eight (8) separate residential apartment buildings constructed principally of concrete, glass, wood, and gypsum board. There shall be four (4) different and distinct residential apartment building types, designated as Types I, II, III, and IV. Apartment Building Types I (Building B) and III (Buildings A, C, E and F) shall each contain eighteen (18) apartments. Each Type IV residential apartment building (Building H) shall contain twelve (12) apartments, and each Type II residential apartment building (Buildings D and G) shall contain twenty-four (24) apartments. All residential apartment buildings are three stories in height without basements.³

Whereas, pursuant to Section A.4 of the Declaration, on page 7, the Association's common elements include, but are not limited to, the following:

4.¹⁴ Common Elements. One freehold estate is hereby designated in all remaining portions of the Project, herein called the "common elements", including specifically but not limited to:

- (a) The Land in fee simple.
- (b) All unfinished, undecorated portions of all perimeter (including party) and load-bearing walls, all structural components, foundations, floor slabs, columns, girders, beams, supports, roofs, halls, corridors, exterior stairs, stairways, entrances of apartment buildings, exits, and walkways of the apartment buildings.

Whereas, Section F of the Declaration, on pages 13 – 14 provides that the administration of the Project, including, but not limited to, repairing, maintaining, and making all necessary reparations regarding the common elements, vests with the Association;

Whereas, Article III, Section 2 of the Bylaws, on page 8, provides in relevant part that the Association's Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Project in compliance with all governmental requirements and for the maintenance and repair of the Project in good order and condition;

Whereas, on or about July 6, 2023, the Association's engineering firm, Wiss, Janney, Elstner Associates, Inc. ("WJE") issued a letter report dated June 30, 2023 (the "WJE Letter Report"), to the Association, noting, among other things, that (i) "[t]o maintain the occupancy of Buildings G and H, additional shoring is required due to ongoing deterioration of the post-tensioning strands and steel columns", (ii) certain post-tension strands needed to be repaired/replaced, (iii) lanais in these buildings had to remain closed as repairs were needed due to the severe concrete deterioration at the leading-edge creating fall hazards, and compromising the lanai rail post connection, and (iv) the soffits in these buildings required a more permanent repair (collectively the "Work");

Whereas, after receiving this WJE Letter Report, on or about July 13, 2023, the Board received clarification from WJE that until the noted shoring was done, Buildings G and H should not be occupied and the lanais should remain closed;

Whereas, on or about July 13, 2023, the Association, by and through its Board, issued two (2) letters dated June 13, 2023, to all owners in the Association letting them know of the findings of the WJE Letter Report, including the structural issues, that a design of the remediation would be needed, proposals for the Work also need to be solicited (i.e., The Hardy Group ("THG") was engaged to do this and it would take about 2 months), and due to the hazardous conditions, Buildings G and H could not be occupied;

Whereas, the Association's Board issued a further letter to the owners dated July 24, 2023, that included an update that THG, the Association's Project Manager, was working with WJE to design the remediation fix for the issues identified in Buildings G and H, and once this design was developed, THG would solicit contractors and obtain pricing for the Work;

Whereas, the Association's Board received a budget and related information for the Work on or about September 6, 2023, from THG, and it noted, among other things, that the Work would take about 8 weeks per building, a contractor could be mobilized in about 90 to 120-days, that the repairs would allow for Buildings G and H to be safely occupied, and the estimated costs of the Work totaled over \$2.25 million;

Whereas, the Association's Management Company was asked to seek a possible loan from local banks for \$2.5 million (this would include possible contingencies), and as of about mid-September 2023 the three largest local banks all declined to loan this amount to the Association;

Whereas, the Association's Board issued a further letter to the owners dated October 9, 2023, informing them, among other things, that the Board approved moving forward with the remedial efforts to Building G and H as recommended by WJE and THG, that the Association's reserves contained approximately \$1 million, that the costs for the Work were approximately \$2.5 million, and that the Board anticipated having to approve a special assessment for this amount given that the banks were not inclined to provide the Association with a loan;

Whereas, on or about November 10, 2023, the Board received an updated estimate from THG for the costs of the Work, and the construction total costs are now estimated at \$4,067,417, plus security fencing for Buildings G and H totaling \$49,500, or a total estimated cost for the Work of \$4,116,917

Whereas, HRS Section 514B-148(e) provides in relevant part that:

(e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subsection that has not been approved by a majority of the unit owners, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

Furthermore, an emergency situation is defined as follows:

"Emergency situation" means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property that the association must insure.

Whereas, the Work on Buildings G and H is necessary and constitutes an "emergency situation", as the current conditions if not corrected threaten personal safety;

Whereas, the repairs related to the Work on Buildings G and H could not have been reasonably foreseen by the Association's Board in the preparation and distribution of the 2023 annual operating budget, as the Board only received the WJE Letter Report in July and the budget for the Work from THG in September, and a revised budget estimate in November 2023;

Whereas, the Association's reserves are not sufficient to borrow \$4.1 million therefrom, and the banks are not willing to provide a loan to the Association for even a portion of this amount, i.e., \$2.5 million;

Whereas, the Work cannot be delayed per the advice of WJE and THG, the Association's consultants; and

Whereas, the Association's Board has determined that it is necessary and in the best interest of the Association to perform the Work and to impose a special assessment against all owners in the total amount of \$4.1 million to fund the Work.

Now Therefore Be It Resolved, that the Board has determined that it is necessary and in the best interest of the Association to impose a special assessment in the amount of \$4.1 million to cover the costs and expenses to perform the Work.

Be It Further Resolved, that the per unit cost of the special assessment shall be:

Unit Type	Assessment per Unit
2 bedroom / 2 bath -Type 5,6	\$33,456
2 bedroom / 2 bath -Type 1,2,3	\$33,169
2 bedroom / 2 bath -Type 4	\$32,923
1 bedroom / 2 bath	\$22,960
1 bedroom / 1 bath	\$19,024

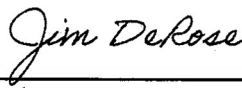
Be it Further Resolved, that this special assessment will be due in full from each owner within 60 days of the date of the Association's billing/notice of special assessment.

Be It Further Resolved, that a copy of this resolution shall be sent along with the notice of special assessment to all owners at their last known addresses of record.

CERTIFICATE OF SECRETARY

This certifies that the undersigned is the Secretary of the Association of Apartment Owners of Kauai Beach Villas and that the foregoing is the full, true and correct resolution adopted by the Board of Directors thereof at a meeting of said Board held on December 4, 2023, legally called and held, at which a quorum was present and voting.

DATED: 12/6/23



 Secretary

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS OF
KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

This Escrow Agreement made on _____, 2023 (the "Escrow" Agreement), between and among _____, a Hawaii corporation, whose address is _____, hereinafter the ("Escrow Co.") and the Association of Apartment Owners of Kauai Beach Villas (AOAO or Association), whose address is 4330 Kauai Beach Drive, Lihue, Hawaii 96766, and the individual unit owners listed on Exhibit A attached hereto, and hereinafter collectively "Owners."

RECITALS

1. Escrow is established at the Escrow Co. for the sole purpose of paying for any repairs, remedial work and all costs, professional fees and expenses regarding Buildings G and H at the Kauai Beach Villas (the Property) and as outlined in that Association of Apartment Owners of Kauai Beach Villas Board Resolution on Special Assessment attached hereto as Exhibit B (the Resolution). Therefore, any funds deposited in Escrow shall not be used for any other repairs, remedial work, general expenses and/or renovations in connection with the Kauai Beach Villas, including, but not limited to, Buildings A through F.

2. The Board of Directors of the AOAO has, by the Declaration, By-Laws and HRS Section 514-148(e), held a Special Board Meeting on December 4, 2023, and approved the Special Assessment as reflected in the Resolution.

3. To ensure payment of the repairs and remedial work only for the Property, as per the Resolution, the AOAO and the Owners listed on Exhibit A, have agreed to create an escrow

(the Escrow) to deposit the special assessment payments made pursuant to the Resolution and to guarantee that such funds are only used to pay for the repairs, remedial work and all costs, professional fees and expenses regarding the Property as noted in the Resolution, including the costs of the Escrow Company.

4. Upon execution of this Escrow Agreement, the Owners will make the special assessment payments per the Resolution to the Association's Managing Agent via the Association's lockbox, and then to the Association's Managing Agent who will deposit all such special assessments into the Escrow. Such special assessment amounts represent the Owner's pro rata or percentage of common interest (PCI) share for the repairs, remedial work and all costs, professional fees and expenses regarding the Property.

5. The Escrow Co. will verify that all funds are deposited into the Escrow, which will be an interest-bearing account, and held until the disbursement of the funds to the AOA-approved contractors and other professionals (e.g., architects, engineers and/or construction managers) has been approved by the Association's Board of Directors and Construction Manager for payments to such contractors and other professionals for work performed on the Property.

6. The Escrow Co. will be authorized to make the disbursements as per this Agreement upon presentation by the contractors and other professionals for request of payment, either as progress payments or final Payment provided that such request is approved in writing by the Association's Board of Directors and Construction Manager.

7. This Escrow is established for the sole and singular purpose of guaranteeing sufficient funds to pay the contractors and other professionals (estimated at \$4.1 million in total) for the repairs, remedial work and all costs, professional fees and expenses of the Property, and no other Association purpose, and the AOA shall have no claim, or contingent claim, to the

funds in the Escrow. Once all claims for the repairs and remedial work of the Property have been satisfied, including evidence of the satisfaction of any potential mechanic's or materialmen's liens, any funds remaining in Escrow will be returned to the Owners in proportion with their PCI.

DISBURSEMENT FROM THE ESCROW

8. Upon the execution of this Agreement by the AOA and the Escrow Co. for the repair and remedial work of the Property, the Owners listed on Exhibit A will deposit into Escrow (as noted above by making payment to the Association's lockbox), the amounts required by their proportionate share or PCI of the costs of repairs, remedial work and all costs, professional fees and expenses as indicated on Exhibit A and Exhibit B, for a total escrow fund of \$4.1 million.

9. Once the total escrow fund of \$4.1 million has been deposited into the Escrow account, the Escrow Co. shall make the Disbursements as periodic requests for payments are made by the contractors and other professionals, however, such payments must first be approved in writing by the Association's Board of Directors and Construction Manager, and payment requests shall be evidenced by statements and other supporting documents..

10. If the total collected escrowed funds do not reach \$4.1 million, and/or the repair and remedial work for the Property cannot proceed, the Association's Board of Directors will inform the Escrow Co. in writing, and upon receipt of such information, Escrow will return all funds held in escrow to the Owners listed on Exhibit A in the same amount of their paid PCI share of the costs of repairs, remedial work and all costs, professional fees and expenses.

11. The Escrow Co. may make final payment to the contractors and other professionals upon the submission to the Escrow Co. of all documents related to final completion

of the contract, including signed material and subcontractor lien releases, completion of all punch list items as certified by the Association's Board of Directors and Construction Manager.

12. Dispute Resolution. If (a) any dispute, difference or controversy shall arise between or among the AOA and contractor concerning this Agreement; or (b) any conflicting demands shall be made upon the Escrow Co., or (c) Escrow Co. shall be uncertain as to Escrow Co.'s duties hereunder in any circumstance hereafter arising, then and in any such event, Escrow Co. will submit any dispute to Dispute Prevention and Resolution (**DPR**) in Honolulu for the purpose of having the respective rights of the Parties and any other claimant or claimants adjudicated, or Escrow Co.'s duties hereunder determined through binding arbitration before a single neutral arbitrator to be selected by the Parties to such dispute.

13. Exculpation. It is understood and agreed that:

a. Escrow Co. shall have no duty to inquire into, or responsibility for, the form, content, due execution, genuineness, validity, sufficiency or enforceability of, or any other matter or thing concerning, any contract, agreement, certification or other document, instrument, or paper referred to herein or received by or delivered to Escrow in connection herewith;

b. Escrow Co. may assume, and shall be fully protected in assuming, for all purposes hereof, that all papers received by or delivered to Escrow in connection herewith have been signed by the proper persons, that such persons are the persons whose signatures purport to appear thereon, and that such persons are duly authorized to execute such papers;

c. Escrow Co. shall not be liable for any act Escrow Co. may do or omit to do in good faith or in accordance with the advice of Escrow's counsel;

d. Escrow Co. shall have no responsibility for the accuracy of the Recitals hereinabove set forth, all of which Recitals are the Recitals solely of the parties; and

e. Escrow Co. shall have no duties or responsibilities hereunder of any kind or nature whatsoever, save and except as herein expressly set forth.

14. Notice. All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, sent by certified or registered mail, postage prepaid, addressed to the parties at the addresses set forth above. Any communication so mailed shall be deemed delivered four (4) business days after mailing.

15. Counterparts. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original and said counterparts together shall constitute one and the same instrument.

16. Third-Party Beneficiaries. The individual owners identified in Exhibit A attached hereto are intended by the Parties hereto to be third-party beneficiaries of this Escrow Agreement.

By _____

Its _____

Escrow

ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS

By _____

Its _____

AOAO

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS

By _____

Its _____

AOAO

Individual Unit Owners

[Exhibit B – List of the amount to be paid and
identification of each owner that is a third-
party beneficiary of this Agreement]

**ESCROW AGREEMENT FOR ASSOCIATION OF APARTMENT OWNERS
OF KAUAI BEACH VILLAS AND THE INDIVIDUAL UNIT OWNERS**

EXHIBIT B



**The
Hardy
Group**

TM

December 19, 2025

Kauai Beach Villas AOA
4330 Kauai Beach Drive
Lihue, HI 96766

RE: Kauai Beach Villas Draw:

JHG Draw 6.0 Kauai Beach Villas – November 2025 Funding Request

Dear Kauai Beach Villas AOA,

Enclosed you will find our funding request related to the Kauai Beach Villas –
Project Reoccupy:

SUBTOTAL Draw 6.0 Amount - Paid Invoices	\$0
SUBTOTAL Draw 6.0 Amount - Unpaid Invoices	\$718,154.84

Total Draw 6.0 Amount: \$718,154.84

Upon your review and approval, please see attached wire information to send the requested funds.

We appreciate the opportunity to work with you on this project.

Sincerely,

Eduardo Limon
Sr. Project Director

cc: Jessica Ogasawara – Project Director

Atlanta
6085 Barfield Avenue
Suite 200
Atlanta, GA 30328

New York
450 Seventh Avenue
Suite 2000
New York, NY 10123

Los Angeles
4640 Admiralty
Way, Suite 231
Marina Del Rey, CA
90292

Orlando
135 W. Central
Boulevard
Orlando, FL 32801

Honolulu
733 Bishop
Suite 1800
Honolulu, HI 96813

Chicago
15255 S. 94th Avenue
5th Floor
Orlando Park, IL 60462

www.jhgi.com • 404.256.8800 • info@jhgi.com

EXHIBIT C



**The
Hardy
Group**

TM

January 16, 2025

Kauai Beach Villas AOA
4330 Kauai Beach Drive
Lihue, HI 96766

RE: Kauai Beach Villas Draw:

JHG Draw 7.0 Kauai Beach Villas – December 2025 Funding Request

Dear Kauai Beach Villas AOA,

Enclosed you will find our funding request related to the Kauai Beach Villas –
Project Reoccupy:

SUBTOTAL Draw 7.0 Amount - Paid Invoices	\$0
SUBTOTAL Draw 7.0 Amount - Unpaid Invoices	\$41,789.13

Total Draw 7.0 Amount: \$41,789.13

Upon your review and approval, please see attached wire information to send the requested funds.

We appreciate the opportunity to work with you on this project.

Sincerely,

Eduardo Limon
Sr. Project Director

cc: Jessica Ogasawara – Project Director

Atlanta
6085 Barfield Avenue
Suite 200
Atlanta, GA 30328

New York
450 Seventh Avenue
Suite 2000
New York, NY 10123

Los Angeles
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