REAL ESTATE COMMISSION

Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii
www.hawaii.gov/hirec

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Friday, September 26, 2008

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room

King Kalakaua Building

335 Merchant Street, First Floor

Honolulu, Hawaii

Present: Trudy Nishihara, Chair, Broker/Honolulu Commissioner

Louis Abrams, Broker/Kauai Commissioner

Annette Aiona, Broker/Hawaii Island Commissioner

Carol Ball, Broker/Maui Commissioner

William S. Chee, Broker/Honolulu Commissioner (late arrival)

Frances Gendrano, Broker/Honolulu Commissioner

Michele Sunahara Loudermilk, Public/Honolulu Commissioner

Neil K. Fujitani, Supervising Executive Officer Diane Choy Fujimura, Senior Real Estate Specialist

Amy Endo, Real Estate Specialist David J. Grupen, Real Estate Specialist Cynthia Yee, Senior Condominium Specialist Cheryl Leong, Condominium Specialist Benedyne Stone, Condominium Specialist

Shari Wong, Deputy Attorney General

Karyn Takahashi, Secretary

Tania Nakano, Real Estate Recovery Fund Clerk

Tammy Norton, Secretary

Jason White

Donald K. Gatewood April O'Donnell Joe O'Donnell

David Nakashima, Esq.

Myoung Oh, Hawaii Association of REALTORS®

Nancy Donahue Jones, Hawaii Association of REALTORS®

Absent: Stanley Kuriyama, Vice Chair, Broker/Honolulu Commissioner

Mark Suiso, Public/Honolulu Commissioner

Call to Order: The Chair called the meeting to order at 9:04 a.m., at which time quorum was

established.

Chair's Report:

The Chair announced that the Commission may move into executive session to consider and evaluate personal information relating to individuals applying for licensure in accordance with Section 92-5(a)(1), HRS, and/or to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities in accordance with Section 92-5(a)(4), HRS.

Commissioners Kuriyama and Suiso were excused from the meeting. Prior notifications of their non-attendance were received.

Commissioner Chee arrived.

Executive Officer's Report:

The Executive Officer informed the Commissioners that the original applications with any original associated documents to be considered at the meeting were available for review.

Announcements, Introductions, Correspondence and Additional Distribution

Additional Distribution

The following materials were distributed to the Commissioners prior to the start of the meeting:

- 6. Licensing Applications
 - h. Kihei Kai Rental Association dba Kihei Kai Oceanfront Condos

Minutes of Previous Meeting

Upon a motion by Commissioner Aiona, seconded by Commissioner Gendrano, it was voted on and unanimously carried to accept the minutes of the August 29, 2008 meeting.

Committees and Program of Work:

Condominium Review Committee

Selection of Printer for the Hawaii Condominium Bulletin

Specialist Leong reported that on August 25, 2008, a request for quotation for a printer for the Hawaii Condominium Bulletin was submitted through the Hawaii Electronic Procurement System (HePS) with a closing date of September 10, 2008. Four bids were received.

According to the lump sum view of the abstract of responses from the procurement website, General Printing was the lowest listed bidder on the website; however, an in-depth review of the breakdown and associated costs indicates that Pacific Business Forms, Ltd. has the actual lowest bid.

Specialist Leong stated that she requested samples of work products from all the bidders and the samples were available for their viewing. She noted that Pacific Business Forms, Ltd. works in conjunction with Service Printers and Service Printers has printed the Real Estate Bulletin in the past.

Commissioner Abrams moved to accept the bid of Pacific Business Forms, Ltd. for the printing of five issues of the Hawaii Condominium Bulletin. Commissioner Ball seconded the motion. The motion was voted on and unanimously carried.

Pursuant to contract, CAI Hawaii's request for prior approval of expenditures and reimbursement for the delivery of the October 25, 2008 seminar – "Defending and Winning Suits Against the Associations or Boards" by a national out of state speaker

Senior Specialist Yee stated that Mr. Milton Motooka submitted a letter withdrawing his request for this seminar. The speaker is unable to conduct the seminar.

At this time, Commissioner Loudermilk stated that she had concerns about the topic of this seminar. Senior Specialist Yee responded that the Commission has previously approved this seminar.

After discussion, it was concluded the Staff will send a strong letter to Mr. Motooka, CAI Hawaii Chapter, about handling this topic fairly and to present both sides of the issue.

Education Review Committee – Selection of Printer for the Real Estate Bulletin

Senior Specialist Fujimura reported that at the September 10, 2008, Education Review Committee meeting, the Committee accepted the bid from Pioneer Ventures, Inc. dba Fisher Printing for four issues of the real estate Bulletin. However, after upon further review of additional information and costs received, the lowest bid is from another vendor—Westwood Development Group Hawaii, LLC. She stated that she had samples of work product from Westwood Development Group Hawaii, LLC available for viewing.

Commissioner Abrams moved to reconsider the decision made at the September 10, 2008 meeting. Commissioner Ball seconded the motion. The motion was voted on and unanimously carried.

Commissioner Abrams moved to accept the bid from Westwood Development Group Hawaii, LLC to print four issues of the real estate Bulletin. Commissioner Ball seconded the motion. The motion was voted on and unanimously carried.

Licensing – Ratification:

Upon a motion by Commissioner Ball, seconded by Commissioner Chee, it was voted on and unanimously carried to ratify the attached list.

Licensing – Applications:

The EO informed the Commissioners that the information provided to the Commissioners is related only to the issue that is before the Commission for consideration. The other materials submitted are available for the Commissioners review should they desire to review it. If the applicants have an issue, which is personal in nature, they have the right to request that their application be considered in executive session.

Donald K. Gatewood

Donald K. Gatewood was asked if he wished to have his application for a real estate salesperson's license considered in executive session. He declined the offer.

Mr. Gatewood stated for the record that his last name is Gatewood, not Gateway as stated on the agenda.

Mr. Gatewood stated that he has passed the test. He stated that he started this process four months ago and is confident his application will pass. He is here today to see if he can get his license application expedited ASAP, as he has a job waiting and is excited to get started.

Mr. Gatewood stated that he has a payment plan set-up and is ready to move forward.

The Deputy AG inquired if he was current with his scheduled payments. Mr. Gatewood replied in the affirmative.

Upon a motion by Commissioner Abrams, seconded by Commissioner Chee, it was voted on and unanimously carried to take this matter under advisement.

Jason White

Jason White was asked if he wished to have his application for a real estate salesperson's license considered in executive session. He declined the offer.

Mr. White expressed his gratitude to the Commission for their time and assistance.

Mr. White stated that he deeply regrets his actions and has learned from his mistakes. He has a new life and hopes to have a successful career with Starwood. He stated that he has an amazing opportunity and his family and future rests on a favorable outcome.

Upon a motion by Commissioner Chee, seconded by Commissioner Abrams, it was voted on and unanimously carried to take this matter under advisement.

Hale Pau Hana Resort, LLC

David Nakashima, Esq., was present and representing Hale Pau Hana Resort, LLC. Mr. Nakashima indicated that he did not want the condominium hotel operator registration application for Hale Pau Hana Resort, LLC considered in executive session upon his signing in at the meeting.

Specialist Grupen reported that the applicant answered yes to complaints, charges of unlicensed activity, and pending disciplinary actions. The applicant was notified by RICO that Hale Pau Hana Resort, LLC may be engaged in unlicensed activity.

There is an inconsistency between the declaration and bylaws regarding transient accommodations. The restated declaration states that, "the owners of the respective apartments shall have the absolute right to lease or rent such apartments for transient purposes, subject to all the provisions of this Declaration." The restated bylaws state, "The apartments of the Project shall be used only for residential purposes." HRS section 467-30(f) states that, "A condominium hotel operator shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws."

Mr. Nakashima stated that he represents Hale Pau Hana Resort, LLC. He stated that they are trying to comply with all applicable laws and regulations. He believes all conditions have been met—bonding, insurance, etc. The one bump in the road is the discrepancy in the declaration and bylaws. He stated that through their analysis, the bylaws are secondary to the declaration. He noted that Hawaii law states that the declaration prevails and the bylaws also state that the declaration prevails. Mr. Nakashima stated that they are moving to amend the bylaws.

Mr. Nakashima stated that through their request, RICO has deferred action on the complaint until after the Commission decides on this CHO registration application.

Mr. Nakashima stated that they do want to comply, will comply, and wish to go on with their business.

Commissioner Ball inquired if the RICO investigation is what prompted this application. Mr. Nakashima replied yes, he was retained two months ago when the investigation was initiated. The RICO investigation did prompt the application, up until then his client believed they were in compliance.

Commissioner Ball inquired if they are in compliance with all zoning ordinances. Mr. Nakashima responded that he believes they are, but he did not have personal knowledge as the Maui counsel handled that issue.

Commissioner Gendrano inquired what the maximum stay is on rentals. Mr. Nakashima responded less than 30 days.

Commissioner Abrams moved to take this matter under advisement. Commissioner Chee seconded the motion. The motion was voted on and unanimously carried.

Kihei Kai Rental Association dba Kihei Kai Oceanfront Condos

Joe and April O'Donnell were present on behalf of the applicant. They were asked if they wished to have the condominium hotel registration application for Kihei Kai Rental Association dba Kihei Kai Oceanfront Condos considered in executive session. They declined the offer.

Shannon Imlay, Esq., from the firm Paul Johnson Park & Niles, representing Sharon and Douglass Viger, owners of unit no. 3 at Kihei Kai provided testimony via teleconference.

Specialist Grupen stated that the applicant has provided all required documents for the approval of the CHO application, staff received a request that the application be included on agenda to allow public input.

Specialist Grupen reported that based on information provided with the application, it appears that the applicant may have been involved in condominium hotel operator activity prior to submitting the application for registration. While the "Use of the Project" as defined in the bylaws originally included language regarding transient living accommodations, the subsequent bylaws were changed to the following language, "The Units of the project shall be used only for their respective purposes as set forth in Declaration and for no other purposes." He noted that HRS section 467-30(f) states that "A condominium hotel operator shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws."

Specialist Grupen also added that paragraph F of the Master Deed and Declaration of Horizontal Property Regime Kihei Kai states "Use: Except for the commercial Apartment, the Apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and the owners of the respective Apartments shall have the absolute right to lease or rent such Apartments for transient purposes, subject to all the provisions of this Declaration.

Mr. O'Donnell stated that he is representing 18 unit owners of Kihei Kai. Per the declaration he believes they have met all CHO requirements and have worked with their attorney and believe they are in compliance and are ready to move forward.

Mr. O'Donnell stated that they have always operated as a rental property and have found that because they are a small operation they fall through the cracks with the management company and this is the reason they are moving forward with the CHO.

Ms. Imlay stated that there is a pending action in condo court against AOAO Kihei Kai. She stated that the bylaws do not appear to meet the requirements of HRS section 467-30(f) as the bylaws do not specifically permit transient lodging.

Ms. Imlay stated that the action before the condo court involves unlawful acts by KKRA; specifically, operating as a condominium hotel operator without registering with the commission or obtaining a bond; violation of the bylaws because the AOAO is conducting KKRA, which is an active business for profit on behalf of the owners, and violation of the bylaws because Kihei Kai is operating without a qualified management agent.

Ms. Imlay referred to an informal non-binding opinion issued at the October 27, 2006, commission meeting.

Commissioner Loudermilk stated that the informal non-binding opinion language was much broader—transient by definition is 30 days or less. The fact that it does not state 30 days in the declaration neither adds or subtracts in defining what is transient as 30 days is already part of the statute.

Ms. Imlay stated that the language in Kihei Kai's declaration is nearly identical to the language in the informal non-binding opinion. Commissioner Loudermilk disagreed.

Commissioner Abrams moved to take this matter under the advisement. Commissioner Chee seconded the motion. The motion was voted on and unanimously carried.

Executive Session:

Upon a motion by Commissioner Abrams, seconded by Commissioner Gendrano, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a)(1), HRS, "To consider and evaluate personal information, relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;" and pursuant to Section 92-5(a)(4), HRS, "To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."

Upon a motion by Commissioner Chee, seconded by Commissioner Abrams, it was voted on and unanimously carried to move out of executive session.

Chair's Report:

At this time, Chair Nishihara announced that Tania Nakano, Real Estate Recovery Fund Clerk, will be retiring at the end of the month. The Commissioners presented Ms. Nakano with a certificate of appreciation and a lei. The Commissioners wished Ms. Nakano well.

Licensing – Applications:

Donald K. Gatewood

After a review of the information presented by the applicant, Commissioner Abrams moved to approve the real estate salesperson's license application of Donald K. Gatewood. Commissioner Gendrano seconded the motion. The motion was voted on and unanimously carried.

David A. Meier

After a review of the information submitted by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson's license application of David A. Meier. Commissioner Abrams seconded the motion. The motion was voted on and unanimously carried.

Jeffrey Gerard Healey

After a review of the information presented by the applicant, Commissioner Abrams moved to approve real estate salesperson's license application of Jeffrey Gerard Healey. Commissioner Aiona seconded the motion. The motion was voted on and unanimously carried.

Jason White

After a review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate salesperson's license application of Jason White, with conditions. Commissioner Gendrano seconded the motion. The motion was voted on and unanimously carried.

Alan Dale Peery

After a review of the information presented by the applicant, Commissioner Loudermilk moved to most likely approve the real estate salesperson's license of Alan Dale Peery, with conditions. Commissioner Abrams seconded the motion. The motion was voted on and unanimously carried.

Philip E. Horton

After a review of the information presented by the applicant, Commissioner Loudermilk moved to approve the real estate broker's license application of Philip E. Horton, subject to Mr. Horton informing the principal broker or sole proprietor real estate broker (including a broker-in-charge of a real estate branch office) with whom he is associated with that a conditional real estate broker license has been granted and the terms of the conditional license, amongst other conditions. Mr. Horton may request that the conditions be removed after a period of two years. Commissioner Chee seconded the motion. The motion was voted on and unanimously carried.

After a review of the information presented by the applicant, Commissioner Loudermilk moved to deny the real estate sole proprietor application of Philip E. Horton pursuant to sections 467-8, 436B-19(1), 436B-19(8), and 436B-19(12), Hawaii Revised Statutes. Commissioner Chee seconded the motion. The motion was voted on and unanimously carried.

Hale Pau Hana Resort, LLC

Commissioner Loudermilk stated that although the language in the declaration and bylaws are in conflict, article 6, section 3, of the declaration will control.

After discussion, it was concluded that if the bylaws state "residential" and the declaration state "transient" and there is a conflict, the bylaws deferring to the declaration meets the provisions of section 467-30(f), HRS.

Commissioner Abrams moved to approve the condominium hotel registration application of Hale Pau Hana Resort LLC. Commissioner Chee seconded the motion. The motion was voted on and unanimously carried.

Kihei Kai Rental Association dba Kihei Kai Oceanfront Condos

Commissioner Loudermilk moved to approve the condominium hotel registration application of Kihei Kai Rental Association dba Kihei Kai Oceanfront Condos. Commissioner Abrams seconded the motion. The motion was voted on and unanimously carried.

Minutes of the September 26, 2008 Meeting Page 9 Next Meeting: Friday, October 31, 2008 9:00 a.m. Queen Liliuokalani Conference Room King Kalakaua Building 335 Merchant Street, First Floor Honolulu, Hawaii Adjournment: With no further business to discuss, Chair Nishihara adjourned the meeting at 10:43 a.m. Reviewed and approved by: <u>/s/ Neil K. Fujitani</u> Neil K. Fujitani Supervising Executive Officer October 22, 2008 Date

Approved with corrections; see minutes of _____ meeting.

Approved as circulated.

Real Estate Commission

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NKF:kt/092608

APPROVED APPLICATIONS FOR REAL ESTATE REAL ESTATE COMMISSION MEETING ON SEPTEMBER 26, 2008

Brokers – Limited Liability Companies and Partnerships Tentacle, LLC, BRYCL Resorts International Glenn S. Nakamura, PB	Effective Date 09/17/08
Brokers – Corporations and Partnerships Hawaii Pacific Realty Group Incorporated Brad Nelson, PB	Effective Date 08/18/08
Premier Real Estate Auctioneers, Inc.	08/18/08
Aristotle Karas, PB Mahalo Maui Real Estate, Inc.	08/26/08
John Madden, PB Royal Palm Properties, Inc. Rollie J. Litteral, PB	09/10/08
Brokers – Limited Liability Companies and Partnerships Name Mark DeCastro Realty & Associates, LLC Mark DeCastro, PB	Effective Date 10/01/08
Property One, LLC	09/08/08
Catherine K. L. C. Wong, PB The Ocean Realty, LLC Pei-Yu Wen, PB	09/09/08
Brokers – Sole Proprietor Brenda L. Stuart, Encore Realty Group Daniel v. Loo, Makani Realty Stefan P. Schweitzer, Kauai Isle Real Estate Dayna Harris, Molokai Vacation Properties	Effective Date 08/21/08 08/29/08 09/11/08 09/12/08
Branch Office Certified Management Inc. Toni A. Floerke-Politsch, PB	Effective Date 08/14/08
Certified Management Inc. Toni A. Floerke-Politsch, PB	09/01/08
Certified Management Inc. Toni A. Floerke-Politsch, PB	09/01/08
<u>Trade Name</u> Erin Wakabayashi, New Era Realty Wailea Makena Real Estate, Inc., Peter Gelsey Realtor	Effective Date 08/08/08 08/18/08
Equivalency to Uniform Section of Examination Certificate Shaj A. Mathew Codie L. Moore Katherine Margah Oberg Ronald Lee Carter Michelle Marie Dansby Jennifer Ann Carter	Expiration Date 08/22/10 08/22/10 08/22/10 08/22/10 08/22/10 08/22/10

Equivalency to Uniform Section of Examination Certificate	Expiration Date
Julie C. Coit	08/25/10
Michael Butterfield Romo	08/26/10
John McLean Alley, II	08/26/10
George W. Manz	08/26/10
Andrew Charles Cohen	09/02/10
Gillian Marie Hampton	09/02/10
Sandra Lee Benson	09/02/10
Patricia Viola Edgette	09/03/10
Renee Sherengo Rogers	09/03/10
Carolyn Ann Wilfley	09/03/10
James Joseph Forno	09/03/10
Jonathan Adam Froug	09/03/10
Lorna R. Gagnon	09/08/10
Linda Marie Hicks	09/08/10
Terence Wynn Isobe	09/08/10
Alan Dale Peery	09/08/10
Thomas Michael Murray	09/08/10
Shirin Hope Kouhkan	09/08/10
Carole Louise Isaacs	09/08/10
Javin Hope	09/08/10
Dale Clinton White	09/08/10
Janine Olga Hol	09/08/10
Katherina Lamothe	09/09/10
Jill Mari Adres	09/09/10
Dash Eugene Turner	09/09/10
Raul Escobedo	09/09/10
Michael Brent Santoli	09/09/10
William Lee Duff	09/09/10
Jasmin Paul	09/09/10
Connie Michelle Gibson	09/11/10
Ronald K. Mormile	09/11/10
Monique Patricia Hawkins	09/11/10
Andy Darryl Goch	09/15/10
James Shearer Buckley	09/16/10
Alan Dean Williams	09/17/10
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Educational Equivalency Certificate	Expiration Date
Shaj A. Mathew	08/22/10
Guy Vance Kidder	08/22/10
Codie L. Moore	08/22/10
Katherine Margah Oberg	08/22/10
Ronald Lee Carter	08/22/10
Michelle Marie Dansby	08/22/10
Jennifer Ann Carter	08/22/10
Julie C. Coit	08/25/10
Michael Butterfield Romo	08/26/10
Liezl Baldugo Chang	08/26/10
Alyssa J. Park	08/26/10
John McLean Alley, II	08/26/10
George W. Manz	08/26/10
Andrew Charles Cohen	09/02/10
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Educational Equivalency Certificate	Expiration Date
Gillian Marie Hampton	09/02/10
Sandra Lee Benson	09/02/10
Patricia Viola Edgette	09/03/10
Renee Sherengo Rogers	09/03/10
Carolyn Ann Wilfley	09/03/10
Ashley Keola Colter	09/03/10
James Shearer Buckley	09/03/10
Richard C. York	09/03/10
James Joseph Forno	09/03/10
Jonathan Adam Froug	09/03/10
Mark Jacobsen	09/03/10
Lorna R. Gagnon	09/08/10
Linda Marie Hicks	09/08/10
Terence Wynn Isobe	09/08/10
Alan Dale Peery	09/08/10
Thomas Michael Murray	09/08/10
Shirin Hope Kouhkan	09/08/10
Carole Louise Isaacs	09/08/10
Javin Hope	09/08/10
Dale Clinton White	09/08/10
Janine Olga Hol	09/08/10
Katherina Lamothe	09/09/10
Jill Mari Adres	09/09/10
Dash Eugene Turner	09/09/10
Raul Escobedo	09/09/10
Jennifer Akiko Shimada	09/09/10
Michael Brent Santoli	09/09/10
William Lee Duff	09/09/10
Connie Michelle Gibson	09/11/10
Ronald K. Mormile	09/11/10
Monique Patricia Hawkins	09/11/10
Janice Marie Hurtado	09/15/10
Cecilia Yeong-Briones	09/15/10
Nanette C. Macapanpan	09/16/10
Andy Darryl Goch	09/15/10
Dianne Kiyoye Sasaki	09/17/10
Alan Dean Williams	09/17/10
Real Estate Broker Experience Certificate	Expiration Date
David Andrew Vickers	08/20/10
Shaj A. Mathew	08/22/10
Guy Vance Kidder	08/22/10
Codie L. Moore	08/22/10
Ray Wai-Kang Chan	08/22/10
Rhon Taylor Stark	08/22/10
Ambur Kim Kiriu	08/22/10
Ronald Lee Carter	08/22/10
Michelle Marie Dansby	08/22/10
Jaime Florian-Merida	08/22/10
Michael Butterfield Romo	08/26/10
Arlene Joy Kelly	08/26/10

Real Estate Broker Experience Certificate Patricia Viola Edgette Stephen Anthony Cipres David John Kucic James Joseph Forno Jonathan Adam Froug Lorna R. Gagnon Terence Wynn Isobe GinaAnn Makanani Apana-Joseph Mayako Deanna Sugi Katherina Lamothe Michael Brent Santoli William Lee Duff Hugh Charles O'Reilly Jennifer Elizabeth Jacobsen Tomoko Matsumoto Ronald K. Mormile Lisa Sonoe Oyama Vickie Lyn Graham Christina Victorius Metzler Michelle Luo Leung	Expiration Date 09/03/10 09/03/10 09/03/10 09/03/10 09/03/10 09/08/10 09/08/10 09/08/10 09/08/10 09/09/10 09/09/10 09/09/10 09/09/10 09/09/10 09/11/10 09/11/10 09/11/10 09/15/10 09/15/10 09/16/10
Real Estate Broker (upgrade) Daniel V. Loo Richard H. Tompkins Dean D. Young Ryan E. T. Phillips Lani Jones Hiroka Brenna Brenda L. Stuart Drudi Johnston Sandra M. Storm Christopher S. Murphy Michael M. Nishizawa John Madden John D. Ragan Pamela J. Benton Man-Lin Chen Lieu Elle Phillips Daniel E. Marsh Dayna Harris Kevin T. Rochlitz Donna Stratman	Effective Date 08/07/08 08/14/08 08/14/08 08/14/08 08/18/08 08/20/08 08/21/08 08/22/08 08/22/08 08/29/08 08/25/08 08/25/08 08/26/08 08/29/08 09/03/08 09/03/08 09/04/08 09/04/08 09/08/08 09/12/08 09/12/08
Condominium Hotel Operator Vacation Rental Booking Management, LLC	Effective Date 08/28/08