UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

[X] Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended March 31, 2019

or

[ ] Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number 1-5103

BARNWELL INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**72-0496921**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1100 Alakea Street, Suite 2900, Honolulu, Hawaii	**96813**
(Address of principal executive offices)	(Zip code)

(808) 531-8400

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☒
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

As of May 7, 2019 there were 8,277,160 shares of common stock, par value $0.50, outstanding.

BARNWELL INDUSTRIES, INC.
AND SUBSIDIARIES

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

BARNWELL INDUSTRIES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	March 31, 2019	September 30, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	**$ 6,427,000**	$ 5,965,000
Certificates of deposit	**—**	741,000
Accounts and other receivables, net of allowance for doubtful accounts of: $40,000 at March 31, 2019; $42,000 at September 30, 2018	**2,066,000**	1,965,000
Income taxes receivable	**102,000**	2,461,000
Other current assets	**2,198,000**	950,000
Total current assets	**10,793,000**	12,082,000
Income taxes receivable, net of current portion	**460,000**	429,000
Asset for retirement benefits	**997,000**	848,000
Investments	**970,000**	1,608,000
Property and equipment	**71,874,000**	73,010,000
Accumulated depletion, depreciation, and amortization	**(58,949,000)**	(56,599,000)
Property and equipment, net	**12,925,000**	16,411,000
Total assets	**$ 26,145,000**	$ 31,378,000
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	**$ 1,615,000**	$ 1,191,000
Accrued capital expenditures	**121,000**	232,000
Accrued compensation	**246,000**	568,000
Accrued operating and other expenses	**1,057,000**	1,140,000
Current portion of asset retirement obligation	**648,000**	444,000
Other current liabilities	**1,913,000**	54,000
Total current liabilities	**5,600,000**	3,629,000
Deferred rent	**150,000**	107,000
Liability for retirement benefits	**4,515,000**	4,410,000
Asset retirement obligation	**6,500,000**	6,678,000
Deferred income tax liabilities	**205,000**	315,000
Total liabilities	**16,970,000**	15,139,000
Commitments and contingencies		
Equity:		
Common stock, par value $0.50 per share; authorized, 20,000,000 shares: 8,445,060 issued at March 31, 2019 and September 30, 2018	**4,223,000**	4,223,000
Additional paid-in capital	**1,350,000**	1,350,000
Retained earnings	**6,548,000**	13,253,000
Accumulated other comprehensive loss, net	**(764,000)**	(514,000)
Treasury stock, at cost: 167,900 shares at March 31, 2019 and September 30, 2018	**(2,286,000)**	(2,286,000)
Total stockholders' equity	**9,071,000**	16,026,000
Non-controlling interests	**104,000**	213,000
Total equity	**9,175,000**	16,239,000
Total liabilities and equity	**$ 26,145,000**	$ 31,378,000

See Notes to Condensed Consolidated Financial Statements

BARNWELL INDUSTRIES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Revenues:				
Oil and natural gas	**$ 1,924,000**	$ 859,000	**$ 3,156,000**	$ 1,812,000
Contract drilling	**987,000**	1,016,000	**2,150,000**	1,858,000
Sale of interest in leasehold land	**—**	—	**165,000**	—
Gas processing and other	**52,000**	100,000	**87,000**	161,000
	2,963,000	1,975,000	**5,558,000**	3,831,000
Costs and expenses:				
Oil and natural gas operating	**1,249,000**	575,000	**2,586,000**	1,233,000
Contract drilling operating	**1,231,000**	883,000	**2,547,000**	1,704,000
General and administrative	**1,461,000**	1,563,000	**3,009,000**	3,044,000
Depletion, depreciation, and amortization	**758,000**	227,000	**1,577,000**	507,000
Impairment of assets	**243,000**	37,000	**2,413,000**	37,000
Interest expense	**—**	—	**4,000**	—
Gain on sales of assets	**—**	(2,250,000)	**—**	(2,250,000)
	4,942,000	1,035,000	**12,136,000**	4,275,000
(Loss) earnings before equity in loss of affiliates and income taxes	**(1,979,000)**	940,000	**(6,578,000)**	(444,000)
Equity in loss of affiliates	**(207,000)**	(80,000)	**(286,000)**	(233,000)
Loss (earnings) before income taxes	**(2,186,000)**	860,000	**(6,864,000)**	(677,000)
Income tax (benefit) provision	**(35,000)**	197,000	**(140,000)**	(306,000)
Net (loss) earnings	**(2,151,000)**	663,000	**(6,724,000)**	(371,000)
Less: Net (loss) earnings attributable to non-controlling interests	**(26,000)**	(16,000)	**1,000**	(33,000)
Net (loss) earnings attributable to Barnwell Industries, Inc.	**$ (2,125,000)**	$ 679,000	**$ (6,725,000)**	$ (338,000)
Basic and diluted net (loss) earnings per common share attributable to Barnwell Industries, Inc. stockholders	**$ (0.26)**	$ 0.08	**$ (0.81)**	$ (0.04)
Weighted-average number of common shares outstanding:				
Basic and diluted	**8,277,160**	8,277,160	**8,277,160**	8,277,160

See Notes to Condensed Consolidated Financial Statements

BARNWELL INDUSTRIES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME
(Unaudited)

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Net (loss) earnings	**$ (2,151,000)**	$ 663,000	**$ (6,724,000)**	$ (371,000)
Other comprehensive income (loss):				
Foreign currency translation adjustments, net of taxes of $0	**130,000**	(181,000)	**(283,000)**	(187,000)
Retirement plans - amortization of accumulated other comprehensive loss into net periodic benefit cost, net of taxes of $0	**16,000**	39,000	**33,000**	63,000
Total other comprehensive income (loss)	**146,000**	(142,000)	**(250,000)**	(124,000)
Total comprehensive (loss) income	**(2,005,000)**	521,000	**(6,974,000)**	(495,000)
Less: Comprehensive (loss) income attributable to non-controlling interests	**(26,000)**	(16,000)	**1,000**	(33,000)
Comprehensive (loss) income attributable to Barnwell Industries, Inc.	**$ (1,979,000)**	$ 537,000	**$ (6,975,000)**	$ (462,000)

See Notes to Condensed Consolidated Financial Statements

BARNWELL INDUSTRIES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY
Six months ended March 31, 2019 and 2018
(Unaudited)

	Shares Outstanding	Common Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock	Non-controlling Interests	Total Equity
Balance at September 30, 2017	8,277,160	$ 4,223,000	$ 1,350,000	$ 15,023,000	$ (1,058,000)	$ (2,286,000)	$ 931,000	$ 18,183,000
Distributions to non-controlling interests	—	—	—	—	—	—	(506,000)	(506,000)
Net loss	—	—	—	(338,000)	—	—	(33,000)	(371,000)
Share-based compensation	—	—	1,000	—	—	—	—	1,000
Foreign currency translation adjustments, net of taxes of $0	—	—	—	—	(187,000)	—	—	(187,000)
Retirement plans - amortization of accumulated other comprehensive loss into net periodic benefit cost, net of taxes of $0	—	—	—	—	63,000	—	—	63,000
Balance at March 31, 2018	8,277,160	$ 4,223,000	$ 1,351,000	$ 14,685,000	$ (1,182,000)	$ (2,286,000)	$ 392,000	$ 17,183,000
Balance at September 30, 2018	8,277,160	$ 4,223,000	$ 1,350,000	$ 13,253,000	$ (514,000)	$ (2,286,000)	$ 213,000	$ 16,239,000
Cumulative impact from the adoption of ASU No. 2014-09	—	—	—	20,000	—	—	—	20,000
Distributions to non-controlling interests	—	—	—	—	—	—	(110,000)	(110,000)
Net loss (earnings)	—	—	—	(6,725,000)	—	—	1,000	(6,724,000)
Foreign currency translation adjustments, net of taxes of $0	—	—	—	—	(283,000)	—	—	(283,000)
Retirement plans - amortization of accumulated other comprehensive loss into net periodic benefit cost, net of taxes of $0	—	—	—	—	33,000	—	—	33,000
Balance at March 31, 2019	**8,277,160**	**$ 4,223,000**	**$ 1,350,000**	**$ 6,548,000**	**$ (764,000)**	**$ (2,286,000)**	**$ 104,000**	**$ 9,175,000**

See Notes to Condensed Consolidated Financial Statements

BARNWELL INDUSTRIES, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six months ended March 31,	
	2019	2018
Cash flows from operating activities:		
Net loss	**$ (6,724,000)**	$ (371,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Equity in loss of affiliates	**286,000**	233,000
Depletion, depreciation, and amortization	**1,577,000**	507,000
Gain on sale of oil and natural gas properties	**—**	(2,250,000)
Impairment of assets	**2,413,000**	37,000
Retirement benefits expense	**109,000**	148,000
Income tax receivable, noncurrent	**(31,000)**	(460,000)
Deferred rent liability	**43,000**	43,000
Accretion of asset retirement obligation	**300,000**	136,000
Deferred income tax (benefit) expense	**(106,000)**	523,000
Asset retirement obligation payments	**(288,000)**	(538,000)
Share-based compensation benefit	**(23,000)**	(26,000)
Retirement plan contributions and payments	**(119,000)**	(210,000)
Sale of interest in leasehold land, net of fees paid	**(124,000)**	—
Increase (decrease) from changes in current assets and liabilities	**1,866,000**	(1,233,000)
Net cash used in operating activities	**(821,000)**	(3,461,000)
Cash flows from investing activities:		
Purchase of certificates of deposit	**—**	(3,958,000)
Proceeds from the maturity of certificates of deposit	**741,000**	3,176,000
Distribution from equity investees in excess of earnings	**352,000**	—
Net proceeds (fees paid on) from sale of interest in leasehold land	**124,000**	(343,000)
Proceeds from sale of oil and natural gas assets	**1,519,000**	763,000
Payments to acquire oil and natural gas properties	**(355,000)**	—
Capital expenditures - oil and natural gas	**(168,000)**	(288,000)
Capital expenditures - all other	**(488,000)**	(65,000)
Increase in notes receivable	**(300,000)**	—
Net cash provided by (used in) investing activities	**1,425,000**	(715,000)
Cash flows from financing activities:		
Distributions to non-controlling interests	**(110,000)**	(506,000)
Net cash used in financing activities	**(110,000)**	(506,000)
Effect of exchange rate changes on cash and cash equivalents	**(32,000)**	(206,000)
Net increase (decrease) in cash and cash equivalents	**462,000**	(4,888,000)
Cash and cash equivalents at beginning of period	**5,965,000**	16,281,000
Cash and cash equivalents at end of period	**$ 6,427,000**	$ 11,393,000

See Notes to Condensed Consolidated Financial Statements

BARNWELL INDUSTRIES, INC.
AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation

The condensed consolidated financial statements include the accounts of Barnwell Industries, Inc. and all majority-owned subsidiaries (collectively referred to herein as "Barnwell," "we," "our," "us," or the "Company"), including a 77.6%-owned land investment general partnership (Kaupulehu Developments) and a 75%-owned land investment partnership (KD Kona 2013 LLLP). All significant intercompany accounts and transactions have been eliminated.

Undivided interests in oil and natural gas exploration and production joint ventures are consolidated on a proportionate basis. Barnwell's investments in both unconsolidated entities in which a significant, but less than controlling, interest is held and in variable interest entities in which the Company is not deemed to be the primary beneficiary are accounted for by the equity method.

Unless otherwise indicated, all references to "dollars" in this Form 10-Q are to U.S. dollars.

Unaudited Interim Financial Information

The accompanying unaudited condensed consolidated financial statements and notes have been prepared by Barnwell in accordance with the rules and regulations of the United States ("U.S.") Securities and Exchange Commission. Accordingly, certain information and footnote disclosures normally included in the annual financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP") have been condensed or omitted pursuant to those rules and regulations, although the Company believes that the disclosures made are adequate to make the information not misleading. These condensed consolidated financial statements and notes should be read in conjunction with the consolidated financial statements and notes thereto included in Barnwell's September 30, 2018 Annual Report on Form 10-K. The Condensed Consolidated Balance Sheet as of September 30, 2018 has been derived from audited consolidated financial statements.

In the opinion of management, all adjustments (which include only normal recurring adjustments) necessary to present fairly the financial position at March 31, 2019, results of operations and comprehensive (loss) income for the three and six months ended March 31, 2019 and 2018, and equity and cash flows for the six months ended March 31, 2019 and 2018, have been made. The results of operations for the period ended March 31, 2019 are not necessarily indicative of the operating results for the full year.

Use of Estimates in the Preparation of Condensed Consolidated Financial Statements

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires management of Barnwell to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities. Actual results could differ significantly from those estimates. Significant assumptions are required in the valuation of deferred tax assets, asset retirement obligations, share-based payment arrangements, obligations for

retirement plans, contract drilling estimated costs to complete, proved oil and natural gas reserves, and the carrying value of other assets, and such assumptions may impact the amount at which such items are recorded.

Revenue Recognition

On October 1, 2018, the Company adopted Accounting Standards Updates ("ASU") No. 2014-09, "Revenue from Contracts with Customers" ("Topic 606") using the modified retrospective method applied to all contracts. Results for reporting periods beginning October 1, 2018 are presented under Topic 606, while prior period amounts are not adjusted and continue to be reported under the accounting standards in effect for the prior period. The Company recorded an adjustment to retained earnings on October 1, 2018 due to the cumulative impact of adopting Topic 606. See Note 7 "Revenue from Contracts with Customers" for the required disclosures related to the impact of adopting this standard and a discussion of the Company's updated policies related to revenue recognition discussed below.

Barnwell operates in and derives revenue from the following three principal business segments:

- *Oil and Natural Gas Segment* - Barnwell engages in oil and natural gas development, production, acquisitions and sales in Canada.

- *Land Investment Segment* - Barnwell invests in land interests in Hawaii.

- *Contract Drilling Segment* - Barnwell provides well drilling services and water pumping system installation and repairs in Hawaii.

Oil and Natural Gas - Barnwell's investments in oil and natural gas properties are located in Alberta, Canada. These property interests are principally held under governmental leases or licenses. Barnwell sells the large majority of its oil, natural gas and natural gas liquids production under short-term contracts between itself and marketers based on prices indexed to market prices and recognizes revenue at a point in time when the oil, natural gas and natural gas liquids are delivered, as this is where Barnwell's performance obligation is satisfied and title has passed to the customer. Under Topic 606, there were no changes to revenue recognition for the Oil and Natural Gas segment.

Land Investment - Barnwell is entitled to receive contingent residual payments from the entities that previously purchased Barnwell's land investment interests under contracts entered into in prior years. The residual payments under those contracts become due when the entities sell lots and/or residential units in the areas that were previously sold under the aforementioned contracts or when a preferred payment threshold is achieved. Prior to the adoption of Topic 606, the payments received by Barnwell were deemed contingent revenues under the full accrual method and were recognized as revenues when payment is assured, which was generally when a lot sale occurred or the preferred payments were made. The adoption of Topic 606 did not fundamentally change the way Barnwell recognizes these contingent residual revenue payments due primarily to the variable consideration constraint provision of Topic 606, whereby the constraint is removed only when it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. As such, there were no significant changes to revenue recognition for the Land Investment segment under Topic 606.

Contract Drilling - Through fixed price contracts which are normally less than twelve months in duration, Barnwell drills water and water monitoring wells and installs and repairs water pumping systems in Hawaii. Under the Topic 606 requirements, Barnwell recognizes revenue from well drilling or the installation of pumps over time based on total costs incurred on the projects relative to the total expected

costs to satisfy the performance obligation as management believes this is an accurate representation of the percentage of completion as control is continuously transferred to the customer. Uninstalled materials, which typically consists of well casing or pumps, are excluded in the costs-to-costs calculation for the duration of the contract as including these costs would result in a distortion of progress towards satisfaction of the performance obligation due to the resulting cumulative catch-up in margin in a single period. An equal amount of cost and revenue is recorded when uninstalled materials are controlled by the customer, which is typically when Barnwell has the right to payment for the materials and when the materials are delivered to the customer's site or location and such materials have been accepted by the customer. Uninstalled materials are held in inventory and included in "Other current assets" on the Company's Condensed Consolidated Balance Sheets until control is transferred to the customer. When the estimate on a contract indicates a loss, Barnwell records the entire estimated loss in the period the loss becomes known.

Contract price and cost estimates are reviewed periodically as work progresses and adjustments proportionate to the costs incurred to date to total estimated costs at completion are reflected in contract revenues in the reporting period when such estimates are revised. The nature of accounting for these contracts is such that refinements of the estimating process for changing conditions and new developments may occur and are characteristic of the process. Many factors can and do change during a contract performance obligation period which can result in a change to contract profitability including differing site conditions (to the extent that contract remedies are unavailable), the availability of skilled contract labor, the performance of major material suppliers, the performance of major subcontractors, unusual weather conditions and unexpected changes in material costs, among others. These factors may result in revisions to costs and income and are recognized in the period in which the revisions become known. Revenue and profit in future periods of contract performance are recognized using the adjusted estimate.

Management evaluates the performance of contracts on an individual basis. In the ordinary course of business, but at least quarterly, we prepare updated estimates that may impact the cost and profit or loss for each contract. The cumulative effect of revisions in estimates of the total forecasted revenue and costs, including any unapproved change orders and claims, during the course of the contract is reflected in the accounting period in which the facts that caused the revision become known. Changes in the cost estimates can have a material impact on our consolidated financial statements and are reflected in the results of operations when they become known.

To the extent a contract is deemed to have multiple performance obligations, the Company allocates the transaction price of the contract to each performance obligation using its best estimate of the standalone selling price of each distinct good or service in the contract.

Billings in excess of costs and estimated earnings represent advanced billings on certain drilling and pump contracts and are included in "Other current liabilities" on the Company's Condensed Consolidated Balance Sheets. Costs and estimated earnings in excess of billings represent certain amounts under customer contracts that were earned and billable, but yet not invoiced, and are included in "Other current assets" on the Company's Condensed Consolidated Balance Sheets.

Significant Accounting Policies

Other than the change to Barnwell's "Revenue Recognition" policy noted above, there have been no other changes to Barnwell's significant accounting policies as described in the Notes to Consolidated Financial Statements included in Item 8 of the Company's most recently filed Annual Report on Form 10-K.

Recently Adopted Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2014-09, “Revenue from Contracts with Customers (Topic 606),” which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The impacts of Topic 606 on Barnwell are described in the "Revenue Recognition" accounting policy noted above as well as Note 7.

In January 2016, the FASB issued ASU No. 2016-01, "Recognition and Measurement of Financial Assets and Financial Liabilities," which provides guidance for the recognition, measurement, presentation, and disclosure of financial assets and liabilities. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, “Classification of Certain Cash Receipts and Cash Payments,” which addresses the classification of certain specific cash flow issues including debt prepayment or extinguishment costs, settlement of certain debt instruments, contingent consideration payments made after a business combination, proceeds from the settlement of certain insurance claims and distributions received from equity method investees. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements

In October 2016, the FASB issued ASU No. 2016-16, “Intra-Entity Transfers of Assets Other Than Inventory,” which provides guidance on recognition of current income tax consequences for intra-entity asset transfers (other than inventory) at the time of transfer. This represents a change from current GAAP, where the consolidated tax consequences of intra-entity asset transfers are deferred until the transferred asset is sold to a third party or otherwise recovered through use. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, "Statement of Cash Flows - Restricted Cash," which requires that a statement of cash flows explain the change during the period in the total of cash, cash equivalents and amounts generally described as restricted cash or restricted cash equivalents. Thus, amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and the end-of-period total amounts set forth on the statement of cash flows. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements as Barnwell did not have restricted cash at the time of adoption.

In February 2017, the FASB issued ASU No. 2017-05, “Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets,” which clarifies the scope of Subtopic 610-20 and adds guidance for partial sales of nonfinancial assets. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements.

In March 2017, the FASB issued ASU No. 2017-07, “Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost,” which requires employers to report the service cost component separate from the other components of net pension benefit costs. The changes to the standard require employers to report the service cost component in the same line item as other compensation costs

arising from services rendered by employees during the reporting period. The other components of net benefit cost are required to be presented in the income statement separately from the service cost component and outside the subtotal of income from operations, if one is presented. If a separate line item is not used, the line item used in the income statement must be disclosed. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update changed the disclosure of net pension benefit costs in Note 5.

In May 2017, the FASB issued ASU No. 2017-09, "Stock Compensation - Scope of Modification Accounting," which provides clarification on when modification accounting should be used for changes to the terms or conditions of a share-based payment award. The Company adopted the provisions of this ASU effective October 1, 2018. The adoption of this update did not have an impact on Barnwell's consolidated financial statements.

Impact of Pending Adoption of Significant Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, "Leases," which seeks to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and by disclosing key information about leasing arrangements. In general, a right-of-use asset and lease obligation will be recorded for leases exceeding a twelve-month term whether operating or financing, while the income statement will reflect lease expense for operating leases and amortization/interest expense for financing leases. The balance sheet amount recorded for existing leases at the date of adoption must be calculated using the applicable incremental borrowing rate at the date of adoption. Subsequent to the issuance of ASU No. 2016-02, the FASB issued ASU No. 2018-01, "Land Easement Practical Expedient for Transition to Topic 842," which provides an optional transition practical expedient to not evaluate existing or expired land easements under the new lease standard, ASU No. 2018-10, "Clarifying Pre-Effective Amendments to the Forthcoming Lease Accounting Rules," which provides further clarification on certain guidance within ASU No. 2016-02, "Leases," ASU No. 2018-11, "Leases (Topic 842) - Targeted Improvements," which allows for a transitional method of adopting the new lease standard, and ASU No. 2019-01, "Leases (Topic 842) - Codification Improvements," which amended certain aspects of the new leasing standard. These ASUs are effective for annual reporting periods beginning after December 15, 2018, and interim periods within those annual periods, and allow for the use of either a full retrospective approach for all periods presented in the period of adoption, or a modified retrospective transition approach. Barnwell is currently evaluating the effect that the adoption of this update will have on the consolidated financial statements.

2. (LOSS) EARNINGS PER COMMON SHARE

Basic (loss) earnings per share is computed using the weighted-average number of common shares outstanding for the period. Diluted (loss) earnings per share is calculated using the treasury stock method to reflect the assumed issuance of common shares for all potentially dilutive securities, which consist of outstanding stock options. Potentially dilutive shares are excluded from the computation of diluted (loss) earnings per share if their effect is anti-dilutive.

Options to purchase 318,750 and 493,750 shares of common stock were excluded from the computation of diluted shares for the three and six months ended March 31, 2019 and 2018, respectively, as their inclusion would have been antidilutive.

Reconciliations between net (loss) earnings attributable to Barnwell stockholders and common shares outstanding of the basic and diluted net (loss) earnings per share computations are detailed in the following tables:

	Three months ended March 31, 2019		
	Net Loss (Numerator)	Shares (Denominator)	Per-Share Amount
Basic net loss per share	**$ (2,125,000)**	**8,277,160**	**$ (0.26)**
Effect of dilutive securities - common stock options	—	—	
Diluted net loss per share	**$ (2,125,000)**	**8,277,160**	**$ (0.26)**

	Six months ended March 31, 2019		
	Net Loss (Numerator)	Shares (Denominator)	Per-Share Amount
Basic net loss per share	**$ (6,725,000)**	**8,277,160**	**$ (0.81)**
Effect of dilutive securities - common stock options	—	—	
Diluted net loss per share	**$ (6,725,000)**	**8,277,160**	**$ (0.81)**

	Three months ended March 31, 2018		
	Net Earnings (Numerator)	Shares (Denominator)	Per-Share Amount
Basic net earnings per share	$ 679,000	8,277,160	$ 0.08
Effect of dilutive securities - common stock options	—	—	
Diluted net earnings per share	$ 679,000	8,277,160	$ 0.08

	Six months ended March 31, 2018		
	Net Loss (Numerator)	Shares (Denominator)	Per-Share Amount
Basic net loss per share	$ (338,000)	8,277,160	$ (0.04)
Effect of dilutive securities - common stock options	—	—	
Diluted net loss per share	$ (338,000)	8,277,160	$ (0.04)

3. INVESTMENTS

A summary of Barnwell's non-current investments is as follows:

	March 31, 2019	September 30, 2018
Investment in Kukio Resort Land Development Partnerships	**$ 920,000**	$ 1,558,000
Investment in leasehold land interest – Lot 4C	**50,000**	50,000
Total non-current investments	**$ 970,000**	$ 1,608,000

Investment in Kukio Resort Land Development Partnerships

On November 27, 2013, Barnwell, through a wholly-owned subsidiary, entered into two limited liability limited partnerships, KD Kona 2013 LLLP and KKM Makai, LLLP ("KKM"), and indirectly acquired a 19.6% non-controlling ownership interest in each of KD Kukio Resorts, LLLP, KD Maniniowali, LLLP and KD Kaupulehu, LLLP ("KDK") for $5,140,000. These entities, collectively referred to hereinafter as the "Kukio Resort Land Development Partnerships," own certain real estate and development rights interests in the Kukio, Maniniowali and Kaupulehu portions of Kukio Resort, a private residential community on the Kona coast of the island of Hawaii, as well as Kukio Resort's real estate sales office operations. KDK holds interests in KD Acquisition, LLLP ("KD I") and KD Acquisition II, LP, formerly KD Acquisition II, LLLP ("KD II"). KD I is the developer of Kaupulehu Lot 4A Increment I ("Increment I"), and KD II is the developer of Kaupulehu Lot 4A Increment II ("Increment II"). Barnwell's ownership interests in the Kukio Resort Land Development Partnerships is accounted for using the equity method of accounting. The partnerships derive income from the sale of residential parcels, of which 19 lots remain to be sold at Increment I as of March 31, 2019, as well as from commissions on real estate sales by the real estate sales office.

In March 2019, KD II admitted a new development partner, Replay Kaupulehu Development, LLC ("Replay"), a party unrelated to Barnwell, in an effort to move forward with development of the remainder of Increment II at Kaupulehu. Effective March 7, 2019, KDK and Replay hold ownership interests of 55% and 45%, respectively, of KD II. Accordingly, Barnwell has a 10.8% indirect non-controlling ownership interest in KD II through KDK as of that date that will continue to be accounted for using the equity method of accounting. Barnwell continues to have an indirect 19.6% non-controlling ownership interest in KD Kukio Resorts, LLLP, KD Maniniowali, LLLP, and KD I.

During the six months ended March 31, 2019, Barnwell received net cash distributions in the amount of $314,000 from the Kukio Resort Land Development Partnerships after distributing $38,000 to non-controlling interests. There were no cash distributions from the Kukio Resort Land Development Partnership for the six months ended March 31, 2018.

Barnwell has the right to receive distributions from its non-controlling interest in KKM in proportion to its partner capital sharing ratio of 34.45%. Barnwell is entitled to a 100% preferred return up to $1,000,000 from KKM on any allocated equity in income of the Kukio Resort Land Development Partnerships for cumulative distributions to all of its partners in excess of $45,000,000 from those partnerships. With the distribution in the six months ended March 31, 2019, cumulative distributions from the Kukio Resort Land Development Partnerships totaled $45,000,000. Because we have no control over the distributions from the Kukio Resort Land Development Partnerships and the ability of the Kukio Resort Land Development Partnerships to make such distributions is dependent upon their future sales of lots, we have not recorded any estimated potential preferred return from KKM in our equity in income to date. However, if sufficient distributions are made by the Kukio Resort Land Development Partnerships in the future, Barnwell will have

equity in income of affiliates for the recognition of the preferred return. There is no assurance that any future distributions and resulting preferred returns will occur.

Equity in loss of affiliates was $207,000 and $286,000 for the three and six months ended March 31, 2019, respectively, and $80,000 and $233,000 for the three and six months ended March 31, 2018, respectively. The equity in the underlying net assets of the Kukio Resort Land Development partnerships exceeds the carrying value of the investment in affiliates by approximately $313,000 as of March 31, 2019, which is attributable to differences in the value of capitalized development costs and a note receivable. The basis difference will be recognized as the partnerships sell lots and recognize the associated costs and sell memberships for the Kuki`o Golf and Beach Club for which the receivable relates. There was no basis difference adjustment for the three months ended March 31, 2019 and 2018. The basis difference adjustments of $1,000 and $3,000 for the six months ended March 31, 2019 and 2018, respectively, increased equity in income of affiliates.

Summarized financial information for the Kukio Resort Land Development partnerships is as follows:

	Three months ended March 31,	
	2019	2018
Revenue	**$ 371,000**	$ 2,230,000
Gross profit	**$ 205,000**	$ 1,048,000
Net loss	**$ (904,000)**	$ (185,000)

	Six months ended March 31,	
	2019	2018
Revenue	**$ 2,319,000**	$ 3,790,000
Gross profit	**$ 851,000**	$ 1,734,000
Net loss	**$ (1,062,000)**	$ (688,000)

Sale of Interest in Leasehold Land

Kaupulehu Developments has the right to receive payments from KD I and KD II resulting from the sale of lots and/or residential units within Increment I and Increment II by KD I and KD II (see Note 12).

With respect to Increment I, Kaupulehu Developments is entitled to receive payments from KD I based on the following percentages of the gross receipts from KD I's sales of single-family residential lots in Increment I: 10% of such aggregate gross proceeds greater than $100,000,000 up to $300,000,000; and 14% of such aggregate gross proceeds in excess of $300,000,000. During the six months ended March 31, 2019, one single-family lot in Increment I was sold bringing the total amount of gross proceeds from single-family lot sales through March 31, 2019 to $216,400,000. As of March 31, 2019, 19 single-family lots, of the 80 lots developed within Increment I, remained to be sold.

Under the terms of the former Increment II agreement with KD II, Kaupulehu Developments was entitled to receive payments from KD II resulting from the sale of lots and/or residential units by KD II within Increment II. Through March 6, 2019, the payments were based on a percentage of gross receipts from KD II's sales ranging from 8% to 10% of the price of improved or unimproved lots or 2.60% to 3.25% of the price of units constructed on a lot, to be determined in the future depending upon a number of variables, including whether the lots are sold prior to improvement. Two ocean front parcels approximately two to three

acres in size fronting the ocean were developed within Increment II by KD II, of which one was sold in fiscal 2017 and one was sold in fiscal 2016. The remaining acreage within Increment II is not yet under development.

Through March 6, 2019, Kaupulehu Developments was also entitled to receive 50% of distributions otherwise payable from KD II to its members after the members of KD II have received distributions equal to the original basis of capital invested in the project, up to $8,000,000. Through March 6, 2019, a cumulative total of $3,500,000 was received from KD II under this arrangement, out of the $8,000,000 maximum. The former arrangement also included the rights to three single-family residential lots in Phase 2 of Increment II when developed, at no cost to Barnwell, with a commitment by Barnwell to begin to construct a residence upon each lot within six months of transfer.

Concurrent with the transaction whereby KD II admitted Replay as a new development partner, Kaupulehu Developments entered into new agreements with KD II whereby the aforementioned terms of the former Increment II arrangement were eliminated and Kaupulehu Developments will instead be entitled to 15% of the distributions of KD II, the cost of which is to be solely borne by KDK out of its 55% ownership interest in KD II, plus a priority payout of 10% of KDK's cumulative net profits derived from Increment II sales subsequent to Phase 2A, up to a maximum of $3,000,000 as to the priority payout. Such interests are limited to distributions or net profits interests and Barnwell will not have any partnership interests in KD II or KDK through its interest in Kaupulehu Developments. The new arrangement also gives Barnwell rights to three single-family residential lots in Phase 2A of Increment II, and four single-family residential lots in phases subsequent to Phase 2A when such lots are developed by KD II, all at no cost to Barnwell. Barnwell is committed to commence construction of improvements within 90 days of the transfer of the four lots in the phases subsequent to Phase 2A as a condition of the transfer of such lots. Also, in addition to Barnwell's existing obligations to pay professional fees to certain parties based on percentages of its gross receipts, Kaupulehu Developments is now also obligated to pay an amount equal to 0.72% and 0.2% of the cumulative net profits of KD II to KD Development, LLC and a pool of various individuals, respectively, all of whom are partners of KKM and are unrelated to Barnwell, in compensation for the agreement of these parties to admit the new development partner for Increment II. Such compensation will be reflected as the obligation becomes probable and the amount of the obligation can be reasonably estimated.

The Increment I percentage of sales arrangement between Barnwell and KD I remains unchanged.

The following table summarizes the Increment I and Increment II revenues from KD I and KD II and the amount of fees directly related to such revenues:

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Sale of interest in leasehold land:				
Revenues - sale of interest in leasehold land	**$ —**	$ —	**$ 165,000**	$ —
Fees - included in general and administrative expenses	**—**	—	**(20,000)**	—
Sale of interest in leasehold land, net of fees	**$ —**	$ —	**$ 145,000**	$ —

Investment in Leasehold Land Interest - Lot 4C

Kaupulehu Developments holds an interest in an area of approximately 1,000 acres of vacant leasehold land zoned conservation located adjacent to Lot 4A, which currently has no development potential without both a development agreement with the lessor and zoning reclassification. The lease terminates in December 2025.

4. OIL AND NATURAL GAS PROPERTIES

Dispositions

In October 2017, Barnwell entered into a Purchase and Sale Agreement with an independent third party and sold its oil and natural gas properties located in the Pouce Coupe area of Alberta, Canada. The sales price per the agreement was adjusted to $72,000 for customary purchase price adjustments to reflect the economic activity from the effective date of May 1, 2017 to the closing date. From Barnwell's net proceeds, $37,000 was withheld and remitted by the buyer to the Canada Revenue Agency for potential amounts due for Barnwell's Canadian income taxes. No gain or loss was recognized on this sale as it did not result in a significant alteration of the relationship between capitalized costs and proved reserves. Proceeds from the disposition were credited to the full cost pool.

In February 2018, Barnwell sold its oil properties located in the Red Earth area of Alberta, Canada. As a result of the significant impact that the sale of Red Earth had on the relationship between capitalized costs and proved reserves of the sold property and retained properties, Barnwell did not credit the sales proceeds to the full cost pool, but instead calculated a gain on the sale of Red Earth of $2,135,000 which was recognized in the three and six months ended March 31, 2018, in accordance with the guidance in Rule 4-10(c)(6)(i) of Regulation S-X.

Also included in gain on sales of assets for the three and six months ended March 31, 2018 is a $115,000 gain on the sale of Barnwell's interest in natural gas transmission lines and related surface facilities in the Stolberg area in February 2018.

There were no such gains or losses on sales of operating assets recognized in the same periods of the current year.

The $1,519,000 of proceeds from sale of oil and gas properties included in the Condensed Consolidated Statement of Cash Flows for the six months ended March 31, 2019 primarily represents the refund of income taxes previously withheld from what otherwise would have been proceeds on prior years' oil and gas property sales.

Acquisitions

During the quarter ended December 31, 2018, Barnwell acquired additional working interests in oil and natural gas properties located in the Wood River and Twining areas of Alberta, Canada for cash consideration of $355,000. The purchase price per the agreements were adjusted for customary purchase price adjustments to reflect the economic activity from the effective date to the closing date. The final determination of the customary adjustments to the purchase price has not yet been made however it is not expected to result in a material adjustment.

There were no oil and natural gas property acquisitions during the quarter ended March 31, 2019.

Impairment of Oil and Natural Gas Properties

Under the full cost method of accounting, the Company performs quarterly oil and natural gas ceiling test calculations. Barnwell's net capitalized costs exceeded the ceiling limitations by $243,000 and $2,413,000 for the three and six months ended March 31, 2019, respectively. There were no ceiling test impairments in the same periods of the prior year.

Changes in the 12-month rolling average first-day-of-the-month prices for oil, natural gas and natural gas liquids prices, the value of reserve additions as compared to the amount of capital expenditures to obtain them, and changes in production rates and estimated levels of reserves, future development costs and the market value of unproved properties, impact the determination of the maximum carrying value of oil and natural gas properties. In addition, the ceiling test is also impacted by any changes in management's quarterly evaluation of the Company's ability to fund the approximately $14,000,000 of future capital expenditures necessary over the next five years to develop the proved undeveloped reserves that are largely in the Twining area, the value of which is included in the calculation of the ceiling limitation. If facts, circumstances, estimates and assumptions underlying management's assessment of the Company's ability to fund such capital expenditures change such that it is no longer reasonably certain that all of the approximately $14,000,000 of capital expenditures necessary to develop the proved undeveloped reserves can be made, it is likely that we will incur a further ceiling test impairment at that time.

5. RETIREMENT PLANS

Barnwell sponsors a noncontributory defined benefit pension plan ("Pension Plan") covering substantially all of its U.S. employees. Additionally, Barnwell sponsors a Supplemental Employee Retirement Plan ("SERP"), a noncontributory supplemental retirement benefit plan which covers certain current and former employees of Barnwell for amounts exceeding the limits allowed under the Pension Plan, and a postretirement medical insurance benefits plan ("Postretirement Medical") covering eligible U.S. employees.

The following tables details the components of net periodic benefit (income) cost for Barnwell's retirement plans:

	Pension Plan		SERP		Postretirement Medical	
	Three months ended March 31,					
	2019	2018	**2019**	2018	**2019**	2018
Service cost	**$ 50,000**	$ 55,000	**$ 9,000**	$ 13,000	**$ —**	$ —
Interest cost	**94,000**	89,000	**21,000**	23,000	**25,000**	19,000
Expected return on plan assets	**(160,000)**	(148,000)	—	—	—	—
Amortization of prior service cost (credit)	**2,000**	2,000	**(1,000)**	(1,000)	**—**	—
Amortization of net actuarial loss	**1,000**	27,000	**1,000**	7,000	**13,000**	3,000
Net periodic benefit (income) cost	**$ (13,000)**	$ 25,000	**$ 30,000**	$ 42,000	**$ 38,000**	$ 22,000

	Pension Plan		SERP		Postretirement Medical	
	Six months ended March 31,					
	2019	2018	**2019**	2018	**2019**	2018
Service cost	**$ 100,000**	$ 108,000	**$ 18,000**	$ 20,000	**$ —**	$ —
Interest cost	**187,000**	178,000	**42,000**	38,000	**50,000**	38,000
Expected return on plan assets	**(321,000)**	(296,000)	**—**	—	**—**	—
Amortization of prior service cost (credit)	**3,000**	3,000	**(2,000)**	(3,000)	**—**	—
Amortization of net actuarial loss	**4,000**	49,000	**2,000**	7,000	**26,000**	6,000
Net periodic benefit (income) cost	**$ (27,000)**	$ 42,000	**$ 60,000**	$ 62,000	**$ 76,000**	$ 44,000

The components of net periodic benefit (income) cost, including service cost, are included in "General and administrative" expenses in the Company's Condensed Consolidated Statements of Operations.

Barnwell contributed $115,000 to the Pension Plan during the six months ended March 31, 2019 and estimates that it will not make any further cash contributions during the remainder of fiscal 2019. The SERP and Postretirement Medical plans are unfunded, and Barnwell funds benefits when payments are made. Expected payments under the Postretirement Medical plan and the SERP for fiscal 2019 are not material. Fluctuations in actual equity market returns as well as changes in general interest rates will result in changes in the market value of plan assets and may result in increased or decreased retirement benefits costs and contributions in future periods.

6. INCOME TAXES

The components of (loss) earnings before income taxes, after adjusting the (loss) earnings for non-controlling interests, are as follows:

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
United States	**$ (1,298,000)**	$ (982,000)	**$ (2,422,000)**	$ (2,125,000)
Canada	**(862,000)**	1,858,000	**(4,443,000)**	1,481,000
	$ (2,160,000)	$ 876,000	**$ (6,865,000)**	$ (644,000)

The components of the income tax (benefit) provision are as follows:

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Current	**$ (1,000)**	$ (256,000)	**$ (34,000)**	$ (829,000)
Deferred	**(34,000)**	453,000	**(106,000)**	523,000
	$ (35,000)	$ 197,000	**$ (140,000)**	$ (306,000)

Consolidated taxes do not bear a customary relationship to pretax results due primarily to the fact that the Company is taxed separately in Canada based on Canadian source operations and in the U.S. based on consolidated operations, and essentially all deferred tax assets, net of relevant offsetting deferred tax

liabilities and any amounts estimated to be realizable through tax carryback strategies, are not estimated to have a future benefit as tax credits or deductions. Income from our non-controlling interest in the Kukio Resort Land Development Partnerships is treated as non-unitary for state of Hawaii unitary filing purposes, thus unitary Hawaii losses provide limited sheltering of such non-unitary income.

The repeal of the corporate Alternative Minimum Tax ("AMT") by the Tax Cuts and Jobs Act of 2017 (“TCJA”), enacted on December 22, 2017, provides a mechanism for the refund over time of any unused AMT credit carryovers. Prior to the enactment of the TCJA, it was not more likely than not that the Company’s AMT credit carryovers would provide a future benefit, as such the AMT deferred tax asset had a full valuation allowance. As a result of the TCJA provision for refundability of the AMT, the Company recorded a current income tax benefit of $460,000 in the quarter ended December 31, 2017 to reflect the undiscounted unused AMT credit carryover balance as a non-current income tax receivable. There was no significant impact of the TCJA during the three and six months ended March 31, 2019. Respective portions of this balance will be reclassified to current income taxes receivable when amounts are eligible for refund within one year of the balance sheet date.

7. REVENUE FROM CONTRACTS WITH CUSTOMERS

Adoption

On October 1, 2018, the Company adopted Topic 606 using the modified retrospective method applied to all contracts. Results for operating periods beginning October 1, 2018 are presented under Topic 606, while prior period amounts are not adjusted and continue to be reported under the accounting standards in effect for the prior period. Changes in other current assets and other current liabilities are primarily due to Topic 606's required treatment for the contract drilling segment's uninstalled materials and the related impact on billings in excess of costs and estimated earnings, which is now referred to as contract liabilities. Additionally, the Company recorded a net increase to beginning retained earnings of $20,000 as of October 1, 2018 due to the cumulative impact of adopting Topic 606, as detailed below. The increase to beginning retained earnings was due entirely to the impact of adoption of Topic 606 on the contract drilling business segment.

	October 1, 2018		
	Pre-606 Balances	606 Adjustments	Adjusted Balances
ASSETS			
Current assets:			
Accounts and other receivables, net of allowance for doubtful accounts	$ 1,965,000	$ (308,000)	$ 1,657,000
Other current assets	950,000	687,000	1,637,000
LIABILITIES AND EQUITY			
Current liabilities:			
Other current liabilities	54,000	359,000	413,000
Equity:			
Retained earnings	13,253,000	20,000	13,273,000

The following tables summarize the impact of adopting Topic 606 on the Company's Condensed Consolidated Statements of Operations and Condensed Consolidated Balance Sheets:

	Three months ended March 31, 2019		
	Impact of changes in accounting policies		
	As Reported	Balances without adoption of Topic 606	Effect of change increase (decrease)
Revenues:			
Contract drilling	**$ 987,000**	$ 677,000	$ 310,000
Costs and expenses:			
Contract drilling operating	**1,231,000**	917,000	314,000
Loss before equity in loss of affiliates and income taxes	**(1,979,000)**	(1,975,000)	(4,000)
Loss before income taxes	**(2,186,000)**	(2,182,000)	(4,000)
Net loss	**(2,151,000)**	(2,147,000)	(4,000)
Less: Net loss attributable to non-controlling interests	**(26,000)**	(26,000)	—
Net loss attributable to Barnwell Industries, Inc. stockholders	**$ (2,125,000)**	$ (2,121,000)	$ (4,000)
Basic and diluted net loss per common share attributable to Barnwell Industries, Inc. stockholders	**$ (0.26)**	$ (0.26)	$ —

	Six months ended March 31, 2019		
	Impact of changes in accounting policies		
	As Reported	Balances without adoption of Topic 606	Effect of change increase (decrease)
Revenues:			
Contract drilling	**$ 2,150,000**	$ 1,418,000	$ 732,000
Costs and expenses:			
Contract drilling operating	**2,547,000**	1,810,000	737,000
Loss before equity in loss of affiliates and income taxes	**(6,578,000)**	(6,573,000)	(5,000)
Loss before income taxes	**(6,864,000)**	(6,859,000)	(5,000)
Net loss	**(6,724,000)**	(6,719,000)	(5,000)
Less: Net earnings attributable to non-controlling interests	**1,000**	1,000	—
Net loss attributable to Barnwell Industries, Inc. stockholders	**$ (6,725,000)**	$ (6,720,000)	$ (5,000)
Basic and diluted net loss per common share attributable to Barnwell Industries, Inc. stockholders	**$ (0.81)**	$ (0.81)	$ —

	March 31, 2019		
	Impact of changes in accounting policies		
	As Reported	Balances without adoption of Topic 606	Effect of change increase (decrease)
ASSETS			
Current assets:			
Accounts and other receivables, net of allowance for doubtful accounts	**$ 2,066,000**	$ 2,443,000	$ (377,000)
Other current assets	**2,198,000**	1,352,000	846,000
LIABILITIES AND EQUITY			
Current liabilities:			
Other current liabilities	**1,913,000**	1,459,000	454,000
Equity:			
Retained earnings	**6,548,000**	6,533,000	15,000

The impact in revenue recognition due to the adoption of Topic 606 is primarily from the timing of revenue recognition for uninstalled materials. Refer to Note 1 "Summary of Significant Accounting Policies" for a summary of the Company's significant policies for revenue recognition. There were no impacts to the oil and natural gas or land investment segments.

Disaggregation of Revenue

The following tables provides information about disaggregated revenue by revenue streams, reportable segments, geographical region, and timing of revenue recognition for the three and six months ended March 31, 2019.

	Three months ended March 31, 2019				
	Oil and natural gas	**Contract drilling**	**Land investment**	**Other**	**Total**
Revenue streams:					
Oil	**$ 1,477,000**	**$ —**	**$ —**	**$ —**	**$ 1,477,000**
Natural gas	**336,000**	**—**	**—**	**—**	**336,000**
Natural gas liquids	**111,000**	**—**	**—**	**—**	**111,000**
Drilling and pump	**—**	**987,000**	**—**	**—**	**987,000**
Other	**—**	**—**	**—**	**40,000**	**40,000**
Total revenues before interest income	**$ 1,924,000**	**$ 987,000**	**$ —**	**$ 40,000**	**$ 2,951,000**
Geographical regions:					
United States	**$ —**	**$ 987,000**	**$ —**	**$ 1,000**	**$ 988,000**
Canada	**1,924,000**	**—**	**—**	**39,000**	**1,963,000**
Total revenues before interest income	**$ 1,924,000**	**$ 987,000**	**$ —**	**$ 40,000**	**$ 2,951,000**
Timing of revenue recognition:					
Goods transferred at a point in time	**$ 1,924,000**	**$ —**	**$ —**	**$ 40,000**	**$ 1,964,000**
Services transferred over time	**—**	**987,000**	**—**	**—**	**987,000**
Total revenues before interest income	**$ 1,924,000**	**$ 987,000**	**$ —**	**$ 40,000**	**$ 2,951,000**

	Six months ended March 31, 2019				
	Oil and natural gas	Contract drilling	Land investment	Other	Total
Revenue streams:					
Oil	$ 2,373,000	$ —	$ —	$ —	$ 2,373,000
Natural gas	498,000	—	—	—	498,000
Natural gas liquids	285,000	—	—	—	285,000
Drilling and pump	—	2,150,000	—	—	2,150,000
Contingent residual payments	—	—	165,000	—	165,000
Other	—	—	—	54,000	54,000
Total revenues before interest income	$ 3,156,000	$ 2,150,000	$ 165,000	$ 54,000	$ 5,525,000
Geographical regions:					
United States	$ —	$ 2,150,000	$ 165,000	$ 1,000	$ 2,316,000
Canada	3,156,000	—	—	53,000	3,209,000
Total revenues before interest income	$ 3,156,000	$ 2,150,000	$ 165,000	$ 54,000	$ 5,525,000
Timing of revenue recognition:					
Goods transferred at a point in time	$ 3,156,000	$ —	$ 165,000	$ 54,000	$ 3,375,000
Services transferred over time	—	2,150,000	—	—	2,150,000
Total revenues before interest income	$ 3,156,000	$ 2,150,000	$ 165,000	$ 54,000	$ 5,525,000

Contract Balances

The following table provides information about accounts receivables, contract assets and contract liabilities from contracts with customers:

	October 1, 2018	March 31, 2019
Accounts receivables from contracts with customers	$ 1,245,000	$ 1,428,000
Contract assets	267,000	273,000
Contract liabilities	400,000	1,901,000

Accounts receivables from contracts with customers are included in "Accounts and other receivables, net of allowance for doubtful accounts," and contract assets, which includes costs and estimated earnings in excess of billings and retainage, are included in “Other current assets.” Contract liabilities, which includes billings in excess of costs and estimated earnings are included in “Other current liabilities” in the accompanying Condensed Consolidated Balance Sheets.

Retainage, included in contract assets, represents amounts due from customers, but where payments are withheld contractually until certain construction milestones are met. Amounts retained typically range from 5% to 10% of the total invoice, up to contractually-specified maximums. The Company classifies as a current asset those retainages that are expected to be collected in the next twelve months.

Contract assets represent the Company’s rights to consideration in exchange for services transferred to a customer that have not been billed as of the reporting date. The Company’s rights are generally unconditional at the time its performance obligations are satisfied.

When the Company receives consideration, or such consideration is unconditionally due, from a customer prior to transferring goods or services to the customer under the terms of a sales contract, the Company records deferred revenue, which represents a contract liability. Such deferred revenue typically results from billings in excess of costs and estimated earnings on uncompleted contracts. As of March 31,

2019, the Company had $1,901,000 included in "Other current liabilities" on the Condensed Consolidated Balance Sheets for those performance obligations expected to be completed in the next twelve months.

The change in contract assets and liabilities was due primarily to normal business operations. For the six months ended March 31, 2019, the Company recognized revenue of $22,000 that was previously included in the beginning balance of contract liabilities. Of the increase in contract liabilities, $1,250,000 represents an advance partial payment received from a contract drilling segment customer on a contract that has not yet commenced work. In order to perform the work under contract, the Company has committed to acquire a new drilling rig and ancillary equipment for an amount that is estimated to approximate the advance payment. The drilling rig and ancillary equipment will be owned by the Company and will be freely available for use on other jobs after completion of the subject contract. The total estimated value of the subject contract is included in the backlog amount disclosed in the Backlog section below.

Contracts are sometimes modified for a change in scope or other requirements. The Company considers contract modifications to exist when the modification either creates new or changes the existing enforceable rights and obligations. Most of the Company's contract modifications are for goods and services that are not distinct from the existing performance obligations. The effect of a contract modification on the transaction price, and the measure of progress for the performance obligation to which it relates, is recognized as an adjustment to revenue (either as an increase or decrease) on a cumulative catchup basis.

The Company elected to utilize the modified retrospective transition practical expedient which allows the Company to evaluate the impact of contract modifications as of the adoption date rather than evaluating the impact of the modifications at the time they occurred prior to the adoption date. Given the nature of our typical contract modifications, which are generally limited to contract price change orders and extensions of time, the effect of the use of this practical expedient is not estimated to be significant.

Performance Obligations

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer, and is the unit of account in Topic 606. Performance obligations are satisfied as of a point in time or over time and are supported by contracts with customers.

The Company's contract drilling segment recognizes revenues over time. For most of the Company's well drilling and pump installation and repair contracts, there are multiple promises of good or services. Typically, the Company provides a significant service of integrating a complex set of tasks and components such as site preparation, well drilling/pump installation, and testing for a project contract. The bundle of goods and services are provided to deliver one output for which the customer has contracted. In these cases, the Company considers the bundle of goods and services to be a single performance obligation. If the contract is separated into more than one performance obligation, the Company allocates the total transaction price to each performance obligation in an amount based on the estimated relative standalone selling prices of the promised goods or services underlying each performance obligation.

For the oil and natural gas segment, revenues are recognized at a point in time and the performance obligation is considered satisfied when oil, natural gas and natural gas liquids are delivered and control has passed to the customer. This is generally at the time the customer obtains legal title to the product and when it is physically transferred to the contractual delivery point. For the land investment segment, which recognizes revenues at a point in time, the performance obligation is considered satisfied when the contingent residual payment revenue recognition criteria has been met and we release any previously retained right to such contingent residual payment.

There are no significant or unusual payment terms related to Barnwell's oil and natural gas or land investment segments. For Barnwell's contract drilling segment, customer contracts determine payment terms which typically allow for progress payments and 5% to 10% retainage. For the contract drilling contracts, Barnwell typically serves as the principal and records related revenue and expenses on a gross basis. In the unusual circumstances where Barnwell acts as an agent, the related revenues and expenses are recognized on a net basis. Barnwell does not typically provide extended warranties on well drilling or pump contracts beyond the normal assurance-type warranties that the product complies with agreed upon specifications.

For oil and natural gas contracts, Barnwell evaluates its arrangements with third parties and partners to determine if the Company acts as the principal or as an agent. In making this evaluation, management considers if Barnwell retains control of the product being delivered to the end customer. As part of this assessment, management considers whether the Company retains the economic benefits associated with the good being delivered to the end customer. Management also considers whether the Company has the primary responsibility for the delivery of the product, the ability to establish prices or the inventory risk. If Barnwell acts in the capacity of an agent rather than as a principal in a transaction, then the revenue is recognized on a net basis, only reflecting the fee, if any, realized by the Company from the transaction.

Backlog - The Company's remaining performance obligations for drilling and pump installation contracts (hereafter referred to as "backlog") represent the unrecognized revenue value of the Company's contract commitments. The Company's backlog may vary significantly each reporting period based on the timing of major new contract commitments. In addition, our customers have the right, under some infrequent circumstances, to terminate contracts or defer the timing of the Company's services and their payments to us. At March 31, 2019, nearly all of the Company's contract drilling segment contracts, for which revenues are recognized over time on a percentage-of-completion basis, have original expected durations of one year or less. For such contracts, the Company has elected the optional exemption from disclosure of remaining performance obligations allowed under ASC 606-10-50-14. The Company has three contract drilling jobs with original expected durations of greater than one year. For those contracts with original expected durations greater than a year, approximately 41% of the remaining performance obligation of $2,962,000 is expected to be recognized in the next twelve months and the remaining, thereafter.

Contract Fulfillment Costs

In connection with the adoption of Topic 606, the Company is required to account for certain fulfillment costs over the life of the contract, consisting primarily of preconstruction costs such as set-up and mobilization costs. Preconstruction costs are capitalized and allocated across all performance obligations and deferred and amortized over the contract term on a progress towards completion basis.

As of March 31, 2019, the Company had $287,000 in unamortized preconstruction costs related to contracts that were not completed. During the three and six months ended March 31, 2019, the amortization of preconstruction costs related to contracts were not material and have been included in the accompanying Condensed Consolidated Statements of Operations. Additionally, no impairment charges in connection with the Company's preconstruction costs were recorded during the period ended March 31, 2019.

8. SEGMENT INFORMATION

Barnwell operates the following segments: 1) acquiring, developing, producing and selling oil and natural gas in Canada (oil and natural gas); 2) investing in land interests in Hawaii (land investment); and 3) drilling wells and installing and repairing water pumping systems in Hawaii (contract drilling).

The following table presents certain financial information related to Barnwell's reporting segments. All revenues reported are from external customers with no intersegment sales or transfers.

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Revenues:				
Oil and natural gas	**$ 1,924,000**	$ 859,000	**$ 3,156,000**	$ 1,812,000
Contract drilling	**987,000**	1,016,000	**2,150,000**	1,858,000
Land investment	**—**	—	**165,000**	—
Other	**40,000**	42,000	**54,000**	70,000
Total before interest income	**2,951,000**	1,917,000	**5,525,000**	3,740,000
Interest income	**12,000**	58,000	**33,000**	91,000
Total revenues	**$ 2,963,000**	$ 1,975,000	**$ 5,558,000**	$ 3,831,000
Depletion, depreciation, and amortization:				
Oil and natural gas	**$ 684,000**	$ 157,000	**$ 1,433,000**	$ 356,000
Contract drilling	**60,000**	53,000	**117,000**	114,000
Other	**14,000**	17,000	**27,000**	37,000
Total depletion, depreciation, and amortization	**$ 758,000**	$ 227,000	**$ 1,577,000**	$ 507,000
Impairment:				
Oil and natural gas	**$ 243,000**	$ —	**$ 2,413,000**	$ —
Land investment	**—**	37,000	**—**	37,000
Total impairment	**$ 243,000**	$ 37,000	**$ 2,413,000**	$ 37,000
Operating (loss) profit (before general and administrative expenses):				
Oil and natural gas	**$ (252,000)**	$ 127,000	**$ (3,276,000)**	$ 223,000
Land investment	**—**	(37,000)	**165,000**	(37,000)
Contract drilling	**(304,000)**	80,000	**(514,000)**	40,000
Other	**26,000**	25,000	**27,000**	33,000
Gain on sales of assets	**—**	2,250,000	**—**	2,250,000
Total operating (loss) profit	**(530,000)**	2,445,000	**(3,598,000)**	2,509,000
Equity in loss of affiliates:				
Land investment	**(207,000)**	(80,000)	**(286,000)**	(233,000)
General and administrative expenses	**(1,461,000)**	(1,563,000)	**(3,009,000)**	(3,044,000)
Interest expense	**—**	—	**(4,000)**	—
Interest income	**12,000**	58,000	**33,000**	91,000
(Loss) earnings before income taxes	**$ (2,186,000)**	$ 860,000	**$ (6,864,000)**	$ (677,000)

9. ACCUMULATED OTHER COMPREHENSIVE LOSS

The changes in each component of accumulated other comprehensive loss were as follows:

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Foreign currency translation:				
Beginning accumulated foreign currency translation	**$ 512,000**	$ 1,047,000	**$ 925,000**	$ 1,053,000
Change in cumulative translation adjustment before reclassifications	**130,000**	(181,000)	**(283,000)**	(187,000)
Income taxes	**—**	—	**—**	—
Net current period other comprehensive income (loss)	**130,000**	(181,000)	**(283,000)**	(187,000)
Ending accumulated foreign currency translation	**642,000**	866,000	**642,000**	866,000
Retirement plans:				
Beginning accumulated retirement plans benefit cost	**(1,422,000)**	(2,087,000)	**(1,439,000)**	(2,111,000)
Amortization of net actuarial loss and prior service cost	**16,000**	39,000	**33,000**	63,000
Income taxes	**—**	—	**—**	—
Net current period other comprehensive income	**16,000**	39,000	**33,000**	63,000
Ending accumulated retirement plans benefit cost	**(1,406,000)**	(2,048,000)	**(1,406,000)**	(2,048,000)
Accumulated other comprehensive loss, net of taxes	**$ (764,000)**	$ (1,182,000)	**$ (764,000)**	$ (1,182,000)

The amortization of accumulated other comprehensive loss components for the retirement plans are included in the computation of net periodic benefit (income) cost which is a component of "General and administrative" expenses on the accompanying Condensed Consolidated Statements of Operations (see Note 5 for additional details).

10. FAIR VALUE MEASUREMENTS

The carrying values of cash and cash equivalents, certificates of deposit, accounts and other receivables, accounts payable and accrued current liabilities approximate their fair values due to the short-term nature of the instruments.

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

The estimated fair values of oil and natural gas properties and the asset retirement obligation incurred in the drilling of oil and natural gas wells or assumed in the acquisitions of additional oil and natural gas working interests are based on an estimated discounted cash flow model and market assumptions. The significant Level 3 assumptions used in the calculation of estimated discounted cash flows included future commodity prices, projections of estimated quantities of oil and natural gas reserves, expectations for timing and amount of future development, operating and asset retirement costs, projections of future rates of production, expected recovery rates and risk adjusted discount rates.

Barnwell estimates the fair value of asset retirement obligations based on the projected discounted future cash outflows required to settle abandonment and restoration liabilities. Such an estimate requires

assumptions and judgments regarding the existence of liabilities, the amount and timing of cash outflows required to settle the liability, what constitutes adequate restoration, inflation factors, credit adjusted discount rates, and consideration of changes in legal, regulatory, environmental and political environments. Abandonment and restoration cost estimates are determined in conjunction with Barnwell's reserve engineers based on historical information regarding costs incurred to abandon and restore similar well sites, information regarding current market conditions and costs, and knowledge of subject well sites and properties. Asset retirement obligation fair value measurements in the current period were Level 3 fair value measurements.

11. INFORMATION RELATING TO THE CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

	Six months ended March 31,	
	2019	2018
Supplemental disclosure of cash flow information:		
Cash paid (received) during the year for:		
Income taxes refunded, net	**$ (2,249,000)**	$ (20,000)
Supplemental disclosure of non-cash investing activities:		
Canadian income tax withholding on proceeds from the sale of oil and natural gas properties	**$ —**	$ 789,000

Capital expenditure accruals related to oil and natural gas exploration and development decreased $105,000 and $88,000 during the six months ended March 31, 2019 and 2018, respectively. Additionally, capital expenditure accruals related to oil and natural gas asset retirement obligations increased $267,000 during the six months ended March 31, 2019 and decreased $38,000 during the six months ended March 31, 2018.

12. RELATED PARTY TRANSACTIONS

Kaupulehu Developments is entitled to receive payments from the sales of lots and/or residential units by KD I and KD II. Through March 6, 2019, Kaupulehu Developments was also entitled to receive 50% of distributions otherwise payable from KD II to its members up to $8,000,000, of which $3,500,000 was received. KD I and KD II are part of the Kukio Resort Land Development Partnerships in which Barnwell holds indirect 19.6% and 10.8% non-controlling ownership interests, respectively, accounted for under the equity method of investment. The percentage of sales payments and percentage of distribution payments are part of transactions which took place in 2004 and 2006 where Kaupulehu Developments sold its leasehold interests in Increment I and Increment II to KD I's and KD II's predecessors in interest, respectively, which was prior to Barnwell's affiliation with KD I and KD II which commenced on November 27, 2013, the acquisition date of our ownership interest in the Kukio Resort Land Development Partnerships. Changes to the arrangement above, effective March 7, 2019, are discussed in Note 3.

During the six months ended March 31, 2019, Barnwell received $165,000 in percentage of sales payments from KD II from the sale of one lot within Increment II. No lots were sold during the six months ended March 31, 2018.

13. PROMISSORY NOTE RECEIVABLE

On March 27, 2019, the Company made a $300,000 loan to Mr. Terry Johnston, an affiliate of the Company through his controlling interests in certain entities within our land investment segment partnerships, and the Company was given an unsecured promissory note in return. The maturity date of the note is July 31, 2019, whereupon all principal and interest outstanding shall be due. Interest accrues at 8% per annum on the unpaid principal amount. In the event of default, the interest rate increases by 5%. The note includes a limited joinder that specifies that in the event of default, any fees otherwise due to Nearco, Inc., an entity controlled by Mr. Johnston, by Kaupulehu Developments may be applied to amounts due under the note. The note receivable was included in "Other current assets" in the Condensed Consolidated Balance Sheet as of March 31, 2019.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Cautionary Statement Relevant to Forward-Looking Information For the Purpose Of "Safe Harbor" Provisions Of The Private Securities Litigation Reform Act of 1995

This Form 10-Q, and the documents incorporated herein by reference, contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). A forward-looking statement is one which is based on current expectations of future events or conditions and does not relate to historical or current facts. These statements include various estimates, forecasts, projections of Barnwell's future performance, statements of Barnwell's plans and objectives, and other similar statements. All such statements we make are forward-looking statements made under the safe harbor of the PSLRA, except to the extent such statements relate to the operations of a partnership or limited liability company. Forward-looking statements include phrases such as "expects," "anticipates," "intends," "plans," "believes," "predicts," "estimates," "assumes," "projects," "may," "will," "will be," "should," or similar expressions. Although Barnwell believes that its current expectations are based on reasonable assumptions, it cannot assure that the expectations contained in such forward-looking statements will be achieved. Forward-looking statements involve risks, uncertainties and assumptions which could cause actual results to differ materially from those contained in such statements. The risks, uncertainties and other factors that might cause actual results to differ materially from Barnwell's expectations are set forth in the "Forward-Looking Statements" and "Risk Factors" sections of Barnwell's Annual Report on Form 10-K for the year ended September 30, 2018. Investors should not place undue reliance on these forward-looking statements, as they speak only as of the date of filing of this Form 10-Q, and Barnwell expressly disclaims any obligation or undertaking to publicly release any updates or revisions to any forward-looking statements contained herein.

Critical Accounting Policies and Estimates

Management has determined that our most critical accounting policies and estimates are those related to the evaluation of recoverability of assets, depletion of our oil and natural gas properties, income taxes and asset retirement obligation which are discussed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018. There have been no significant changes to these critical accounting policies and estimates during the three and six months ended March 31, 2019. We continue to monitor our accounting policies to ensure proper application of current rules and regulations.

Current Outlook

Our ability to sustain our business in the future will depend on sufficient oil and natural gas operating cash flows, which are highly sensitive to potentially volatile oil and natural gas prices, sufficient future land investment segment proceeds and distributions from the Kukio Resort Land Development Partnerships, the timing of which are both highly uncertain and not within Barnwell's control, and our ability to fund our needed oil and natural gas capital expenditures and the level of success of such capital expenditures, as well as our ability to fund oil and natural gas asset retirement obligations and ongoing operating and general and administrative expenses.

Management believes our current cash balances and estimated future revenues will be sufficient to fund the Company's estimated cash outflows for the next 12 months from the date of this report. However, the drilling of oil and natural gas wells to convert proved undeveloped reserves to proved producing reserves

will need to commence within the next 12 months in order to work towards abatement of declining oil and natural gas cash flows from currently producing properties as those properties mature. Without sufficient oil and natural gas and land investment segments cash inflows, our ability to develop our recently acquired proved undeveloped reserves will be diminished. Management is seeking financing for the drilling of new wells, however if we are unable to obtain such financing or if the financing is not obtained in sufficient time or is not of sufficient magnitude, and if our projected cash outflows for operating and general and administrative expenses continue to exceed our cash inflows because of low oil and natural gas prices or the absence of sufficient land investment segment proceeds and distributions, or if unforeseen circumstances arise that impair our ability to sustain or grow our business, the Company may need to consider further sales of our assets or alternative strategies or we may be forced to wind down our operations, either through liquidation or bankruptcy, and we may not be able to continue as a going concern beyond May 2020.

Impact of Recently Issued Accounting Standards on Future Filings

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, "Leases," which seeks to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and by disclosing key information about leasing arrangements. Note 1 in the "Notes to Consolidated Financial Statements" describes the impact of ASU No. 2016-02 in further detail.

In February 2018, the FASB issued ASU No. 2018-02, "Reclassification of Certain Tax Effects From Accumulated Other Comprehensive Income," which allows a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from TCJA. This ASU is effective for annual reporting periods beginning after December 15, 2018 and interim periods within those annual periods, with early adoption permitted. The adoption of this update is not expected to have a material impact on Barnwell's consolidated financial statements.

In July 2018, the FASB issued ASU No. 2018-09, "Codification Improvements," which provides further clarification to the codification literature. The transition and effective date guidance is based on the facts and circumstances of each amendment within the ASU. Some of the amendments in the ASU do not require transition guidance and will be effective upon issuance of the ASU. Other amendments have transition guidance with effective dates for annual reporting periods beginning after December 15, 2018. The adoption of this update is not expected to have a material impact on Barnwell's consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, "Fair Value Measurement: Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement," which provides changes to certain fair value disclosure requirements. This ASU is effective for annual reporting periods beginning after December 15, 2019 and interim periods within those annual periods, with early adoption permitted. The adoption of this update is not expected to have a material impact on Barnwell's consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-14, "Compensation - Retirement Benefits-Defined Benefit Plans - General: Disclosure Framework-Changes to the Disclosure Requirements for Defined Benefit Plans," which provides changes to certain pension and postretirement plan disclosures. This ASU is effective for annual reporting periods ending after December 15, 2020, with early adoption permitted. The adoption of this update is not expected to have a material impact on Barnwell's consolidated financial statements.

In October 2018, the FASB issued ASU No. 2018-17, "Consolidation: Targeted Improvements to Related Party Guidance for Variable Interest Entities," which modifies the guidance related to indirect interests

held through related parties under common control for determining whether fees paid to decision makers and service providers are variable interest. This ASU is effective for annual reporting periods beginning after December 15, 2019 and interim periods within those annual periods, with early adoption permitted. The adoption of this update is not expected to have a material impact on Barnwell's consolidated financial statements.

Overview

Barnwell is engaged in the following lines of business: 1) acquiring, developing, producing and selling oil and natural gas in Canada (oil and natural gas segment), 2) investing in land interests in Hawaii (land investment segment), and 3) drilling wells and installing and repairing water pumping systems in Hawaii (contract drilling segment).

Oil and Natural Gas Segment

Barnwell is involved in the acquisition and development of oil and natural gas properties in Canada where we initiate and participate in acquisition and developmental operations for oil and natural gas on properties in which we have an interest, and evaluate proposals by third parties with regard to participation in such exploratory and developmental operations elsewhere.

Land Investment Segment

The land investment segment is comprised of the following components:

1) Through Barnwell's 77.6% interest in Kaupulehu Developments, a Hawaii general partnership, 75% interest in KD Kona 2013 LLLP, a Hawaii limited liability limited partnership, and 34.45% non-controlling interest in KKM, a Hawaii limited liability limited partnership, the Company's land investment interests include the following:

- The right to receive percentage of sales payments from KD I resulting from the sale of single-family residential lots by KD I, within Increment I of the approximately 870 acres of the Kaupulehu Lot 4A area located in the North Kona District of the island of Hawaii. Kaupulehu Developments is entitled to receive payments from KD I based on the following percentages of the gross receipts from KD I's sales at Increment I: 10% of such aggregate gross proceeds greater than $100,000,000 up to $300,000,000; and 14% of such aggregate gross proceeds in excess of $300,000,000. Increment I is an area zoned for approximately 80 single-family lots, of which 19 remained to be sold at March 31, 2019, and a beach club on the portion of the property bordering the Pacific Ocean.

- Prior to March 7, 2019, the right to receive percentage of sales payments from KD II resulting from the sale of lots and/or residential units by KD II, within Increment II of Kaupulehu Lot 4A. Increment II is the remaining portion of the approximately 870-acre property and is zoned for single-family and multi-family residential units and a golf course and clubhouse. Kaupulehu Developments was entitled to receive payments from KD II based on a percentage of the gross receipts from KD II's sales ranging from 8% to 10% of the price of improved or unimproved lots or 2.60% to 3.25% of the price of units constructed on a lot, to be determined in the future depending upon a number of variables, including whether the lots are sold prior to improvement. Kaupulehu Developments was also entitled to receive 50% of any future distributions otherwise payable from KD II to it members up to $8,000,000, of which $3,500,000 had been received. Two ocean front parcels approximately two to three acres in size fronting the ocean were developed and sold within Increment II by KD II, and Kaupulehu

Developments received percentage of sales payments from those sales. The remaining acreage within Increment II is not yet developed. In February 2019, KD II was granted a 20-year time extension of the allowed zoning for the project that would have otherwise expired in April 2019.

As of March 7, 2019, with the admission of Replay as a new development partner of Increment II, the ownership interests in KD II of KDK and Replay were changed to 55% and 45%, respectively. Additionally, Kaupulehu Developments has the right to receive 15% of the distributions of KD II, the cost of which is to be solely borne by KDK out of its 55% ownership interest in KD II, plus a priority payout of 10% of KDK's cumulative net profits derived from Increment II sales subsequent to Phase 2A, up to a maximum of $3,000,000. Such interests are limited to distributions or net profits interests and Barnwell does not have any partnership interest in KD II or KDK through its interest in Kaupulehu Developments. Barnwell also has rights to three single-family residential lots in Phase 2A of Increment II, and four single-family residential lots in phases subsequent to Phase 2A when such lots are developed by KD II, all at no cost to Barnwell. Barnwell is committed to commence construction of improvements within 90 days of the transfer of the four lots in the phases subsequent to Phase 2A as a condition of the transfer of such lots. Also, in addition to Barnwell's existing obligations to pay professional fees to certain parties based on percentages of its gross receipts, Kaupulehu Developments is now also obligated to pay an amount equal to 0.72% and 0.20% of the cumulative net profits of KD II to KD Development, LLC and a pool of various individuals, respectively, all of whom are partners of KKM and are unrelated to Barnwell, in compensation for the agreement of these parties to admit the new development partner for Increment II.

- Prior to March 7, 2019, we had an indirect 19.6% non-controlling ownership interest in KD Kukio Resorts, LLLP, KD Maniniowali, LLLP and KDK. As of March 7, 2019, with the admission of Replay as a new development partner of Increment II, we now have an indirect 10.8% non-controlling ownership interest in KD II through KDK. Our indirect interest in the other entities remains unchanged. These entities own certain real estate and development rights interests in the Kukio, Maniniowali and Kaupulehu portions of Kukio Resort, a private residential community on the Kona coast of the island of Hawaii, as well as Kukio Resort’s real estate sales office operations. KDK was the developer of Kaupulehu Lot 4A Increments I and II. The partnerships derive income from the sale of residential parcels as well as from commission on real estate sales by the real estate sales office. KD I has engaged Replay as a consultant to assist with the sales and marketing strategy of Increment I. Replay does not have an ownership interest in KD I. As of March 31, 2019, 19 lots remained to be sold within Increment I.

- Approximately 1,000 acres of vacant leasehold land zoned conservation in the Kaupulehu Lot 4C area located adjacent to the 870-acre Lot 4A described above, which currently has no development potential without both a development agreement with the lessor and zoning reclassification.

2) Prior to February 2019, Barnwell owned an 80% interest in Kaupulehu 2007, LLP ("Kaupulehu 2007"), a Hawaii limited liability limited partnership. In 2018, Kaupulehu 2007 sold the last residential parcel in the Kaupulehu Increment I area. The Kaupulehu 2007 partnership was terminated in February 2019.

Contract Drilling Segment

Barnwell drills water and water monitoring wells and installs and repairs water pumping systems in Hawaii. Contract drilling results are highly dependent upon the quantity, dollar value and timing of contracts awarded by governmental and private entities and can fluctuate significantly.

Results of Operations

Summary

The net loss attributable to Barnwell for the three months ended March 31, 2019 totaled $2,125,000, a $2,804,000 decrease in operating results from net earnings of $679,000 for the three months ended March 31, 2018. The following factors affected the results of operations for the three months ended March 31, 2019 as compared to the same period in the prior year:

- A $2,250,000 gain recognized in the prior year quarter primarily from the sale of oil properties in the Red Earth area of Alberta, Canada; and

- A $384,000 decrease in contract drilling operating results, before income taxes, primarily due to unforeseen difficulties encountered on two drilling jobs.

Barnwell had a net loss of $6,725,000 for the six months ended March 31, 2019, a $6,387,000 decrease in operating results from net loss of $338,000 for the six months ended March 31, 2018. The following factors affected the results of operations for the six months ended March 31, 2019 as compared to the prior year period:

- A $3,499,000 decrease in oil and natural gas segment operating results, before income taxes, primarily attributable to a $2,413,000 ceiling test impairment due to lower 12-month rolling average first-day-of-the-month prices, with the remainder of the decrease primarily attributable to lower oil prices received by the Company in the current period, as compared to the same period in the prior year;

- A $2,250,000 gain recognized in the prior year period primarily from the sale of oil properties in the Red Earth area;

- A $554,000 decrease in contract drilling operating results, before income taxes, primarily due to unforeseen difficulties encountered on two drilling jobs; and

- The prior year period includes a $460,000 income tax benefit due to the enactment of changes to U.S. federal income tax laws in December 2017, whereas there was no such benefit in the current period.

General

Barnwell conducts operations in the U.S. and Canada. Consequently, Barnwell is subject to foreign currency translation and transaction gains and losses due to fluctuations of the exchange rates between the Canadian dollar and the U.S. dollar. Barnwell cannot accurately predict future fluctuations of the exchange rates and the impact of such fluctuations may be material from period to period. To date, we have not entered into foreign currency hedging transactions.

The average exchange rate of the Canadian dollar to the U.S. dollar decreased 5% and 4% in the three and six months ended March 31, 2019, respectively, as compared to the same periods in the prior year. The exchange rate of the Canadian dollar to the U.S. dollar decreased 3% at March 31, 2019, as compared to September 30, 2018. Accordingly, the assets, liabilities, stockholders' equity and revenues and expenses of Barnwell's subsidiaries operating in Canada have been adjusted to reflect the change in the exchange rates.

Barnwell's Canadian dollar assets are greater than its Canadian dollar liabilities; therefore, increases or decreases in the value of the Canadian dollar to the U.S. dollar generate other comprehensive income or loss, respectively. Other comprehensive income and losses are not included in net earnings (loss). Other comprehensive income due to foreign currency translation adjustments, net of taxes, for the three months ended March 31, 2019 was $130,000, a $311,000 change from other comprehensive loss due to foreign currency translation adjustments, net of taxes, of $181,000 for the same period in the prior year. Other comprehensive loss due to foreign currency translation adjustments, net of taxes, for the six months ended March 31, 2019 was $283,000, a $96,000 change from other comprehensive loss due to foreign currency translation adjustments, net of taxes, of $187,000 for the same period in the prior year. There were no taxes on other comprehensive loss due to foreign currency translation adjustments in the three and six months ended March 31, 2019 and 2018 due to a full valuation allowance on the related deferred tax asset.

Oil and Natural Gas

The following tables set forth Barnwell's average prices per unit of production and net production volumes. Production amounts reported are net of royalties.

	Average Price Per Unit			
	Three months ended March 31,		Increase (Decrease)	
	2019	2018	$	%
Natural Gas (Mcf)*	**$ 1.88**	$ 1.72	$ 0.16	9%
Oil (Bbls)**	**$ 44.76**	$ 50.21	$ (5.45)	(11%)
Liquids (Bbls)**	**$ 27.75**	$ 46.00	$ (18.25)	(40%)

	Average Price Per Unit			
	Six months ended March 31,		Increase (Decrease)	
	2019	2018	$	%
Natural Gas (Mcf)*	**$ 1.55**	$ 1.47	$ 0.08	5%
Oil (Bbls)**	**$ 34.90**	$ 47.98	$ (13.08)	(27%)
Liquids (Bbls)**	**$ 31.62**	$ 41.67	$ (10.05)	(24%)

	Net Production			
	Three months ended March 31,		Increase (Decrease)	
	2019	2018	Units	%
Natural Gas (Mcf)*	**171,000**	71,000	100,000	141%
Oil (Bbls)**	**33,000**	14,000	19,000	136%
Liquids (Bbls)**	**4,000**	1,000	3,000	300%

	Net Production			
	Six months ended March 31,		Increase (Decrease)	
	2019	2018	Units	%
Natural Gas (Mcf)*	**311,000**	153,000	158,000	103%
Oil (Bbls)**	**68,000**	31,000	37,000	119%
Liquids (Bbls)**	**9,000**	2,000	7,000	350%

* Mcf = 1,000 cubic feet. Natural gas price per unit is net of pipeline charges.

** Bbl = stock tank barrel equivalent to 42 U.S. gallons

The oil and natural gas segment generated a $252,000 operating loss before general and administrative expenses in the three months ended March 31, 2019, a decrease in operating results of $379,000 as compared to the $127,000 operating profit before general and administrative expenses generated during the same period of the prior year. The oil and natural gas segment generated a $3,276,000 operating loss before general and administrative expenses in the six months ended March 31, 2019, a decrease in operating results of $3,499,000 as compared to the $223,000 operating profit before general and administrative expenses generated during the same period of the prior year. The operating losses in the current year periods include the impact of ceiling test impairments of $243,000 and $2,413,000 for the three and six months ended March 31, 2019, respectively. There were no ceiling test impairments in the same periods of the prior year.

Oil and natural gas revenues increased $1,065,000 (124%) and $1,344,000 (74%) for the three and six months ended March 31, 2019, respectively, as compared to the same periods in the prior year, primarily due to increased oil and natural gas production from the Twining property that was partially offset by decreases in oil and natural gas liquids prices as compared to the same periods in the prior year.

Oil and natural gas operating expenses increased $674,000 (117%) and $1,353,000 (110%) for the three and six months ended March 31, 2019, respectively, as compared to the same periods in the prior year, primarily as a result of increased production as described above.

Oil and natural gas segment depletion increased $527,000 (336%) and $1,077,000 (303%), for the three and six months ended March 31, 2019, respectively, as compared to the same periods in the prior year, primarily due to increases in both production and the depletion rate as a result of the acquisition of working interests in the Twining area in August 2018.

Oil prices received by the Company declined significantly in the quarter ended December 31, 2018, and averaged $25.60 per barrel for those three months due to both the global decrease in oil prices during the period and the impact of significant pipeline and refinery capacity issues in the western Canadian oil markets which significantly impacted the prices received by the Company from its oil marketers for its oil production in the quarter ended December 31, 2018. On December 2, 2018, the Alberta government announced mandatory production cuts, effective January 1, 2019, for larger companies who produce over 10,000 barrels of oil per day. This mandate does not significantly impact Barnwell's oil production from operated and non-operated properties and is aimed at reducing the unfavorable differential between Canadian oil prices and the benchmark West Texas Intermediate price. Oil prices received by the Company in the quarter ended March 31, 2019 averaged $44.76 per barrel, reflecting more favorable global oil prices as well as the impact of the Alberta government's aforementioned actions. The Alberta government started phasing out this program reducing the production cuts beginning in February and again in April 2019.

On April 30, 2019, Trident Exploration Corp., the operator of certain of the Company's wells in the Wood River area, ceased operations. The timing of when these wells will re-commence operations is unknown. The Company's interest in these wells produced approximately $55,000 in operating margin, defined as oil and natural gas revenues less oil and natural gas operating expenses, during the quarter ended March 31, 2019.

Sale of Interest in Leasehold Land

Kaupulehu Developments is entitled to receive percentage of sales payments from the sales of lots and/or residential units in Increment I by KD I. Prior to March 7, 2019, Kaupulehu Developments was also entitled to receive percentage of sales payments from the sales of lots and/or residential units in Increment II by KD II and entitled to receive 50% of any future distributions otherwise payable from KD II to its members up to $8,000,000, of which $3,500,000 was received. Effective March 7, 2019, Kaupulehu Developments' arrangements with regard to payments from the sales of lots and/or residential units in Increment II were changed, as detailed in the Overview section above.

The following table summarizes the percentage of sales payment revenues received from KD I and KD II and the amount of fees directly related to such revenues:

	Three months ended March 31,		Six months ended March 31,	
	2019	2018	**2019**	2018
Sale of interest in leasehold land:				
Revenues - sale of interest in leasehold land	**$ —**	$ —	**$ 165,000**	$ —
Fees - included in general and administrative expenses	**—**	—	**(20,000)**	—
Sale of interest in leasehold land, net of fees paid	**$ —**	$ —	**$ 145,000**	$ —

During the three months ended December 31, 2018, Barnwell received $165,000 in percentage of sales payments from KD I from the sale of one single-family lot within Phase II of Increment I. No lots were sold during the three months ended March 31, 2019 or the three and six months ended March 31, 2018.

As of March 31, 2019, 19 single-family lots of the 80 lots developed within Increment I remained to be sold. As discussed in the Overview section above, Replay was admitted as a new development partner of Increment II on March 7, 2019. The Company does not have a controlling interest in Increments I and II, and there is no assurance with regards to the amounts of future sales from Increments I and II.

Contract Drilling

Contract drilling revenues decreased $29,000 (3%) and contract drilling costs increased $348,000 (39%) for the three months ended March 31, 2019, as compared to the same period in the prior year. The contract drilling segment generated a $304,000 operating loss before general and administrative expenses in the three months ended March 31, 2019, a decrease in operating results of $384,000 as compared to the $80,000 operating profit generated during the same period of the prior year.

Contract drilling revenues and contract drilling costs increased $292,000 (16%) and $843,000 (49%), respectively, for the six months ended March 31, 2019, as compared to the same period in the prior year. The

contract drilling segment generated a $514,000 operating loss before general and administrative expenses in the six months ended March 31, 2019, a decrease in operating results of $554,000 as compared to the $40,000 operating profit generated during the same period of the prior year. The decrease in operating results was due to unforeseen difficulties encountered on two jobs with unusually hard geological formations, which slowed progress on those jobs, and due to unforeseen difficulties in cementing and casing on one of those jobs due to unfavorable weather and geological formation issues.

In March 2019, the Company entered into a contract for the drilling of three water injection wells, and the Company received an advance of $1,250,000, which is reflected in "Other current liabilities" on the Condensed Consolidated Balance Sheet at March 31, 2019. The cash from the advance was used to fund the Company's purchase of a new drilling rig and ancillary equipment, which was in the process of being acquired as of March 31, 2019, and which will be available for use on future jobs after this contract is completed. Unlike the Company's typical water well drilling jobs, which are generally based on a fixed price per lineal foot drilled, this contract is based on a fixed rate per day or fixed rate per hour depending upon the activity. Activity on the job commenced in late April 2019, and the job is estimated to run through September 2019.

Contract drilling revenues and costs are not seasonal in nature, but can fluctuate significantly based on the awarding and timing of contracts, which are determined by contract drilling customer demand. The Company is unable to predict the near-term and long-term availability of water well drilling and pump installation and repair contracts as a result of volatility in demand.

General and Administrative Expenses

General and administrative expenses decreased $102,000 (7%) and $35,000 (1)% for the three and six months ended March 31, 2019, as compared to the same periods in the prior year. The decreases were due primarily to a reduction in accrued bonus expense and directors' fees in the current year periods, as compared to the same periods in the prior year.

Depletion, Depreciation, and Amortization

Depletion, depreciation, and amortization increased $531,000 (234%) and $1,070,000 (211%) for the three and six months ended March 31, 2019, respectively, as compared to the same periods in the prior year, primarily due to the increase in oil and natural gas depletion as discussed in the "Oil and natural gas" section above.

Impairment of Assets

Under the full cost method of accounting, the Company performs quarterly oil and natural gas ceiling test calculations. Due to lower 12-month rolling average first-day-of-the-month prices for oil, natural gas and natural gas liquids prices in the current year periods, as compared to the same periods of the prior year, Barnwell's net capitalized costs exceeded the ceiling limitation by $243,000 and $2,413,000 for the three and six months ended March 31, 2019, respectively. There were no ceiling test impairments in the same periods of the prior year.

Changes in the 12-month rolling average first-day-of-the-month prices for oil, natural gas and natural gas liquids prices, the value of reserve additions as compared to the amount of capital expenditures to obtain them, and changes in production rates and estimated levels of reserves, future development costs and the market value of unproved properties, impact the determination of the maximum carrying value of oil and natural gas properties. In addition, the ceiling test is also impacted by any changes in management's quarterly

evaluation of the Company's ability to fund the approximately $14,000,000 of future capital expenditures necessary over the next five years to develop the proved undeveloped reserves that are largely in the Twining area, the value of which is included in the calculation of the ceiling limitation. If facts, circumstances, estimates and assumptions underlying management's assessment of the Company's ability to fund such capital expenditures change such that it is no longer reasonably certain that all of the approximately $14,000,000 of capital expenditures necessary to develop the proved undeveloped reserves can be made, it is likely that we will incur a further ceiling test impairment at that time.

In the three and six months ended March 31, 2018, the Company recorded a $37,000 impairment of its residential parcel held for sale as a result of the sales contract in escrow as of March 31, 2018.

Gain on Sales of Assets

In February 2018, Barnwell sold its oil properties located in the Red Earth area of Alberta, Canada. As a result of the significant impact that the sale of Red Earth had on the relationship between capitalized costs and proved reserves of the sold property and retained properties, Barnwell did not credit the sales proceeds to the full cost pool, but instead calculated a gain on the sale of Red Earth of $2,135,000 which was recognized in the three and six months ended March 31, 2018, in accordance with the guidance in Rule 4-10(c)(6)(i) of Regulation S-X. Refer to the "Oil and Natural Gas Properties" section below for further information.

Also included in gain on sales of assets for the three and six months ended March 31, 2018 is a $115,000 gain on the sale of Barnwell's interest in natural gas transmission lines and related surface facilities in the Stolberg area in February 2018.

There were no such gains or losses on sales of operating assets recognized in the same periods of the current year.

Equity in Loss of Affiliates

Barnwell’s investment in the Kukio Resort Land Development partnerships is accounted for using the equity method of accounting. Barnwell was allocated partnership losses of $207,000 during the three months ended March 31, 2019, as compared to allocated losses of $80,000 during the three months ended March 31, 2018. The allocated losses for the three months ended March 31, 2019 and 2018 are due to no lots being sold in either period by the investee partnerships.

Barnwell was allocated partnership losses of $286,000 during the six months ended March 31, 2019, as compared to an allocated loss of $233,000 during the six months ended March 31, 2018. The increase in the allocated partnership losses is due primarily to a decrease in the investee partnerships' real estate office commission income due to a decrease in real estate resale activity in the current year period, as compared to the same period in the prior year.

Income Taxes

Barnwell’s effective consolidated income tax benefit rate for the three and six months ended March 31, 2019, after adjusting earnings (loss) before income taxes for non-controlling interests, was 2% in each period as compared to an effective income tax rate of 22% and an effective income tax benefit rate of 48% for the three and six months ended March 31, 2018, respectively.

Consolidated taxes do not bear a customary relationship to pretax results due primarily to the fact that the Company is taxed separately in Canada based on Canadian source operations and in the U.S. based on consolidated operations, and essentially all deferred tax assets, net of relevant offsetting deferred tax liabilities and any amounts estimated to be realizable through tax carryback strategies, are not estimated to have a future benefit as tax credits or deductions. Income from our non-controlling interest in the Kukio Resort Land Development Partnerships is treated as non-unitary for state of Hawaii unitary filing purposes, thus unitary Hawaii losses provide limited sheltering of such non-unitary income.

The repeal of the corporate Alternative Minimum Tax ("AMT") by the Tax Cuts and Jobs Act ("TCJA"), enacted on December 22, 2017, provides a mechanism for the refund over time of any unused AMT credit carryovers. Prior to the enactment of the TCJA, it was not more likely than not that the Company's AMT credit carryovers would provide a future benefit, as such the AMT deferred tax asset had a full valuation allowance. As a result of the TCJA provision for refundability of the AMT, the Company recorded a current income tax benefit of $460,000 in the quarter ended December 31, 2017. There was no significant impact of the TCJA during the three and six months ended March 31, 2019.

Net Earnings (Loss) Attributable to Non-controlling Interests

Earnings and losses attributable to non-controlling interests represent the non-controlling interests' share of revenues and expenses related to the various partnerships and joint ventures in which Barnwell has interests.

Net loss attributable to non-controlling interests for the three months ended March 31, 2019 totaled $26,000, as compared to net loss attributable to non-controlling interests of $16,000 for the same period in the prior year. The $10,000 (63%) change is due to an increase in the amount of Kukio Land Development Partnership losses in the current year period as compared to the same period in the prior year.

Net earnings attributable to non-controlling interests for the six months ended March 31, 2019 totaled $1,000, as compared to net loss attributable to non-controlling interests of $33,000 for the same period in the prior year. The $34,000 (103%) change is due to the percentage of sales proceeds received in the current year period as compared to none during the same period in the prior year.

Liquidity and Capital Resources

Barnwell's primary sources of liquidity are cash on hand and land investment segment proceeds. At March 31, 2019, Barnwell had $5,193,000 in working capital.

Cash Flows

Cash flows used in operations totaled $821,000 for the six months ended March 31, 2019, as compared to cash flows used in operations of $3,461,000 for the same period in the prior year. The $2,640,000 change in operating cash flows for the six months ended March 31, 2019, as compared to the prior year, was due to a $3,099,000 increase in cash flows from operations due to changes in working capital, primarily attributable to the collection of Canadian income tax refunds and an advance received for a contract drilling segment job, partially offset by a $551,000 decrease in contract drilling margin before depreciation and income taxes, primarily due to unforeseen difficulties encountered on two drilling jobs.

Cash flows provided by investing activities totaled $1,425,000 during the six months ended March 31, 2019, as compared to cash flows used in investing activities of $715,000 during the same period of the prior

year. The $2,140,000 increase in investing cash flows was primarily due to $741,000 in maturities of certificates of deposit in the current year period as compared to $782,000 in net purchases of certificates of deposit in the prior year period and a $756,000 increase in proceeds from sales of oil and natural gas properties. The current year period's proceeds from sales of oil and natural gas properties are comprised primarily of refunds of Canadian income taxes previously withheld from what otherwise would have been proceeds on prior years' oil and natural gas property sales. Additionally, Barnwell received $352,000 in distributions from equity investees in excess of earnings during the current year period.

Net cash used in financing activities totaled $110,000 for the six months ended March 31, 2019, as compared to $506,000 during the same period of the prior year. The $396,000 change in financing cash flows was due to a decrease in distributions to non-controlling interests in the current year period as compared to the prior year period.

Capital Expenditures

Barnwell's oil and natural gas capital expenditures, including accrued capital expenditures and excluding acquisitions and additions and revisions to estimated asset retirement obligations, totaled $20,000 and $62,000 for the three and six months ended March 31, 2019, respectively, as compared to $23,000 and $200,000 for the same periods in the prior year. Barnwell also invested $392,000 and $488,000 in the three and six months ended March 31, 2019, respectively, for other capital expenditures consisting primarily of contract drilling equipment. Barnwell estimates that total capital expenditures, excluding oil and natural gas property acquisitions and additions and revisions to estimated asset retirement obligations, for fiscal 2019 will range from $1,700,000 to $2,000,000, which includes approximately $1,300,000 for a new contract drilling segment rig and ancillary equipment. This estimate may change as dictated by management's assessment of the oil and natural gas environment and prospects.

Oil and Natural Gas Property Acquisitions and Dispositions

Fiscal 2018 Dispositions

In October 2017, Barnwell entered into a Purchase and Sale Agreement with an independent third party and sold its oil and natural gas properties located in the Pouce Coupe area of Alberta, Canada. The sales price per the agreement was adjusted to $72,000 for customary purchase price adjustments to reflect the economic activity from the effective date of May 1, 2017 to the closing date. From Barnwell's net proceeds, $37,000 was withheld and remitted by the buyer to the Canada Revenue Agency for potential amounts due for Barnwell's Canadian income taxes.

In February 2018, Barnwell sold its oil properties located in the Red Earth area of Alberta, Canada to two separate independent third parties. The sales prices per the agreements were adjusted for customary purchase price adjustments to reflect the economic activity from the effective date of October 1, 2017 to the closing date, for a combined adjusted sales price of $1,367,000. Barnwell recorded a gain on the sale of Red Earth of $2,135,000 in the quarter ended March 31, 2018, which included asset retirement obligations of $1,666,000 assumed by the purchaser. From Barnwell's net proceeds, $752,000 was withheld and remitted by the buyer to the Canada Revenue Agency for potential amounts due for Barnwell's Canadian income taxes.

In February 2018, Barnwell also sold its interests in natural gas transmission lines and related surface facilities in the Stolberg area of Alberta, Canada, for $118,000, and we recognized a $115,000 gain on the sale.

Fiscal 2019 Acquisitions

During the quarter ended December 31, 2018, Barnwell acquired additional working interests in oil and natural gas properties located in the Wood River and Twining areas of Alberta, Canada for cash consideration of $355,000. The purchase price per the agreements were adjusted for customary purchase price adjustments to reflect the economic activity from the effective date to the closing date. The final determination of the customary adjustments to the purchase price has not yet been made however it is not expected to result in a material adjustment.

Asset Retirement Obligation

In April 2019, Barnwell was notified by the Alberta Energy Regulator ("AER") that the AER is preparing an abandonment order for certain of the Company's non-producing wells in the Manyberries area which will either direct owners to abandon wells or apply for the transfer of the wells to the AER, and asked for confirmation of Barnwell's working interests in wells in the Manyberries area. Currently the timing and amount of any required cash outflows for Barnwell's portion of an AER order pertaining to wells at the Manyberries area is unknown. Of the wells listed by the AER, Barnwell has working interests in approximately 84 gross (9.4 net wells). The estimated asset retirement obligation for all of the Company's wells in the Manyberries area is included in "Asset retirement obligation" in the Condensed Consolidated Balance Sheets.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We have established disclosure controls and procedures to ensure that material information relating to Barnwell, including its consolidated subsidiaries, is made known to the officers who certify Barnwell's financial reports and to other members of executive management and the Board of Directors.

As of March 31, 2019, an evaluation was carried out by Barnwell's Chief Executive Officer and Chief Financial Officer of the effectiveness of Barnwell's disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that Barnwell's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) were effective as of March 31, 2019 to ensure that information required to be disclosed by Barnwell in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities Exchange Act of 1934 and the rules thereunder.

Changes in Internal Control Over Financial Reporting

There was no change in Barnwell's internal control over financial reporting during the quarter ended March 31, 2019 that materially affected, or is reasonably likely to materially affect, Barnwell's internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 6. EXHIBITS

Exhibit Number	Description
10.1	Agreement with KD Kaupulehu, LLLP to Release Retained Rights, dated as of March 7, 2019, between Kaupulehu Developments and KD Kaupulehu, LLLP
10.2*	Agreement with Respect to Retained Rights, dated as of March 7, 2019, between Kaupulehu Developments and KD Acquisition II, LP
31.1	Certification of Chief Executive Officer Pursuant To Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer Pursuant To Section 302 of the Sarbanes-Oxley Act of 2002
32	Certification Pursuant To Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

* Certain confidential information has been omitted from a portion of this exhibit

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BARNWELL INDUSTRIES, INC.
(Registrant)

Date: May 14, 2019

/s/ Russell M. Gifford
Russell M. Gifford
Chief Financial Officer,
Executive Vice President,
Treasurer and Secretary

INDEX TO EXHIBITS

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Exhibit No. 10.1

AGREEMENT (WITH KD KAUPULEHU. LLLP) TO RELEASE RETAINED RIGHTS

THIS AGREEMENT (WITH KD KAUPULEHU, LLLP) TO RELEASE RETAINED RIGHTS ("Agreement") is entered into this day 7th of March, 2019 by and between Kaupulehu Developments, a Hawaii general partnership ("KD"), and KD Kaupulehu, LLLP, a Delaware limited liability limited partnership ("KD Kaupulehu");

R E C I T A L S :

A. KD Acquisition II, LP, a Delaware limited partnership ("Acquisition II"), is the lessee under a ground lease entitled "Indenture of Lease", dated as of May 27, 2009, Lease No. 29,250, and made between the Trustees of the Estate of Bernice Pauahi Bishop as the lessor, and WB KD Acquisition II, LLC as the lessee, as modified by an Amendment of Bishop Estate Lease Nos. 29,250 and 29,251 dated March 7, 2016 (the lease as amended being referred to below as the "Increment 2 Lease"). The Increment 2 Lease leases and demises to Acquisition II certain land and related real property interests situated in the County of Hawaii which are described on **Exhibit "A"** attached hereto and incorporated herein by this reference, which land and interests are hereinafter referred to as "Increment 2".

B. On terms and conditions set forth in that certain May 27, 2009 Amended and Restated Agreement as to Lot 4A, Increment 2 ("Increment 2 Sale Agreement"), and except as noted otherwise below with respect to certain rights retained by KD, KD assigned, sold and conveyed all of its retained right, title and interest in Increment 2 to Acquisition II (to WB KD Acquisition II, LLC, Acquisition II's pre-conversion to LP entity) as lessee under the Increment 2 Lease.

C. In selling its leasehold interest in Increment 2 under the Increment 2 Sale Agreement to Acquisition II, KD reserved certain rights in Increment 2 and the Increment 2 leasehold including (1) the right to receive a percentage of the gross proceeds from Increment 2 lot or unit sales, (2) the right to approve changes in the Increment 2 Concept Plan, which plan identified the location and the number of units of each type which Acquisition II planned to develop within Increment 2, and (3) the right upon certain conditions specified in the Increment 2 Sale Agreement, to step in and assume Acquisition II's rights under the Increment 2 Lease. The rights described in items (1), (2), and (3) above are referred to below as "KD's Retained Rights".

D. Notice to third-parties of KD's Retained Rights in Increment 2 (and of its similar rights reserved with respect to in Increment 1) is provided by Memorandum of Agreement dated February 13, 2004 recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2004-031731, as amended by Amendment to Memorandum of Agreement

dated May 27, 2009 recorded in said Bureau as Document No. 2009-096329 (collectively referred to below as "Notice of Retained Rights").

E. To date, only two (2) residential lots within Increment 2 have been developed and sold (KD acknowledges receipt of the payments due it in consideration of its release of its Retained Rights in the two lots sold), and much of the infrastructure and amenities needed to support the full development of the increment have not yet been constructed and installed.

F. Acquisition II intends to proceed with the development of Increment 2 and in connection therewith has admitted Replay Kaupulehu Development, LLC ("Replay") as a partner of Acquisition II to take advantage of Replay's similar-project experience and to obtain Replay's expertise and assistance in the planning, design, development, marketing and sale of Increment 2 (the "Project"), the first contemplated phase of which is referred to below as "Phase 2A".

G. Acquisition II has requested that KD release KD's Retained Rights in Increment 2 to facilitate the financing of the Project and each phase thereof.

H. On the terms and conditions, and for the consideration, set forth in that certain Agreement With Respect to Retained Rights between KD and Acquisition II to be entered into of even date herewith, KD has agreed to release its Retained Rights in Increment 2.

I. KD's agreement to release its Retained Rights under the agreement with Acquisition II is, however, contingent on KD's receipt of the additional consideration from KD Kaupulehu described below.

J. KD Kaupulehu is a partner of Acquisition II with a forty percent (40%) interest (a fifty-five percent (55%) interest if the KD Net Profits Interest is included) in Acquisition II's profits and losses.

K. KD Kaupulehu is a Delaware limited liability limited partnership organized and operated pursuant to that certain June 9, 2014 Amended and Restated Partnership Agreement of KD Kaupulehu, LP (the "Partnership Agreement"). A copy of the Partnership Agreement is attached hereto as **Exhibit "B".**

NOW THEREFORE, for the consideration and mutual agreements described below, KD and KD Kaupulehu agree as follows:

1. Agreement to Release Retained Rights. KD agrees to release its Retained Rights in Increment 2 at Closing for the consideration and on the terms and conditions set forth below.

2. Consideration for Release. As consideration for KD's Release of its Retained Rights, KD Kaupulehu agrees to make payments to KD in the same amounts and at the same times as if KD were a Partner of KD Kaupulehu with a ten percent (10%) interest in the cumulative net profits

(after giving effect to losses) of KD Kaupulehu derived from any phase of the Project subsequent to Phase 2A. Each distribution made by KD Kaupulehu pursuant to Section 6.03(b) of the Partnership Agreement, to the extent that it includes net profits from phases of the Project subsequent to Phase 2A, will be shared between the partners of KD Kaupulehu and KD as if KD's "Percentage Interest" in the cumulative net profits of the KD Kaupulehu partnership is 10%. The above-described payments to KD shall continue until KD has received total distributions pursuant to Section 6.03(b) in the amount of THREE MILLION AND NO/100 DOLLARS ($3,000,000.00).

3. Condition Precedent to KD's Release of Retained Rights. KD's release of its Retained Rights shall be contingent upon the occurrence of closing under KD's Agreement With Respect to Retained Rights with Acquisition II.

4. Closing; Form of Release. Upon the satisfaction of the condition precedent in Section 3 above ("Closing"), KD will execute and deliver to Acquisition II for recordation in said Bureau the Partial Release of Retained Rights in the form attached to the Agreement With Respect to Retained Rights between KD and Acquisition II as **Exhibit "C".**

5. Notices. All notices, demands, consents, approvals, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder (collectively, "Notices") shall be in writing and shall be given by (a) personal delivery, (b) facsimile transmission or (c) a reputable overnight courier service, fees prepaid, addressed as follows:

If to Kaupulehu Developments:	c/o Barnwell Hawaiian Properties, Inc. 1100 Alakea Street, Suite 2900 Honolulu, Hawaii 96813 Attn: Alexander Kinzler Facsimile No.: (808) 531-7181
If to KD Kaupulehu, LLLP:	c/o Barnwell Hawaiian Properties, Inc. 1100 Alakea Street, Suite 2900 Honolulu, Hawaii 96813 Attn: Alexander Kinzler Facsimile No.: (808) 531-7181
With a copy to:	Ashford & Wriston LLP 999 Bishop Street, Suite 1400 Honolulu, Hawaii 96813 Attn: Cuyler Shaw Facsimile No.: (808) 539-4945

Any partner may designate another addressee (and/or change its address) for Notices hereunder. A Notice sent in compliance with the provisions of this Section 5 shall be deemed given on the date of receipt.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii.

7. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. Amendments, variations, modifications or changes herein may be made effective and binding upon the parties by, and only by, the setting forth of same in a document duly executed by each party, and any alleged amendment, variation, modification or change herein which is not so documented shall not be effective as to any party.

9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which when assembled shall constitute one and the same instrument. The submission of a signature page transmitted by facsimile or by other electronic transmission such as in portable document format ("pdf") shall have the full force and effect of an original.

10. Venue. Each of the parties consents to the jurisdiction of any court in Honolulu, Hawaii for any action arising out of matters related to this Agreement.

11. Terms capitalized but not defined in this Agreement shall have the meanings assigned to them in the Partnership Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to Release Retained Rights as of the date first written above.

Kaupulehu Developments,
a Hawaii general partnership

By: /s/ Alexander Kinzler
Name: Alexander Kinzler
Title: President/Managing Partner

"KD"

KD Kaupulehu, LLLP,
A Delaware limited liability limited partnership

By: Kaupulehu Makai, LLLP
Its general partner

By: _____
Name: _____
Title: _____

"KD Kaupulehu"

IN WITNESS WHEREOF, the parties have executed this Agreement to Release Retained Rights as of the date first written above.

Kaupulehu Developments,
a Hawaii general partnership

By: _____
Name: _____
Title: _____

"KD"

KD Kaupulehu, LLLP,
A Delaware limited liability limited partnership

By: Kaupulehu Makai, LLLP

By: KKM Makai, LLLP, its general partner

By: Noble enterprises, Inc., its general partner

By: /s/ Terry Johnston
Terry Johnston
Its President

"KD Kaupulehu"

EXHIBIT "A"

Increment 2 Real Property

FIRST:

All of those certain parcels of land (being portion of the land(s) described in and covered by Royal Patent Number 7843, Land Commission Award Number 7715, Apana 10 to L. Kamehameha) situate, lying and being at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii being:

> LOT 46A of the "KAUPULEHU LOT 4-A INCREMENT 2, PHASE 1 SUBDIVISION", containing an area of 147.768 acres, more or less;

All as shown on subdivision map prepared by Dan H. Hirota, Land Surveyor, dated August 26, 2015, approved by the Planning Director, County of Hawaii, on September 17, 2015, as SUB-13-001254-Revised, as shown in AFFIDAVIT dated September 25, 2015, recorded as Document No. A-57490755.

SECOND:

All of that certain parcel of land situate at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 45 of the "Kaupulehu LOT 4-A, INCREMENT 1, PHASE 2 SUBDIVISION", as shown on File Plan Number 2438, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 273.875 acres, more or less.

EXHIBIT "B"

Limited Liability Limited Partnership Agreement of KD Kaupulehu, LLLP

LIMITED LIABILITY LIMITED PARTNERSHIP AGREEMENT

OF

KD KAUPULEHU, LLLP

Dated as of June 9, 2014

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LIMITED LIABILITY LIMITED PARTNERSHIP AGREEMENT
OF
KD KAUPULEHU, LLLP

This LIMITED LIABILITY LIMITED PARTNERSHIP AGREEMENT (this "Agreement") of KD KAUPULEHU, LLLP is made and entered into as of June 9, 2014 ("Effective Date"), by and between KAUPULEHU MAKAI, LLLP, a Hawaii limited liability limited partnership ("Makai), and G&K DEVELOPMENT, LLC, a Hawaii limited liability company (the "Getty Entity").

WHEREAS, the Company (as hereinafter defined) was organized as a Delaware limited liability company pursuant to a Certificate of Formation (the "Certificate of Formation") dated January 30, 2004, and filed with the Secretary of State of Delaware on January 30, 2004;

WHEREAS, the original members of the Company were WB UNITED LAND INVESTMENTS, L.P. ("WULI") and the Getty Entity;

WHEREAS, WULI and the Getty Entity were parties to that certain Limited Liability Company Agreement of WB Kaupulehu, LLC dated February 13, 2004 ("Company Agreement");

WHEREAS, on November 27, 2013, Makai purchased WULI's 60% interest as member in the Company;

WHEREAS, in connection with Makai's purchase of WULI's interest as member in the Company, the Company Agreement was amended to account for the admission of Makai as a member and to make certain other changes;

WHEREAS, the Company was converted to a Delaware limited liability limited partnership by the filing of a Certificate of Conversion with the Secretary of State of Delaware on June 9, 2014;

WHEREAS, in connection with Makai's purchase of WULI's member interest and the conversion of the Company from a limited liability company to a limited liability limited partnership, Makai and the Getty Entity wish to amend and restate the Company Agreement as amended to read as set forth below.

NOW, THEREFORE, the parties hereto hereby agree as follows:

I.

DEFINED TERMS

1.01. Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

"Additional Capital Contribution" has the meaning set forth in Section 4.02(a).

"Adjusted Capital Account Deficit" means, with respect to any Partner for any taxable year or other period, the deficit balance, if any, in such Partner's Capital Account as of the end of such year or other period, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts that such Partner is obligated to restore or is deemed obligated to restore as described in the penultimate sentence of Treasury Regulation Section 1.704-2(g)(1) and in Treasury Regulation Section 1.704-2(i); and

(b) Debit to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"Administrator" means any Person designated as such pursuant to Section 7.03(a) (the Development Manager is hereby designated as such by the Executive Committee).

"Affiliated" or "Affiliate" means, with respect to any Person, (a) any other Person directly or indirectly controlling, controlled by, or under common control with such Person, or (b) any officer, director, general partner or managing member of such Person, or (c) any other Person which is an officer, director, general partner, managing member or holder of 50% or more of the voting interests of any other Person described in clauses (a) or (b) of this definition. The term "control" as used herein (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power (i) to vote 50% or more of the outstanding voting securities of such person or entity; or (ii) to otherwise direct management policies of such person or entity by contract or otherwise.

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Book Basis" means, with respect to any asset of the Company, the adjusted basis of such asset for federal income tax purposes; provided, however, that (a) if any asset is contributed to the Company, the initial Book Basis of such asset shall equal its fair market value on the date of contribution, and (b) the Book Basis of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Executive Committee, as of the following times: (i) the acquisition of an additional Interest by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Partner of more than a de minimis amount of property as consideration for an Interest; and (iii) in connection with the

liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Executive Committee reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Company. The Book Basis of all assets of the Company shall be adjusted thereafter by depreciation as provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(g) and any other adjustment to the basis of such assets other than depreciation or amortization.

"Budget" means the budget covering the Company's anticipated operations approved by the Executive Committee and in effect from time to time pursuant to Section 8.06, which budget shall include the Operating Plan.

"Capital Account" means the separate account maintained for each Partner under Section 4.01.

"Capital Contribution" means, with respect to any Partner, all Initial Capital Contributions and Additional Capital Contributions made by such Partner to the Company pursuant to this Agreement.

"Certificate of Formation" has the meaning set forth in the recital paragraphs to this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means the limited liability limited partnership continued and governed by the terms of this Agreement.

"Company Accountant" has the meaning set forth in Section 8.04.

"Company Minimum Gain" means "partnership minimum gain" as defined in Treasury Regulation Section 1.704-2(d).

"Company Property" means any asset or other property (real, personal or mixed) owned by or leased to the Company, which shall consist of the Initial Company Property, and other property acquired by the Company pursuant to the terms hereof.

"Confidential Information" has the meaning set forth in Section 13.16(a).

"Delaware Act" means the Delaware Limited Partnership Act, as amended from time to time.

"Development Management Agreement" means the Development Management Agreement to be entered into by and between the Company and the Development Manager in such form as may be designated by the Executive Committee.

"Development Manager" means any Person who is engaged as a property and development manager for the Initial Company Property and approved by the Executive Committee, whose services will include those specified in the Development Management Agreement.

"Event of Default" has the meaning set forth in Section 12.01. "Executive Committee" has the meaning set forth in Section 7.01(a).

"Expenses" means, for any period, the total gross expenditures of the Company relating to the operations of the Company, ownership, maintenance, management, operations, sale, financing or refinancing of the Company Property during such period contemplated by the then applicable Budget or otherwise approved (either prospectively or retroactively) by the Executive Committee, including (a) all cash operating expenses (including without limitation real estate taxes and assessments, personal property taxes, sales taxes, and all fees, commissions, expenses and allowances paid or reimbursed to any Partner or any of its Affiliates pursuant to any property management agreement or otherwise as permitted hereunder), (b) all deposits of Revenues to the Company's reserve accounts, as determined by the Executive Committee, (c) all debt service payments including debt service on loans made to the Company by the Partners or any of their Affiliates, (d) all expenditures which are treated as capital expenditures (as distinguished from expense deductions included in (a)) under generally accepted accounting principles, and (e) all expenditures related to any acquisition, sale, disposition, financing, refinancing or securitization of any Company Property; provided, however, that Expenses shall not include (i) any payment or expenditure to the extent (A) the sources of funds used for such payment or expenditure are not included in Revenues or (B) such payment or expenditure is paid out of any Company reserves, and (ii) any expenditure properly attributable to the liquidation of the Company.

"GAAP" means United States generally accepted accounting principles consistently applied.

"Getty Entity" has the meaning set forth in the introductory paragraph hereof. "Initial Budget and Operating Plan" has the meaning set forth in Section 8.06.

"Initial Company Property" means all fee simple and leasehold real property situated at Kaupulehu, North Kona, Big Island, Hawaii, owned as of the Effective Date by the Company's subsidiaries, KD Acquisition, LLLP and KD Acquisition II, LLLP.

"Interest" means, with respect to any Partner at any time, the interest of such Partner in the Company at such time, including the right of such Partner to any and all of the benefits to which such Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all of the terms and provisions of this Agreement.

"Internal Rate of Return" or "IRR" means the annual percentage rate, compounded quarterly, which, when utilized to calculate the present value of the distributions of Net Cash Flow to a Partner, causes such present value of distributions to equal the present value of such Partner's Capital Contributions. The present value of a Partner's Initial Capital Contribution is the nominal amount

of such capital, and the present value of any Additional Capital Contribution is the nominal amount of such Additional Capital Contribution discounted back to the date the Initial Capital Contribution was contributed utilizing said annual percentage rate.

"Limited Partner" means any Person who has been admitted to the Partnership as a limited partner in accordance with the terms of this Agreement in such Person's capacity as a limited partner. The initial Limited Partner is G&K Development, LLC.

"Liquidating Partner" means the Partner designated as such by the Executive Committee; provided, however, that any Partner that is then in default hereunder or that causes the dissolution of the Company under Section 11.01(e) shall not serve as the Liquidating Partner (in which event the Liquidating Partner shall be the non-defaulting Partner).

"Loss" means, for each taxable year or other period, an amount equal to the Company's items of taxable deduction and loss for such year or other period, determined in accordance with Section 703(a) of the Code (including all items of loss or deduction required to be stated separately under Section 703(a)(1) of the Code), with the following adjustments:

(a) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures under Treasury Regulation Section 1.704-1(b)(2)(iv)(i) , and not otherwise taken into account in computing Loss, will be considered an item of Loss;

(b) Loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Book Basis of such property, notwithstanding that the adjusted tax basis of such property may differ from its Book Basis;

(c) In lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account depreciation for the taxable year or other period as determined in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(8);

(d) Any items of deduction and loss specially allocated pursuant to Section 6.02 shall not be considered in determining Loss; and

(e) Any decrease to Capital Accounts as a result of any adjustment to the Book Basis of Company assets pursuant to Treasury Regulation Section 1.704-1(b)(2) (iv)(f) or *(g)* shall constitute an item of Loss.

"Major Decision" has the meaning set forth in Section 7.01(a).

"Managing Partner" means Makai as the initial general partner of the Company or any other Person who is admitted as an additional or successor general partner of the Company in accordance with this Agreement and applicable law.

"Necessary Expenses" shall mean expenditures in respect of debt service on any Company financing (including the expense of curing any defaults thereunder), utilities, real estate taxes and assessments, emergency repairs, or other expenditures which the Executive Committee reasonably determines are necessary for the continued ordinary operation of the Company Property, including without limitation uninsured losses or deductibles, operating shortfalls, repairs, additions or modifications to comply with applicable laws or insurance requirements, insurance premiums for insurance policies approved by the Executive Committee, and any final orders, judgments, or other proceedings and all costs and expenses related thereto, regardless of whether the Budget has been approved or whether such expenditures exceed the amounts provided for in the applicable Budget. Only the Executive Committee (and not any Partner) shall determine what constitutes a Necessary Expense.

"Net Cash Flow" means, for any period, the excess of (a) Revenues for such period over (b) Expenses for such period.

"Net Loss" means, for any period, the excess of Losses over Profits, if applicable, for such period.

"Net Profit" means, for any period, the excess of Profits over Losses, if applicable, for such period.

"Nonrecourse Deductions" has the meaning set forth in Treasury Regulation Section 1.704-2(b)(1).

"Notices" has the meaning set forth in Section 13.03.

"Operating Plan" means the strategic and comprehensive operating plan covering the Company's anticipated operations of Company Property and approved by the Executive Committee and in effect from time to time pursuant to Section 8.06, which operating plan shall include the Budget.

"Partially Adjusted Capital Account" means, with respect to any Partner for any taxable year or other period of the Company, the Capital Account balance of such Partner at the beginning of such year or period, adjusted for all contributions and distributions during such year or period and all special allocations pursuant to Section 6.02 with respect to such year or period but before giving effect to any allocations of Net Profit or Net Loss pursuant to Section 6.01.

"Partner" means one or more of Makai and/or the Getty Entity, or any other Person who is admitted as a member of the Company in accordance with this Agreement and applicable law.

"Partner Minimum Gain" means the Company's "partner nonrecourse debt minimum gain" as defined in Treasury Regulation Section 1.704-2(i)(2).

"Partner Nonrecourse Debt" means "partner nonrecourse debt" as defined in Treasury Regulation Section 1.704-2(b)(4).

"Partner Nonrecourse Deductions" means "partner nonrecourse deductions" as defined in Treasury Regulation Section 1.704-2(i)(2).

"Percentage Interest" means with regard to each Partner the percentage set forth below opposite its name (in each case subject to adjustment as provided in this Agreement):

Partner	Percentage Interest
Makai	60%
Getty Entity	40%

"Person" means any individual, partnership, corporation, limited liability company, limited liability partnership, trust or other entity.

"Profit" means, for each taxable year or other period, an amount equal to the Company's items of taxable income and gain for such year or other period, determined in accordance with Section 703(a) of the Code (including all items of income and gain required to be stated separately under Section 703(a)(1) of the Code), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit will be added to Profit;

(b) Gain resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Book Basis of such property, notwithstanding that the adjusted tax basis of such property may differ from its Book Basis;

(c) Any items specially allocated pursuant to Section 6.02 shall not be considered in determining Profit; and

(d) Any increase to Capital Accounts as a result of any adjustment to the Book Basis of Company assets pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) or *(g)* shall constitute an item of Profit.

"Reasonable Period" means, with respect to any defaulting member, a period of 30 calendar days after such defaulting Partner receives written notice of its default from a non-defaulting Partner; provided, however, that if such breach can be cured but cannot reasonably be cured within such 30-day period, the period shall continue, if such defaulting Partner commences to cure the breach within

such 30-day period, for so long as such defaulting Partner diligently prosecutes the cure to completion up to a maximum of 90 calendar days.

"Regulatory Allocations" has the meaning set forth in Section 6.02(g).

"Revenues" means, for any period, the total gross revenues received by the Company during such period, including all receipts of the Company from (a) rent, cost, expense and other recoveries and all additional rent paid to the Company (including for parking facilities), (b) concessions to the Company which are in the nature of revenues, (c) rent or business interruption insurance, and casualty and liability insurance, if any, (d) funds made available to the extent such funds are withdrawn from the Company's reserve accounts and deposited into the Company's operating accounts, (e) proceeds from the sale or other disposition of any Company Property, (f) proceeds from the financing, refinancing or securitization of any Company Property (including, without limitation, cash or other consideration received by the Company from any Public Vehicle in exchange for the Company Property, but not in exchange for an Interest or portion thereof, or in exchange for a Partner's undivided interest in the Property), and (g) other revenues and receipts realized by the Company, including without limitation excess cash from Capital Contributions that were not used as contemplated by the Executive Committee for the purpose of funding the Shortfall giving rise to the need for such Capital Contributions or such other Shortfall as the Executive Committee may reasonably determine.

"Target Account" means, with respect to any Partner for any taxable year of the Company or other period, the excess of (a) an amount equal to the hypothetical distribution such Partner would receive if all assets of the Company, including cash, were sold for cash equal to their Book Basis (taking into account any adjustments to Book Basis for such year or other period), all liabilities allocable to such assets were then due and were satisfied according to their terms (limited, with respect to each nonrecourse liability, to the Book Basis of the assets securing such liability) and all remaining proceeds from such sale were distributed pursuant to Section 6.03, over (b) the amount of Company Minimum Gain and Partner Minimum Gain that would be charged back to such Partner as determined pursuant to Treasury Regulation Section 1.704-2 in connection with such sale.

"Transfer" has the meaning set forth in Section 9.01.

"Treasury Regulation" or "Regulation" means, with respect to any referenced provision, such provision of the regulations of the United States Department of the Treasury or any successor provision.

1.02. Other Defined Terms. As used in this Agreement, unless otherwise specified, (a) all references to Sections, Articles or Exhibits are to Sections, Articles or Exhibits of this Agreement, and (b) each accounting term has the meaning assigned to it in accordance with GAAP.

II.

ORGANIZATION

2.01. Continuation. The Company was formed as a Delaware limited liability company and converted to a Delaware limited liability limited partnership as evidenced by Certificate of Conversion filed with the Delaware Secretary of State on June 9, 2014. The Partners hereby agree to continue the Company as a limited liability limited partnership under the Delaware Act, upon the terms and subject to the conditions set forth in this Agreement. The Managing Partner is hereby authorized to file and record with the Secretary of State any documents as may be reasonably required or appropriate under the Delaware Act or the laws of any other jurisdiction in which the Company may conduct business or own property.

2.02. Name and Principal Place of Business

(a) The name of the Company is set forth on the cover page to this Agreement. The Executive Committee may change the name of the Company or adopt such trade or fictitious names for use by the Company as the Executive Committee may from time to time determine. All business of the Company shall be conducted under such name, and tide to all Company Property shall be held in such name.

(b) The principal place of business and office of the Company shall be located at 1100 Alakea Street, Suite 2900, Honolulu, Hawaii 96813, or at such other place or places as the Executive Committee may from time to time designate.

2.03. Term. The term of the Company commenced on January 30, 2004, the date of the filing of the Certificate of Formation pursuant to the Delaware Act, and shall continue until December 31, 2052, unless sooner terminated pursuant to the provisions of this Agreement.

2.04. Registered Agent and Registered Office. The name of the Company's registered agent for service of process shall be The Corporation Trust Company, and the address of the Company's registered agent and the address of the Company's registered office in the State of Delaware shall be 1209 Orange Street, Wilmington, Delaware 19801. Such agent and such office may be changed from time to time by the Executive Committee with written notice to all Partners.

2.05. Purpose.

(a) The purpose of the Company shall be:

(i) To acquire, own, manage, operate, develop, entitle, improve, finance, refinance, sell and otherwise deal with and dispose of the Company Property; and

(ii) To conduct all activities reasonably necessary or desirable to accomplish the foregoing purposes.

III.

PARTNERS

3.01. Partners.

(a) As of the Effective Date, the Partners of the Company are Makai and the Getty Entity. Except as expressly permitted by this Agreement, no other Person shall be admitted as a Partner of the Company and no additional Interest shall be issued, without the approval of all of the Partners.

(b) Subject to the terms of this Agreement, Makai shall constitute the Managing Partner of the Company. The Partners, in the exercise of their duties hereunder as Partners, shall have no fiduciary duties towards the Company and the other Partners.

3.02. Limitation on Liability. Except as otherwise expressly provided in the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Partner shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company. Except as otherwise expressly provided in the Delaware Act, the liability of each Partner shall be limited to the amount of Capital Contributions required to be made by such Partner in accordance with the provisions of this Agreement, but only when and to the extent the same shall become due pursuant to the provisions of this Agreement.

IV.

CAPITAL

4.01. Capital Accounts. A separate capital account (each, a "Capital Account") will be maintained for each Partner in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). Consistent therewith, the Capital Account of each Partner will be determined and adjusted as follows:

(a) Each Partner's Capital Account will be credited with:

(i) Any contributions of cash made by such Partner to the capital of the Company plus the fair market value of any property contributed by such Partner to the capital of the Company (net of any liabilities to which such property is subject or which are assumed by the Company);

(ii) The Partner's distributive share of Net Profit and any items in the nature of income or gain specially allocated to such Partner pursuant to Section 6.02; and

(iii) Any other increases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(b) Each Partner's Capital Account will be debited with:

(i) Any distributions of cash made from the Company to such Partner plus the fair market value of any property distributed in kind to such Partner (net of any liabilities to which such property is subject or which are assumed by such Partner);

(ii) The Partner's distributive share of Net Loss and any items in the nature of expenses or losses specially allocated to such Partner pursuant to Section 6.02; and

(iii) Any other decreases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(c) The Capital Account balance of each Partner as of the Effective Date will be the same as the Partner's final capital account balance as a member of the Company's prior-to-conversion limited liability company.

The provisions of this Section 4.01 and any other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Section 704(b) of the Code and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions.

4.02. Additional Contributions, Loans and Withdrawals of Capital.

(a) Additional Capital Contributions.

(i) General Partner-Requested Contributions. The General Partner may, by written notice to each Partner, request additional capital contributions ("Additional Capital Contribution") to the Partnership. Such notice shall set forth the total amount of funds required by the Partnership, each Partner's proportionate share of such amount based on the Partner's then existing Percentage Interest, the date by which the requested Additional Capital Contribution is to be contributed, and the reason or reasons that the Partnership requires the additional funds. If approved by all Partners, which approval may be withheld in each Partner's discretion, the Partners shall make the requested Additional Capital Contribution by the date approved by the Partners. No Partner shall be obligated to make any Additional Capital Contribution which the Partner did not approve.

(ii) Option to Fund Additional Capital. In the event that less than all of the Partners approve any call for additional capital by the General Partner, then the other Partners shall be given the opportunity to make the Additional Capital Contributions in the ratio of the each contributing Partner's Percentage Interest to the total Percentage Interests of those Partners who are willing to make the Additional Capital Contribution multiplied by the total amount of Additional Capital Contributions being requested by the General Partner.

(iii) No Duty to Restore Capital Account. Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, the deficit, if any, in the Capital Account of any Partner upon dissolution of the Partnership shall not be an asset of the Partnership and such Partner shall not be obligated to contribute such amount to the Partnership to bring the balance of such Partner's Capital Account to zero.

(b) Loans. . No Partner shall be required to lend any money to or for the benefit of the Partnership. If Partnership funds are insufficient to meet its costs, expenses, obligations or liabilities, or to make any expenditure authorized by this Agreement, any Partner may (but shall not be required to) lend all or a portion of the amount of needed funds to the Partnership. Any such loans shall bear interest at a rate of ten percent (10%) per annum, and shall be on such other terms as the General Partner and the Partner(s) making such loans may agree.

(c) Withdrawals and Interest. Except. as expressly set forth herein, no Partner shall be entitled to withdraw any portion of its Capital Contribution or Capital Account balance. No Partner shall be entitled to receive any interest on the balance in such Partner's Capital Account.

V.

INTERESTS IN THE COMPANY

5.01. Percentage Interest. The Percentage Interests of the Partners may be adjusted only as set forth in this Agreement.

5.02. Return of Capital. No Partner shall be liable for the return of the capital contributions (or any portion thereof) of any other Partner, it being expressly understood that any such return shall be made solely from the assets of the Company. No Partner shall be entitled to withdraw or receive a return of any part of its capital contributions or Capital Account, to receive interest on its capital contributions or Capital Account or to receive any distributions from the Company, except as expressly provided for in this Agreement or under applicable law.

5.03. Ownership. All Company Property shall be owned by the Company, subject to the terms and provisions of this Agreement. Title to Company assets shall be held by the Company in the Company's name.

VI.

ALLOCATIONS AND DISTRIBUTIONS

6.01. Allocations. For each taxable year or portion thereof, Net Profit and Net Loss shall be allocated (after all allocations pursuant to Section 6.02 have been made) as follows:

(a) Net Loss shall be allocated among the Partners so as to reduce, proportionately, the differences between their respective Partially Adjusted Capital Accounts and Target Accounts for such year; provided, however, that no portion of the Net Loss for any taxable year shall be allocated to a Partner whose Target Account is greater than or equal to its Partially Adjusted Capital Account for such taxable year.

(b) Net Profit shall be allocated among the Partners so as to reduce, proportionately, the differences between their respective Target Accounts and Partially Adjusted Capital Accounts for such year; provided, however, that no portion of the Net Profit for any taxable year shall be allocated

to a Partner whose Target Account is less than or equal to his Partially Adjusted Capital Account for such taxable year.

6.02. Allocations and Compliance with Section 704(b). The following special allocations shall, except as otherwise provided, be made in the following order:

(a) If there is a net decrease in Company Minimum Gain or in any Partner Minimum Gain during any taxable year or other period, prior to any other allocation pursuant hereto, such Partner shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount and manner required by Treasury Regulation Sections 1.704-2(f) or 1.704-2(i)(4). The items to be so allocated shall be determined in accordance with Treasury Regulation Section 1.704-2.

(b) Nonrecourse Deductions for any taxable year or other period shall be allocated (as nearly as possible) under Treasury Regulation Section 1.704-2 to the Partners, pro rata in proportion to their respective Percentage Interests.

(c) Any Partner Nonrecourse Deductions for any taxable year or other period shall be allocated to the Partner that made or guaranteed or is otherwise liable with respect to the loan to which such Partner Nonrecourse Deductions are attributable in accordance with principles under Treasury Regulation Section 1.704-2(i).

(d) Any Partner who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), *(5)* or *(6)* which causes or increases a negative balance in his or its Capital Account shall be allocated items of Profit sufficient to eliminate such increase or negative balance caused thereby, as quickly as possible, to the extent required by such Treasury Regulation.

(e) No allocation of loss or deduction shall be made to any Partner if, as a result of such allocation, such Partner would have an Adjusted Capital Account Deficit. Any such disallowed allocation shall be made to the Partners entitled to receive such allocation under Treasury Regulation Section 1.704-1(b)(2)(iv) in proportion to their respective Percentage Interests. If losses or deductions are reallocated under this subsection 6.02(e), subsequent allocations of income and losses (and items thereof) shall be made so that, to the extent possible, the net amount allocated under this subsection 6.02(e) equals the amount that would have been allocated to each Partner if no reallocation had occurred under this subsection 6.02(e).

(f) For purposes of Section 752 of the Code and the Treasury Regulations thereunder, excess nonrecourse liabilities (within the meaning of Treasury Regulations Section 1.752- 3(a)(3)) shall be allocated to the Partners pro rata in proportion to their respective Percentage Interests.

(g) The allocations contained in Sections 6.02(a), 6.02(c), 6.02(d), 6.02(e) and 6.02(f) (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury

Regulation Sections 1.704-I and 1.704-2. The Regulatory Allocations shall be taken into account in allocating Profits, Losses, Net Profit and Net Loss and other items of income, gain, loss and deduction among the Partners so that to the extent possible, the aggregate of (i) the allocations made to each Partner under this Agreement other than the Regulatory Allocations and (ii) the Regulatory Allocations made to each Partner shall equal the net amount that would have been allocated to each Partner had the Regulatory Allocations not occurred. The Executive Committee shall take account of the fact that certain of the Regulatory Allocations will occur at a period in the future for purposes of applying this Section 6.02(g).

6.03. Distributions. Except as provided in Section 6.05, the Company shall, as soon as reasonably practical (but no less often than quarterly, if appropriate), make distributions of Net Cash Flow to the Partners in the following manner and order of priority:

(a) First, to the Partners in proportion to their Additional Capital Contributions until all such Additional Capital Contributions have been returned in full; and

(b) Second, to the Partners in proportion to their respective Percentage Interests.

6.04. Intentionally Omitted.

6.05. Distributions in Liquidation. Upon the dissolution and winding-up of the Company, the proceeds of sale and other assets of the Company distributable to the Partners under Section 11.02(c)(iii) shall be distributed, not later than the latest time specified for such distributions pursuant to Treasury Regulation Section L704-1(b)(2)(ii)(b)(2) to the Partners in proportion to and in accordance with the amounts and priorities set forth in Section 6.03. With the approval of the Executive Committee, a pro rata portion of the distributions that would otherwise be made to the Partners under the preceding sentence may be distributed to a trust reasonably established, for a reasonable period of time, for the benefit of the Partners for the purposes of liquidating Company assets, collecting amounts owed to the company, and paying any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the Company. The assets of any trust established under this Section 6.05 will be distributed to the Partners from time to time by the trustee of the trust upon approval of the Executive Committee in the same proportions as the amount distributed to the trust by the Company would otherwise have been distributed to the Partners under this Agreement.

6.06. Tax Matters. The Partners intend for the Company to be treated as a partnership for federal income tax purposes. The Executive Committee shall make all applicable elections, determinations and other decisions under the Code and applicable Treasury Regulations, including, without limitation, the deductibility of a particular item of expense and the positions to be taken on the Company's tax return, and shall approve the settlement or compromise of all audit matters raised by the Internal Revenue Service affecting the Partners generally. The Partners shall each take reporting positions on their respective federal, state and local income tax returns consistent with the positions determined for the Company by the Executive Committee. The Administrator shall

cause all federal, state and local income and other tax returns to be timely filed by the Company and shall, after receiving the Executive Committee's approval of such returns, be authorized to execute such returns (provided that the Administrator shall, for so long as it diligently performs its obligations hereunder, not be responsible for the delays of any other Partner or reputable accountants or auditors retained by the Administrator or at the request of the Executive Committee on behalf of the Company).

6.07. Tax Matters Partner. Makai shall be the tax matters partner within the meaning of Section 6231(a)(7) of the Code and, subject to Section 6.06, shall exercise all rights, obligations and duties of a tax matters partner under the Code; provided, however, that Makai shall not have any right to settle or compromise any matter raised by the Internal Revenue Service without the approval of the Executive Committee, and the other Partners shall be kept informed of, and given an opportunity to participate in a non-binding manner in, all such matters which the tax matters partner deems to be material; provided, however, that if a tax settlement would have a disproportionate material adverse impact on one of the other Partners, such Partner shall be given a reasonable period of time to approve the proposed settlement, which approval shall not be unreasonably withheld, conditioned or delayed.

6.08. Section 704(c). In accordance with Section 704(c) of the Code and the applicable Treasury Regulations thereunder, income, gain, loss, deduction and tax depreciation with respect to any property contributed to the capital of the Company, or with respect to any property which has a Book Basis different than its adjusted tax basis, shall, solely for federal income tax purposes, be allocated among the Partners so as to take into account any variation between the adjusted tax basis of such property to the Company and the Book Basis of such property. Any elections, accounting conventions or other decisions relating to such allocations shall be made by the Executive Committee in a manner that (A) reasonably reflects the purposes and intention of this Agreement, and (B) complies with Code Sections 704(b) and 704(c) and the Treasury Regulations thereunder. For such allocations, the Executive Committee may select any method permitted in the Treasury Regulations under Code Section 704(c) with respect to such allocations, including the "traditional method", the "traditional method with curative allocations" and the "remedial allocation method".

6.09. Withholding. All amounts required to be withheld pursuant to Section 1446 of the Code or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the Partners for all purposes under this Agreement. If the Executive Committee reasonably determines that the Company has insufficient liquid assets to satisfy such withholding obligation, the Partner as to which withholding applies shall contribute cash to the Company in an amount sufficient to satisfy such withholding obligation.

VII.

MANAGEMENT

7.01. Management. Except as otherwise expressly provided in this Agreement, the business and affairs of the Company shall be vested in and controlled by the Executive Committee as provided below.

(a) The Company and the Managing Partner shall act by means of and through a committee of persons appointed in writing pursuant to Section 7.02 (the "Executive Committee"). Each person appointed by a Partner to the Executive Committee shall act at the exclusive direction of, be the agent of and shall be free to represent the views and positions of such appointing Partner. The Executive Committee shall have responsibility for establishing the policies and operating procedures with respect to the business and affairs of the Company and for making all decisions as to all matters which the Company has authority to perform, as fully as if all the Partners were themselves making such decisions in lieu thereof. All decisions made with respect to the management and control of the Company and approved by the Executive Committee (except for such decisions which by the express terms of Section 7.01(g) of this Agreement require the approval of all Partners) shall be binding on the Company and all Partners. The Executive Committee may elect officers of the Company to implement the decisions (including without limitation executing documents) of the Executive Committee from time to time. Except as otherwise expressly provided in this Agreement or as otherwise previously approved by the Executive Committee, or provided for in any Budget or Operating Plan, the Executive Committee shall, acting reasonably and in the best interest of the Company, have the sole authority to authorize and approve the following matters (a "Major Decision"):

(i) The entering into of any agreements with any governmental agency, any neighboring or adjacent property owner, any community organizations or any other third parties respecting the development or entitlement, or the development or entitlement status, of the Company Property, or sending any correspondence to or having any other material communications with, any governmental agency which directly binds the Company or advocates a position on behalf of the Company;

(ii) Any financing, refinancing or securitization of any Company Property and the use of any proceeds thereof, including, without limitation, interim and permanent financing, and any other financing or refinancing of the operations of the Company and the execution and delivery of any documents, agreements or instruments evidencing, securing or relating to any such financing; provided, however, that no guarantees or credit enhancements can be required from any Partner or its Affiliates without such party's consent;

(iii) The approval of any Budget and Operating Plan, and any amendments or modifications thereto (which shall only be permitted in accordance with this Agreement);

(iv) (A) Any sale, assignment, transfer or other disposition of Company Property or any part thereof, (B) any development, improvement, rehabilitation, alteration, repair, or completion of construction of any Company Property, or the processing of entitlements with respect thereto or taking any action relating thereto which burdens or encumbers the

Company Property, and (C) any activity which generates revenues, or which is otherwise on terms, that, in the case of (C), vary materially from the ranges and guidelines in the Budget or Operating Plan (for purposes of this Section 7.01(a)(iv), such a material variance shall be (I) an amount that is not within the ranges established in the Operating Plan or is in excess of the amount set forth in the Budget for such expenditure or line item by more than 10% of the line item or 5% of the Budget, whichever is less (in addition to individual expenditures and obligations, such test shall be applied to aggregate expenditures and obligations made on a quarterly basis as well), or (II) terms that materially conflict with the other guidelines in the Operating Plan regarding such transactions).

(v) Any lease of any portion of Company Property, or any amendment or modification thereto, or any termination thereof;

(vi) The making of any recurring operating expenditure or incurring of any recurring operating obligation by or on behalf of the Company that varies materially from the Budget or entering into (or amending or modifying) of any agreement which was not specifically included or contemplated in the Budget or under the Operating Plan, or otherwise approved by the Executive Committee (for purposes of this Section 7.01(a) (vi), such a material variance shall be (A) expenditures or obligations involving an amount that is in excess of the amount set forth on a quarterly basis or on an annual basis in the Budget for such expenditure on a line item basis by more than 10% of the line item or 5% of the Budget, whichever is less, for such period, (B) expenditures or obligations involving the incurrence of an expenditure or obligation for any transaction or any series of related transactions when taken with all prior expenditures or obligations during the particular quarter or fiscal year related thereto exceeds the maximum expenditure amount provided in the Budget or the Operating Plan for such particular transaction or series of transactions for such period by the lesser of 10% of such maximum expenditure amount for such particular transaction or series of transactions for such period or 5% of the Budget for such period, or (C) in the case of any material service, maintenance or similar agreement proposed to be entered into, such agreement is not terminable (without penalty) by the Company on 30 calendar days or less written notice to the other party; provided, however, that expenditures made or obligations incurred or agreements entered into pursuant to, or which are specifically included in or contemplated under, the Budget or Operating Plan shall not be Major Decisions to the extent they do not vary (other than immaterial variances) from the Budget and Operating Plan);

(vii) Entering into or consummating any transaction or arrangement with any Partner or any Affiliate of any Partner, or any other transaction involving an actual or potential conflict of interest, each of which shall, unless it is on arm's length terms, require the consent of the disinterested Partner;

(viii) The establishment of reasonable reserves, determination of the amount of available Net Cash Flow, and making of distributions to Partners (subject to the requirements of Section 6.03);

(ix) The institution of any legal proceedings in the name of the Company, settlement of any legal proceedings against the Company and confession of any judgment against the Company or any property of the Company other than the institution of any eviction, suits for breach of tenant leases, or similar proceedings contemplated or provided for in the Operating Plan;

(x) The possession or pledge of any Company Property for other than Company purposes (which shall require the consent of all Partners);

(xi) (A) The filing of any voluntary petition in bankruptcy on behalf of the Company, (B) the consenting to the filing of any involuntary petition in bankruptcy against the Company, (C) the filing of any petition seeking, or consenting to, the reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (D) the consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, (E) the making of any assignment for the benefit of creditors, (F) the admission in writing of the Company's inability to pay its debts generally as they become due or (G) the taking of any action by the Company in furtherance of any such action;

(xii) The entering into of any (A) asset or property management agreement, (B) development agreement or (C) leasing agreement (except to the extent permitted in the Development Management Agreement), or (D) other third party contract, in any case with respect to which funds are not provided for, or the existence of which is not contemplated, in the Budget and/or Operating Plan, as applicable, with regard to the Company or any Company Property;

(xiii) The engagement of any manager, contractor, developer or sales or placement agent or broker not expressly permitted hereunder or under the Development Management Agreement for the management, leasing, disposition, financing or refinancing of any Company Property;

(xiv) Any other material matter pertaining to the Company's business, or any deviation from the Budget and Operating Plan, which is designated by the Executive Committee to be a "Major Decision" hereunder;

(xv) The approval, determination or any other action expressly reserved to the Executive Committee under this Agreement, including, without limitation, any modification, amendment, or renewal of any matter previously requiring the approval of the Executive Committee; and

(xvi) Any other matter which the Executive Committee deems to be significant.

(b) Subject to the terms of this Agreement, the prior approval of the Executive Committee and Makai, as applicable, and the limitations imposed by law, the Managing Partner (acting through the Executive Committee, and subject to all applicable limitations on the authority of the Executive Committee set forth herein) shall have all of the same powers and duties as a general partner of a general partnership under the laws of the State of Delaware, including, without limitation, the full power and authority to:

(i) Acquire, hold, operate, sell, transfer, assign, convey, exchange, lease, sublease, mortgage or otherwise dispose of or deal with all or any part of the Company Property;

(ii) In furtherance of the Company's purposes and business, borrow money, whether on a secured or unsecured basis, refinance, recast, modify, amend, extend, compromise or otherwise deal with any such loan, and in connection therewith, issue evidences of indebtedness and secure the same by mortgages, deeds of trust, security agreements or other similar documents affecting the assets of the Company;

(iii) Authorize other persons to execute and deliver such documents on behalf of the Company as the Executive Committee may deem necessary or desirable for the Company's business, including, without limitation, guarantees and indemnities;

(iv) Perform, or cause to be performed, all of the Company's obligations under any agreement to which the Company is a party;

(v) Enter into contracts on behalf of the Company and make expenditures as are required to operate and manage the Company and the Company Properties;

(vi) Take any action in furtherance of, or relating to, developing the Company Property; and

(vii) Do any act which is necessary or desirable to carry out any of the purposes of the Company.

(c) Notwithstanding anything to the contrary contained in Section 7.01(a) or (b), none of the Executive Committee, the Managing Partner (except for while Makai is the Managing Partner) or the Administrator shall have any authority to authorize or approve any matter set forth in Section 7.01(a)(ii), (iii), (iv), (v), (vi), (ix), or (xi) without the approval of Makai.

(d) The Company may employ, engage or retain any Persons (including any Affiliate of any Partner) to act as brokers, accountants, attorneys, engineers or in such other capacities as the Executive Committee may determine are reasonably necessary or desirable in connection with the Company's business, and the Managing Partner, the members of the Executive Committee and the

Administrator shall be entitled to rely in good faith upon the recommendations, reports and advice given them by any such Persons in the course of their professional engagement.

(e) Only the Executive Committee shall have the right or power to make decisions on behalf of and exercise control over the Company business, affairs or operations; provided, however, that the Executive Committee may elect to implement those decisions through any Partner it selects in writing, and/or through one or more officers it elects in writing and/or through other Persons; and provided further that the Managing Partner may not, without the consent of the Executive Committee, take any actions which specifically require the consent of the Executive Committee pursuant to the terms hereof.

(f) Intentionally Omitted.

(g) Anything in this Agreement to the contrary notwithstanding, neither the Executive Committee nor the Managing Partner shall, without the written consent or ratification of the specific act by all the Partners given in this Agreement or by other written instrument executed and delivered by all the Partners subsequent to the date of this Agreement, cause or permit the Company to:

(i) make any loans to the Managing Partner or its Affiliates;

(ii) amend this Agreement;

(iii) do any act in contravention of this Agreement or which would make it impossible to carry out the business of the Company;

(iv) cause the Company to make any distribution of Company property in kind to any Partner;

(v) change the nature of the business conducted by the Company or its purposes as described in Section 2.05 hereof; or

(vi) extend the term of the Company.

7.02. Members of the Executive Committee. (a) The Executive Committee shall consist of five members. The members of the Executive Committee as of the date of this Agreement are Terry Johnston, David Johnston and Alex Kinzler, appointed by Makai, and William Getty and John M. Nees, appointed by the Getty Entity. Notwithstanding any other provision of this Agreement to the contrary, Makai will at all times have the right to appoint a majority in number of the members of the Executive Committee. Each Partner may, by written notice to the others, remove any person appointed by such Partner and appoint a substitute therefor. Any Partner may, by written notice delivered to the other Partners, delegate any or all of the duties of such Partner's representatives on the Executive Committee to another of its representatives on the Executive Committee or Makai.

(a) Regular meetings of the Executive Committee shall be held at such times and places as shall be designated from time to time by resolution of the Executive Committee, provided the Executive Committee shall meet no less frequently than quarterly and provided such regular meetings of the Executive Committee shall be as often as necessary or desirable to carry out its management functions.

(b) Special meetings of the Executive Committee may be called by or at the request of any Partner. The person or persons authorized to call the special meeting of the Executive Committee may fix any reasonable place as the place for holding the special meeting of the Executive Committee, or such meeting may occur telephonically.

(c) Notice of any meeting of the Executive Committee shall be given to each Partner no fewer than 2 days and no more than 30 days prior to the date of the meeting. Notices shall be delivered in the manner set forth in Section 13.03 hereof. The attendance of a member of the Executive Committee at a meeting of the Executive Committee shall constitute a waiver of notice of such meeting, except where a member of the Executive Committee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Executive Committee need be specified in the notice or waiver of notice of such meeting.

(d) Provided that notice of a meeting has been given to each Partner as called for by paragraph (d), above, a majority (in number) of the members of the Executive Committee shall constitute a quorum for transaction of business at any meeting of the Executive Committee, provided that, subject to the proviso set forth in clause (g), below, if less than a majority of such number of members of the Executive Committee are present at said meeting, a majority of the members of the Executive Committee present may adjourn the meeting at any time without further notice, and provided further that diligent efforts shall be made to attempt to have an Executive Committee member appointed by the Getty Entity available (either in person or telephonically) at each meeting of the Executive Committee.

(e) Provided that notice of a meeting has been given to each Partner as called for by paragraph (d), above, the act of a majority (in number) of the members of the Executive Committee present shall be the act of the Executive Committee, unless the act of a greater number is required by this Agreement; and no action shall be deemed to have taken place unless a majority of the members of the Executive Committee shall have approved the same, and unless at least one Executive Committee member appointed by Makai shall have approved the same.

(f) Any action required to be taken at a meeting of the Executive Committee or any other action which may be taken at a meeting of the Executive Committee may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by a majority in number of the members of the Executive Committee entitled to vote with respect to the subject matter thereof, provided that each Partner shall be provided with at least 1 Business Day prior notice

of such proposed action. Provided that such notice is given to each Partner, any such consent signed by a majority in number of the members of the Executive Committee shall have the same effect as an act of a majority (in number) of the members of the Executive Committee at a properly called and constituted meeting of the Executive Committee at which all of the members of the Executive Committee were present and voting.

(g) The members of the Executive Committee may participate in and act at meetings of the Executive Committee through the use of a telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meetings shall constitute attendance in person at the meeting of the person or persons so participating.

(h) Except as otherwise determined by the Executive Committee or as approved as part of the Budget, no member thereof, nor officer of the Company, nor employee, agent or contractor of any Partner or any Affiliate thereof (other than the Company or Development Manager), shall be entitled to receive any salary or any remuneration or expense reimbursement from the Company for his or her services as a member of the Executive Committee or for his or her services to the Company or with respect to the Company Property.

(i) The Executive Committee may, by resolution, designate one or more individuals as employees or agents of the Company in furtherance of its business and exclusive purposes. No such employee or agent need be a Partner of the Company. Each employee or agent shall have the authority and shall perform the duties as designated by the Executive Committee from time to time. Any employee or agent so appointed by the Executive Committee may be removed by the Executive Committee whenever in their judgment the best interests of the Company would be served.

(j) The Administrator shall be responsible for coordinating all meetings of the Executive Committee and shall prepare a proposed agenda for each meeting of the Executive Committee, and will distribute such agenda to each member of the Executive Committee at least a week in advance of any meeting. The Executive Committee may amend such agenda as it sees fit. A written record of all meetings of the Executive Committee and all decisions made by it shall be made by a representative of the Managing Partner, as Secretary of the Executive Committee, and kept in the records of the Company and shall be initialed or signed by each of the members of the Executive Committee. The approval of any Budget and Operating Plan will be evidenced by the signing or initialing of a copy of the approved version by at least a majority (in number) of the members of the Executive Committee. Minutes and/or resolutions of the Executive Committee when initialed or signed by a majority (in number) of the members of the Executive Committee shall be binding and conclusive evidence of the decisions reflected therein and any authorizations granted thereby.

(k) Any Partner may, at any time as set forth in a notice to the other Partners, remove, for any or no mason, its representative from the Executive Committee and may designate a replacement person to act as its representative.

(l) In the event there is a disagreement between the Executive Committee members appointed by the Getty Entity and the Executive Committee members appointed by Makai with respect to a proposed entitlement, development matter, acquisition, sale, financing or refinancing of the Company Property (a "Special Matter"), then either such Partner shall have the right to deliver a notice to the other (the "First Notice") stating that a disagreement exists. If such Partners are unable to agree on the resolution of the Special Matter within 10 Business Days of the delivery of the First Notice, either such Partner shall have the right to deliver a subsequent notice (the "Second Notice") to the other informing the other of the continued existence of such dispute. Within 5 Business Days after the timely delivery of the Second Notice, senior representatives of Makai and the Getty Entity shall hold a meeting, either telephonically or at the Company's principal place of business, to attempt to resolve such disagreement. Notwithstanding the foregoing, (i) if any Partner believes that the Special Matter is an "emergency", it may shorten the time periods referenced above, and (ii) if the parties are unable to resolve the dispute regarding a Special Matter within the time period referenced above, the Executive Committee shall be able to make a decision on such Special Matter as referenced in the balance of this Section 7.02.

7.03. Administrator.

(a) The Executive Committee may designate any Person (including any Partner, any Affiliate of a Partner or any other Person so willing to act) to act as the "Administrator" hereunder and may engage such Administrator to conduct (subject to the requirement of receiving the consent of the Executive Committee or one or more Partners if and when required by the terms hereof) the day-to-day business of the Company (or any portion thereof), which may include the performance of the following duties:

(i) To oversee, coordinate and process the operations, including without limitation, the entitlement, development, sale of lots and memberships, and management on a day-to-day basis of any and all of the assets which comprise the Company Property, coordinate with all governmental agencies, neighboring property owners, community groups and other relevant third parties, and prepare all communications with governmental agencies, neighboring property owners, community groups and other relevant third parties;

(ii) Subject to the availability of funds therefor, to take all proper and necessary actions reasonably required to cause the Company and all third parties at all times to perform and comply with the provisions (including, without limitation, any provisions requiring the expenditure of funds by the Company) of any loan commitment, agreement, mortgage, lease, or other contract, instrument or agreement to which the Company is a party or which affects any Company Property or the operation thereof;

(iii) Subject to the availability of funds therefor, to pay in a timely manner all non-disputed operating expenses of the Company in accordance with the terms of the Budget and the Operating Plan or as otherwise provided herein;

(iv) To the extent available, and subject to the availability of the funds therefor, to obtain and maintain insurance coverage on Company Properties as required by the Executive Committee and pay all non-disputed taxes, assessments, charges and fees payable in connection with the ownership, use and occupancy of the Company Properties;

(v) To manage and administer the process of entitling, developing, selling and refinancing the Company Property;

(vi) To execute and deliver agreements, certificates and similar documents which are necessary to obtain loans on terms approved by the Executive Committee and to acquire the Initial Company Property pursuant to the Purchase Document; and

(vii) To make quarterly requests for disbursements (a "Disbursement Request") from the Company, which Disbursement Request shall set forth the operating expenses, entitlement and development and capital costs or such other costs approved in the Budget and Operating Plan for which the Disbursement Request is being made, and shall compare the amount requested in such Disbursement Request to the amount allocated to such cost item in the Budget and Operating Plan.

7.04. Intentionally Omitted.

7.05. Duties and Conflicts.

(a) The Partners and their respective officers, employees, appointed members of the Executive Committee and Affiliates shall devote such time to the Company business as they deem to be necessary or desirable in connection with their respective duties and responsibilities hereunder. Except as otherwise agreed to in writing by the Executive Committee and all disinterested Partners, no Partner nor any member, partner, shareholder, officer, director, employee, agent or representative of any Partner shall receive any salary or other remuneration for its services rendered pursuant to this Agreement.

(b) Each of the Partners recognizes that each of the other Partners and its members, partners, shareholders, officers, directors, employees, agents, representatives, appointed members of the Executive Committee and Affiliates, have or may have other business interests, activities and investments, some of which may be in conflict or competition with the business of the Company and that each of the other Partners and its partners, shareholders, officers and directors, employees, agents, representatives, appointed members of the Executive Committee and Affiliates, are entitled to carry on such other business interests, activities and investments. Each of the Partners may engage in or possess an interest in any other business or venture of any kind, independently or with others, including, without limitation, owning, financing, acquiring, leasing, promoting, developing, improving, operating, managing and servicing real property and mortgage loans on its own behalf or on behalf of other entities with which any of the Partners is affiliated or otherwise, and each of the Partners may engage in any such activities, whether or not competitive with the Company,

without any obligation to offer any interest in such activities to the Company or to the other Partners. Neither the Company nor the other Partners shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Company, shall not be deemed wrongful or improper.

7.06. Company Expenses. Except as otherwise provided in this Agreement or the Development Management Agreement, except for costs which are to be borne by the Development Manager pursuant to the terms of the Development Management Agreement, and except for any costs to be borne by any third party under any agreement with the Company, the Company shall be responsible for paying, and shall pay, all direct costs and expenses related to the business of the Company and of acquiring, holding, owning, developing, servicing, collecting upon and operating the Company Property. Subject to the preceding sentence, all costs and expenses relating to any employees, staff or other personnel approved by the Executive Committee to provide day-to-day operations and financial reporting to oversee the operations of the Company Property, costs of financing, fees and disbursements of attorneys, financial advisors, accountants, appraisers, brokers and engineers, travel expenses, and all other fees, costs and expenses directly attributable to the business and operations of the Company shall be borne by the Company. In the event any such costs and expenses are or have been paid by any Partner, such Partner shall be entitled to be reimbursed for such payment so long as such payment is reasonably necessary for Company business or operations and has been approved by the Executive Committee or is expressly authorized in this Agreement or the appropriate Budget or Operating Plan (including any permitted variance hereunder). Notwithstanding the foregoing, in no event shall the Company have any obligation to pay or reimburse any Partner for any general overhead expense of such Partner.

VIII.

BOOKS AND RECORDS

8.01. Books and Records. The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, shall maintain, or cause to be maintained, at the expense of the Company, in a manner customary and consistent with good accounting principles, practices and procedures, a comprehensive system of office records, books and accounts (which records, books and accounts shall be and remain the property of the Company) in which shall be entered fully and accurately each and every financial transaction with respect to the ownership and operation of the Company Property. Bills, receipts and vouchers shall be maintained on file by the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee,. The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, shall maintain or cause to be maintained said books and accounts in a safe manner and separate from any records not having to do directly with the Company or any Company Property. The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, shall cause audits to be performed and audited statements and income tax returns to be prepared as required by Section 8.03 (provided that the Administrator shall, for so long as it diligently performs its obligations hereunder, not be responsible for the delays of any non-

Affiliated Partner or reputable accountants or auditors retained by the Administrator or at the request of the Executive Committee on behalf of the Company or at the request of the Executive Committee). Such books and records of account shall be prepared and maintained by the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, at the principal place of business of the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, or such other place or places as may from time to time be reasonably determined by the Executive Committee. Each Partner or its duly authorized representative shall have the right to inspect, examine and copy such books and records of account at the Company's office during reasonable business hours.

8.02. Accounting and Fiscal Year. Unless the Executive Committee elects a different method, the books of the Company shall be kept on the accrual basis in accordance with GAAP and on a tax basis and the Company shall report its operations for tax purposes on the accrual method. The fiscal year and tax year of the Company shall end on August 31st of each year, unless a different tax year shall be required by the Code.

8.03. Reports.

(a) The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will prepare, or cause to be prepared, at the expense of the Company, and furnish to each Partner (provided that the Administrator shall, for so long as it diligently performs its obligations hereunder, not be responsible for the delays of any non-Affiliated Partner or reputable accountants or auditors retained by the Administrator or at the request of the Executive Committee on behalf of the Company) (i) within 21 calendar days after the end of each fiscal quarter of the Company, unless such fiscal quarter is the last fiscal quarter of any fiscal year of the Company, (A) an unaudited balance sheet of the Company dated as of the end of such fiscal quarter, (B) an unaudited related income statement of the Company for such fiscal quarter, (C) an unaudited statement of each Partner's Capital Account for such fiscal quarter, and (D) an unaudited statement of cash flows of the Company for such fiscal quarter, and (ii) within 15 calendar days after the end of each calendar month, a status report of the Company's activities during such calendar month, including summary descriptions of entitlement and development and related matters, and additions to, dispositions of and leasing and occupancy of Company Properties and any material legal issues such as material claims filed or threatened against the Company, the arising of material claims by the Company against other parties and developments in any then pending material legal actions affecting the Company during such fiscal quarter, and a reconciliation of actual Expenses and Revenues during such period compared with the Budget amounts for such items, and a quarterly explanation of the discrepancies, all of which shall be certified by the Administrator as being, to the best of its knowledge, true and correct.

(b) In addition, the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will prepare, at the expense of the Company, and furnish to

each Partner within 60 calendar days after the end of such fiscal year, (i) an audited balance sheet of the Company dated as of the end of such fiscal year, (ii) an audited related income statement of the Company for such fiscal year, (iii) an audited* statement of cash flows for such fiscal year, and (iv) an audited* statement of each Partner's Capital Account for such fiscal year, all of which shall be certified by the Administrator as being, to the best of its knowledge, true and correct and all of which shall be certified in the customary manner by the Company Accountant (which firm shall provide such balance sheet, income statement and statement of Capital Account in draft form to the Partners for review prior to finalization and certification thereof).

(c) The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will furnish to each Partner, at the expense of the Company, copies of all reports required to be furnished to any lender of the Company.

(d) The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will use diligent commercially reasonable efforts to cause the Company Accountant to prepare all federal, state and local tax returns required of the Company, submit those returns to the other Partners for their approval not later than sixty (60) days following each fiscal year and will file the tax returns after they have been approved by the Executive Committee. If the Executive Committee shall not have approved any such tax return prior to the date required for the filing thereof (including any extensions granted), the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will diligently endeavor to timely obtain an extension of such date to the extent such an extension is available.

(e) The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, shall prepare, or cause to be prepared, at Company expense, such additional financial reports and other information as the Executive Committee may reasonably determine are appropriate.

(f) All decisions as to accounting principles shall be made by the Executive Committee, subject to the provisions of this Agreement.

8.04. The Company Accountant. The Company shall retain as the regular accountant and auditor for the Company (the "Company Accountant") any accounting firm designated by the Executive Committee. The fees and expenses of the Company Accountant shall be a Company expense.

8.05. Reserves. The Executive Committee may, in its discretion and subject to such conditions as it shall determine, establish reasonable reserves for the purposes and requirements as it may deem appropriate.

8.06. The Budget and Operating Plan.

(a) The Administrator, or such other Person as shall be approved by the Executive Committee for such purpose, shall deliver at least sixty (60) days prior to the end of each fiscal year a proposed budget and strategic operating plan (upon approval and as approved by the Executive Committee, the "Budget and Operating Plan") for the Company through the end of the following fiscal year, with quarterly projections through the next five (5) years, which sets forth all anticipated income, operating expenses, entitlement and development and capital and other costs and expenses of the Company, together with an exit valuation/strategy and projected quarterly/annual capital contributions and returns and aggregate lRR's to each Partner, and which shall provide for the development and improvement (to the extent feasible given entitlements and land availability) of the Company Property (provided if the Administrator should fail to timely prepare and submit in proposed form any such Budget and Operating Plan, the Executive Committee shall be authorized to prepare such Budget and Operating Plan). In formulating the comprehensive Budget and Operating Plan, to the extent reasonably feasible at the time of preparation thereof, the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will develop (for approval by the Executive Committee) proposed strategies regarding (i) plans for entitlement, development and rehabilitation of any real property and proposed reductions to Expenses and other Company costs and expenses and increases in revenues, (ii) preparation and release of all promotional and advertising material relating to, and a marketing plan for, the Company Property or concerning the Company, (iii) terms for any proposed sale or disposition of any Company Property, or acquisition of additional Company Property, and (iv) selection of legal counsel, accountants, appraisers and other consultants for the Company to efficiently implement the Budget and Operating Plan. The Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will also consider and make recommendations to the extent it deems the same appropriate regarding the amendment, modification, alteration, change, cancellation, or prepayment of any indebtedness evidenced by any mortgage loan presently or hereafter affecting any Company Property, and procurement of title insurance and other insurance for the Company, or decrease or vary the insurance carried by or on behalf of the Company, and any other matters affecting the Company's business. The Executive Committee may review the Initial Budget and Operating Plan and make such amendments or modifications thereto as the Executive Committee shall determine appropriate or necessary in its reasonable discretion based on the actual operating results for the Company Property.

(b) In conjunction with the formulation of the Operating Plan, to the extent applicable to the Company Property, the Administrator, or such other Person as may be appointed for such purpose by the Executive Committee, will also develop (for approval by the Executive Committee) proposed operating guidelines for such property for the upcoming fiscal year.

8.07. Accounts. All funds of the Company shall be deposited in such checking accounts, savings accounts, time deposits, or certificates of deposit in the Company's name or shall be invested in the Company's name, in such manner as shall be reasonably designated by the Executive Committee from time to time. Company funds shall not be commingled with those of any other person or entity. Company funds shall be used only for the business of the Company.

IX.

TRANSFER OF INTERESTS

9.01. No Transfer. Except as expressly permitted or contemplated by this Agreement, no Partner may sell, assign, give, hypothecate, pledge, encumber or otherwise transfer ("Transfer") all or any portion of its Interest, whether directly or indirectly, without the written consent of the other Partners. Any Transfer in contravention of this Article IX shall be null and void. No Partner, without the prior written consent of the other Partners, shall resign from the Company except as a result of such Partner's involuntary dissolution or fmal adjudication as a bankrupt or in connection with a Transfer permitted by this Article IX.

9.02. Permitted Transfers:

(a) Makai may from time to time and in its sole discretion without the consent of any other Partner, sell or assign its Interest in whole or in part to any entity or Person.

(b) The Getty Entity may sell or assign its Interest, but only with the consent of Makai, which shall not be unreasonably withheld; provided, however, that (i) such a Transfer must be a Transfer of all of such Interest, not in part, and provided further that, upon such Transfer, the Getty Entity and its transferee shall, notwithstanding anything to the contrary provided elsewhere herein, no longer have any rights under Section 9.05 hereunder, and (ii) the Getty Entity shall notify Makai in writing of the intended sale of the Getty Entity's Interest pursuant to a written notice (the "Sale Notice") which sets forth the Getty Entity's sales price, as well as the other terms all as reflected in a fully executed and delivered binding purchase and sale agreement for the Interest at the time the Sale Notice is given (the "Proposed Price") and the other proposed terms (the "Proposed Terms") of such sale, and Makai's approval or disapproval shall be based on the Proposed Price and the Proposed Terms, and (iii) prior to any such Transfer (which shall require the approval of Makai), for the period commencing with the giving of the *Sale* Notice and terminating 30 days thereafter (the "ROHR Period"), Makai shall have the opportunity to purchase the Getty Entity's Interest, at a price equal to or in excess of the Proposed Price and on terms no less advantageous to the Getty Entity than the Proposed Terms. If Makai approves the transfer documented in the Sale Notice but fails to accept the terms set forth in the Sale Notice within the ROFR Period, then the Getty Entity shall be free to sell or transfer the Interest, in whole but not in part, but only if such sale or transfer is consummated within 90 days after the expiration of the ROFR Period (the "Sale Period") at a price equal to or greater than the Proposed Price, and on the Proposed Terms. If Makai accepts the terms of the Sale Notice prior to the expiration of the ROFR Period, then the Getty Entity and Makai shall consummate such sale within 30 clays after the date that Makai accepts the terms of the Sale Notice, at the Proposed Price and on the Proposed Terms or such other terms that may be agreed to by the Getty Entity and Makai.

(c) Any permitted Transfer shall not relieve the transferor of any of its obligations prior to such Transfer. Nothing contained in this Article IX shall prohibit a Transfer indirectly of any

interest in the Company if a direct Transfer would otherwise be permitted under this Section 9.02. Subject to Section 9.03, any transferee pursuant to this Section 9.02 shall become a Partner of the Company. The provisions of this Section 9.02 will not apply to or be deemed to authorize or permit any collateral transfer of, or grant of a security interest in, a Partner's interest in the Company, or in Company Property (which transfer or grant shall be subject to the other provisions of this Agreement).

9.03. Transferees. Notwithstanding anything to the contrary contained in this Agreement, no transferee of all or any portion of any Interest shall be admitted as a Partner unless (a) such Interest is transferred in compliance with the applicable provisions of this Agreement, (b) such transferee shall have furnished evidence of satisfaction of the requirements of Section 9.02 reasonably satisfactory to the remaining Partners, and (c) such transferee shall have executed and delivered to the Company such instruments as the remaining Partners reasonably deem necessary or desirable to effectuate the admission of such transferee as a Partner and to confirm the agreement of such transferee to be bound by all of the terms and provisions of this Agreement with respect to such Interest. At the request of the remaining Partners, each such transferee shall also cause to be delivered to the Company, at the transferee's sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Company, to the effect that (i) such transferee has the legal right, power and capacity to own the Interest proposed to be transferred, (ii) if applicable, such Transfer does not violate any provision of any loan commitment or any mortgage, deed of trust or other security instrument encumbering all or any portion of the Company Property, and (iii) such Transfer does not violate any federal or state securities laws and will not cause the Company to become subject to the Investment Company Act of 1940, as amended. As promptly as practicable after the admission of any Person as a Partner, the books and records of the Company shall be changed to reflect such admission. All reasonable costs and expenses incurred by the Company in connection with any Transfer of any Interest and, if applicable, the admission of any transferee as a Partner shall be paid by such transferee.

9.04. Section 754 Election. In the event of a Transfer of all or part of the Interest of a Partner, at the request of the transferee or if in the best interests of the Company (as determined by the Executive Committee), the Executive Committee may elect pursuant to Section 754 of the Code to adjust the basis of Company Property as provided by Sections 734 and 743 of the Code, and any cost of such election or cost of administering or accounting for such election shall be at the sole cost and expense of the requesting transferee.

9.05. ROFO.

(a) Makai shall have the right to cause the Company to sell the Company Property at any time, provided that if the Getty Entity shall not have previously defaulted under this Section 9.05, and is not then in default hereunder, then (i) prior to any such sale which constitutes a sale in bulk of all of the Company's assets, together with the assets held by KD Kukio Resorts, LLLP and KD Maninf owali, LLLP (collectively, the "Group Company Property"), Makai shall notify the

Getty Entity in writing of the intended sale of the Group Company Property pursuant to a written notice (the "Sale Notice") which sets forth Makai's intended sales price for the Group Company Property at the time the Sale Notice is given (the "Proposed Price") and other proposed terms (the "Proposed Terms") of such sale, and (ii) for the period commencing with the giving of the Sale Notice and terminating 30 days thereafter (the "ROFO Period"), the Getty Entity shall have the opportunity to purchase the Group Company Property, at a price equal to or in excess of the Proposed Price and on terms no less advantageous to the Company than the Proposed Terms. If the Getty Entity fails to accept the terms set forth in the Sale Notice, then Makai shall be free to compel the Company to sell the Group Company Property, or any portion thereof, but only if such sale is consummated within 270 days after the expiration of the ROFO Period (the "Sale Period") at a price equal to or greater than 80% of the Proposed Price (prorated if the sale is of only a portion of the Group Company Property). If the Getty Entity accepts the terms of the Sale Notice, then the Getty Entity shall be required to consummate such sale within 30 days after the date of the Sale Notice, and the Getty Entity shall have no further rights under this Section 9.05(a).

(b) Nothing in this Section 9.05 or elsewhere herein shall limit the authority of the Executive Committee to compel a sale of the Company Property or any portion thereof.

X.

EXCULPATION AND INDEMNIFICATION

10.01. Exculpation. No Partner, member of the Executive Committee, general or limited partner of any Partner, shareholder or member or other holder of an equity interest of any Partner or manager, officer or director of any of the foregoing, shall be liable to the Company or to any other Partner for monetary damages for any losses, claims, damages or liabilities arising from any act or omission performed or omitted by it and arising out of or in connection with this Agreement or the Company's business or affairs; provided, however, such act or omission was taken in good faith, was reasonably believed to be in the best interests of the Company and was within the scope of authority granted to such Person, and was not attributable to such Partner's or Person's fraud, bad faith, willful misconduct or gross negligence. No general or limited partner of any Partner, shareholder, member or other holder of an equity interest in such Partner or manager, officer of director of any of the foregoing shall be personally liable for the performance of any such Partner's obligations of this Agreement, but the foregoing shall not relieve any partner or member of any Partner from its obligations to such Partner.

10.02. Indemnification.

(a) The Company shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless each Partner, each member of the Executive Committee and each general or limited partner of any Partner or such Partner's Affiliate, shareholder, member or other holder of any equity interest in such Partner or its Affiliate, or any manager, officer or director of any of the foregoing (collectively, the "Indemnitees"), from and against any losses, claims, demands, liabilities, costs, damages, expenses and causes of action to which such Indemnitee may become

subject in connection with any matter arising out of or incidental to any act performed or omitted to be performed by any such Indemnitee in connection with this Agreement or the Company's business or affairs; provided, however, that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnitee to be in the best interest of the Company and within the scope of authority granted to such member or applicable Indemnitee, and was not attributable to such Indemnitee's fraud, bad faith, willful misconduct or gross negligence. Any indemnity under this Section 10.02 shall be paid solely out of and to the extent of Company assets and shall not be a personal obligation of any Partner and in no event will any Partner be required, or permitted without the consent of all of the Partners, to contribute additional capital under Section 4.02 to enable the Company to satisfy any obligation under this Section 10.02. All judgments against the Company and the Partners, or any one or more thereof, wherein such Partner (or Partners) is entitled to indemnification, must first be satisfied from Company assets before the Partners shall be responsible therefor.

(b) The Company and the other Partners shall be indemnified and held harmless by each Partner from and against any and all claims, demands, liabilities, costs, damages, expenses and causes of action of any nature whatsoever arising out of or attributable to (i) any act performed by or on behalf of any such Partner or its designated Executive Committee member which is not performed in good faith or is not reasonably believed by such Partner or its designated Executive Committee member to be in the best interest of the Company and within the scope of authority conferred upon such Partner or its designated Executive Committee member under this Agreement, (ii) the fraud, bad faith, willful misconduct or gross negligence of such Partner or its designated Executive Committee member, (iii) the breach by the Company of any of its representations and warranties made under any purchase, loan or other agreement entered into in connection with the acquisition of Company Property, which breach was the result of information or matters relating to such Partner, or (iv) any denial of an insurance claim by the Company based on an intentional misstatement or intentional withholding of information by any Partner.

(c) The provisions of this Section 10.02 shall survive for a period of four years from the date of dissolution of the Company, provided that, if at the end of such period there are any actions, proceedings or investigations then pending, any Indemnitee may so notify the Company and the other Partners at such time (which notice shall include a brief description of each such action, proceeding or investigation and the liabilities asserted therein) and the provisions of this Section 10.02 shall survive with respect to each such action, proceeding or investigation set forth in such notice (or any related action, proceeding or investigation based upon the same or similar claim) until such date that such action, proceeding or investigation is finally resolved.

(d) Notwithstanding anything to the contrary contained in this Agreement, the obligations of the Company or any Partner under this Section 10.02 shall (i) be in addition to any liability which the Company or such Partner may otherwise have and (ii) inure to the benefit of such Indemnitee, its Affiliates and their respective members, managers, directors, officers,

employees, agents and Affiliates and any successors, assigns, heirs and personal representatives of such Persons.

XI.

DISSOLUTION AND TERMINATION

11.01. Dissolution. The Company shall be dissolved and its business wound up upon the earliest to occur of any of the following events, unless the majority-in-interest of the remaining Partners vote to continue the life of the Company upon the occurrence of such an event:

(a) The sale, condemnation or other disposition of all Company Property and the receipt of all consideration therefor;

(b) The expiration of the period related to the election under Section 12.02(a);

(c) The expiration of the period set forth in Section 2.03;

(d) The written determination of the Executive Committee to terminate the Company; or

(e) The resignation, expulsion, bankruptcy or dissolution of any Partner (which shall not include the occurrence of such an event with respect to any Partner's underlying members or partners which does not cause such an event to occur with respect to the Partner itself) or the occurrence of any other event that terminates the continued membership of any Partner in the Company, unless, within 90 days after such event, each of the remaining Partners elects in writing (i) to continue the business of the Company, (ii) if at such time there exists only one remaining Partner, effective as of the date of such event, to admit at least one additional Partner to the Company, and (iii) if applicable, to appoint a new Managing Partner.

Without limitation on, but subject to, the other provisions hereof, the assignment of all or any part of a Partner's Interest permitted hereunder will not result in the dissolution of the Company. Except as otherwise specifically provided in this Agreement, each Partner agrees that, without the consent of the other Partners, any Partner may not withdraw from or cause a voluntary dissolution of the Company. In the event any Partner withdraws from or causes a voluntary dissolution of the Company in contravention of this Agreement, such withdrawal or the causing of a voluntary dissolution shall not affect such Partner's liability for obligations of the Company.

11.02. Termination. In all cases of dissolution of the Company, the business of the Company shall be wound up and the Company terminated as promptly as practicable thereafter, and each of the following shall be accomplished:

(a) The Liquidating Partner shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Partners.

(b) The Company Property shall be liquidated by the Liquidating Partner as promptly as possible, but in an orderly and businesslike and commercially reasonable manner and subject to the provisions of the Operating Plan then in effect or a liquidating plan approved by the Executive Committee. The Liquidating Partner may distribute Company Property in kind only with the consent of all of the Partners.

(c) The proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:

(i) To the payment of (A) the debts and liabilities of the Company (including any outstanding amounts due on any indebtedness encumbering the Company Property, or any part thereof) and (B) the expenses of liquidation.

(ii) To the setting up of any reserves which the Liquidating Partner and the Executive Committee shall determine to be reasonably necessary for contingent, unliquidated or unforeseen liabilities or obligations of the Company or any Partner arising out of or in connection with the Company. Such reserves may, in the discretion of the Liquidating Partner, be paid over to a national bank or national title company selected by it and authorized to conduct business as an escrow agent to be held by such bank or title company as escrow agent for the purposes of disbursing such reserves to satisfy the liabilities and obligations described above, and at the expiration of such period as the Liquidating Partner may reasonably deem advisable, distributing any remaining balance as provided in Section 11.02(c)(iii); provided, however, that, to the extent that it shall have been necessary, by reason of applicable law or regulation, to create any reserves prior to any and all distributions which would otherwise have been made under Section 11.02(c)(i) and, by reason thereof, a distribution under Section 11.02(c)(i) has not been made, then any balance remaining shall first be distributed pursuant to Section 11.02(c)(i).

(iii) The balance, if any, to the Partners in accordance with Section 6.05.

11.03. Liquidating Partner. The Liquidating Partner is hereby irrevocably appointed as the true and lawful attorney in the name, place and stead of each of the Partners, such appointment being coupled with an interest, to make, execute, sign, acknowledge and file with respect to the Company all papers which shall be necessary or desirable to effect the dissolution and termination of the company in accordance with the provisions of this Article XI. Notwithstanding the foregoing, each Partner, upon the request of the Liquidating Partner or the Executive Committee, shall promptly execute, acknowledge and deliver all such documents, certificates and other instruments as the Liquidating Partner or the Executive Committee shall reasonably request to effectuate the proper dissolution and termination of the Company, including the winding up of the business of the Company.

11.04. Claims of the Partners. Partners and former Partners shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company

remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Partners and former Partners shall have no recourse against the Company or any other Partner.

XII.

DEFAULT BY MEMBER

12.01. Events of Default. If a Partner commits a material violation or breach of any of the provisions of this Agreement causing material damage or loss to the Company which is not cured (including, without limitation, by the breaching Partner reimbursing the Company for the resulting material damage or loss) within a Reasonable Period, such Partner shall have committed an "Event of Default". A failure to make an Additional Capital Contribution shall not constitute an Event of Default.

12.02. Effect of Event of Default. Upon the occurrence of an Event of Default by any Partner, the Getty Entity (if the defaulting Partner is Makai) or any Partner in Makai (if the defaulting Partner is the Getty Entity) shall have the right, at any time within one year from the date of such Event of Default and upon giving the defaulting Partner 10 calendar days written notice of such election (and provided such Event of Default is continuing through the end of such 10-day period), to take any of the following actions:

(a) Dissolve the Company; and

(b) Pursue any other right or remedy available at law or in equity.

XIII.

MISCELLANEOUS

13.01. Representations and Warranties of the Partners.

(a) Each Partner represents and warrants to the other Partners as follows:

(i) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to conduct the business of the Company.

(ii) This Agreement constitutes the legal, valid and binding obligation of the Partner enforceable in accordance with its terms.

(iii) No consents or approvals are required from any governmental authority or other person or entity for the Partner to enter into this Agreement and the Company. All limited liability company, corporate or partnership action on the part of the Partner necessary for the authorization, execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly taken.

(iv) The execution and delivery of this Agreement by the Partner, and the consummation of the transactions contemplated hereby, does not conflict with or contravene the provisions of its organizational documents or any agreement or instrument by which it or its properties are bound or any law, rule, regulation, order or decree to which it or its properties are subject.

(v) It understands that (A) an investment in the Company involves substantial and a high degree of risk, (B) no federal or state agency has passed on the offer and sale of the Interest in the Company to such Person, (C) it must bear the economic risk of such Person's investment in the Company for an indefinite period of time, since such Person's Interest in the Company has not been registered for sale under the Securities Act of 1933 and, therefore, cannot be sold or otherwise transferred unless subsequently registered under the Securities Act of 1933 or an exemption from such registration is available, and the Interest in the Company of such Person cannot be sold or otherwise transferred unless registered under applicable state securities or blue sky laws or an exemption from such registration is available, (D) there is no established market for the Interest of such Person in the Company and no public market will develop and (E) such Person's principals have such knowledge and experience in real estate and, other financial and business matters that they are capable of evaluating the merits and risks of an investment in the Company.

(b) INTENTIONALLY OMITTED.

(c) INTENTIONALLY OMITTED.

(d) Each Partner agrees to indemnify and hold harmless the Company and each other Partner and their officers, directors, shareholders, partners, agents, members, employees, successors and assigns from and against any and all loss, damage, liability or expense (including costs and attorneys' fees) which they may incur by reason of, or in connection with, any breach of the foregoing representations and warranties by such Partner and all such representations and warranties shall survive the execution and delivery of this Agreement and the termination and dissolution of the Getty Entity and/or the Company or any other Partner.

13.02. Further Assurances. Each Partner agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

13.03. Notices. All notices, demands, consents, approvals, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder (collectively, "Notices") shall be in writing and shall be given by (a) personal delivery, (b) facsimile transmission or (c) a reputable overnight courier service, fees prepaid, addressed as follows:

If to Kaùpulehu Makai, LLLP	c/o Barnwell Hawaiian Properties, Inc. 1100 Alakea Street, Suite 2900 Honolulu, Hawaii 96813 Attn: Terry Johnston Facsimile No.: (808) 531-7181
With a copy to:	Ashford & Wriston LLP 1099 Alakea Street, Suite 1400 Honolulu, Hawaii 96813 Attn: Cuyler Shaw Facsimile No.: (808) 533-4945
If to the Getty Entity to:	Mr. Robert Leberman Trust Administrator 1325 Airmotive Way, Suite 340 Reno, NV

Any Partner may designate another addressee (and/or change its address) for Notices hereunder by a Notice given pursuant to this Section 13.03. A Notice sent in compliance with the provisions of this Section 13.03 shall be deemed given on the date of receipt.

13.04. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed wholly within that State.

13.05. Attorney Fees. If the Company or any Partner obtains a judgment against any Partner by reason of the breach of this Agreement or the failure to comply with the terms hereof, reasonable attorneys' fees and costs as fixed by the court shall be included in such judgment.

13.06. Captions. All titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

13.07. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter, singular and plural, as the identity of the party or parties may require.

13.08. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective executors, administrators, legal representatives, heirs, successors and assigns, and shall inure to the benefit of the parties hereto and, except as otherwise provided herein, their respective executors, administrators, legal representatives, heirs, successors and assigns.

13.09. Extension Not a Waiver. No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to a Partner or the Company shall impair or affect the right of such Partner or the Company thereafter to exercise the same. Any extension of time or other indulgence granted to a member hereunder shall not otherwise alter or affect any power, remedy or right of any other Partner or of the Company, or the obligations of the Partner to whom such extension or indulgence is granted.

13.10. Creditors Not Benefited. Nothing contained in this Agreement is intended or shall be deemed to benefit any creditor of the Company or any Partner, and no creditor of the Company shall be entitled to require the Company or the Partners to solicit or accept any Additional Capital Contribution for the Company or to enforce any right which the Company or any Partner may have against any Partner under this Agreement or otherwise or under any Guaranty.

13.11. Recalculation of Interest. If any applicable law is ever judicially interpreted so as to deem any distribution, contribution, payment or other amount received by any Partner or the Company under this Agreement as interest and so as to render any such amount in excess of the maximum rate or amount of interest permitted by applicable law, then it is the express intent of the Partners and the Company that all amounts in excess of the highest lawful rate or amount theretofore collected be credited against any other distributions, contributions, payments or other amounts to be paid by the recipient of the excess amount or refunded to the appropriate Person, and the provisions of this Agreement immediately be deemed reformed, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the payment of the fullest amount otherwise required hereunder. All sums paid or agreed to be paid that are judicially determined to be interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the term of such obligation so that the rate or amount of interest on account of such obligation does not exceed the maximum rate or amount of interest permitted under applicable law.

13.12. Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and other application thereof shall not in any way be affected or impaired thereby.

13.13. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. Amendments, variations, modifications or changes herein may be made effective and binding upon the Partners by, and only by, the setting forth of same in a document duly executed by each Partner, and any alleged amendment, variation, modification or change herein which is not so documented shall not be effective as to any Partner.

13.14. Publicity. The parties agree that no Partner shall issue any press release or otherwise publicize or disclose the terms of this Agreement or the proposed terms of any acquisition of the Company Property, without the consent of each of the other Partners, except as such disclosure may

be made in the course of normal reporting practices by any Partner to its members, shareholders or partners or as otherwise required by law.

13.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which when assembled shall constitute one and the same instrument. The submission of a signature page transmitted by facsimile or by other electronic transmission such as in portable document format ("pdf') shall have the full force and effect of an original.

13.16. Confidentiality.

(a) The terms of this Agreement, the identity of any person with whom the Company may be holding discussions with respect to any investment, acquisition, disposition or other transaction, and all other business, financial or other information relating directly to the conduct of the business and affairs of the Company or the relative or absolute rights or interests of any of the Partners (collectively, the "Confidential Information") that is not already publicly available or that has not been publicly disclosed pursuant to authorization by all of the Partners is confidential and proprietary information of the Company, the disclosure of which would cause irreparable harm to the Company and the Partners. Accordingly, each Partner represents that it has not and agrees that it will not and will direct its shareholders, partners, directors, officers, agents, advisors and Affiliates not to, disclose to any Person any Confidential Information or confirm any statement made by third Persons regarding Confidential Information until the Company has publicly disclosed the Confidential Information pursuant to authorization by the Executive Committee and has notified each Partner that it has done so; provided, however, that any Partner (or its Affiliates) may disclose such Confidential Information if required by law (it being specifically understood and agreed that anything set forth in a registration statement or any other document filed pursuant to law will be deemed required by law), if necessary for it to perform any of its duties or obligations hereunder, and to its attorneys and advisors who agree to maintain a similar confidence.

(b) Subject to the provisions of Section 13.16(a), each Partner agrees not to disclose any Confidential Information to any Person (other than a Person (including without limitation an attorney or advisor) agreeing to maintain all Confidential Information in strict confidence or a judge, magistrate or referee in any action, suit or proceeding relating to or arising out of this Agreement or otherwise), and to keep confidential all documents (including, without limitation, responses to discovery requests) containing any Confidential Information. Each Partner hereby consents in advance to any motion for any protective order brought by any other Partner represented as being intended by the movant to implement the purposes of this Section 13.16, provided that, if a Partner receives a request to disclose any Confidential Information under the terms of a valid and effective order issued by a court or governmental agency and the order was not sought by or on behalf of or consented to by such Partner, then such Partner may disclose the Confidential Information to the extent required if the Partner as promptly as practicable (i) notifies each of the other Partners of the existence, terms and circumstances of the order, (ii) consults in good faith with each of the other

Partners on the advisability of taking legally available steps to resist or to narrow the order, and (iii) if disclosure of the Confidential Information is required, exercises its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the portion of the disclosed Confidential Information that any other Partner designates. The cost (including, without limitation, attorneys' fees and expenses) of obtaining a protective order covering Confidential Information designated by such other Partner will be borne by the Company.

(c) The covenants contained in this Section 13.16 will survive the Transfer of the Interest of any Partner and the termination of the Company.

13.17. Venue. Each of the Partners consents to the jurisdiction of any court in Honolulu, Hawaii for any action arising out of matters related to this Agreement. Each of the Partners waives the right to commence an action in connection with this Agreement in any court outside of Honolulu, Hawaii.

13.18. Waiver of Jury Trial. EACH OF THE PARTNERS HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

13.19. Limitation of Liability. Except as otherwise expressly provided by Delaware law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Partner shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Partner. Except as otherwise expressly provided by this Agreement (with respect to liability among Partners) or by Delaware law, the liability of each Partner shall be limited to the amount of Capital Contributions, if any, required to be made by such Partner in accordance with this Agreement, but only when and to the extent the same shall become due pursuant to the provisions of this Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

G&K DEVELOPMENT, LLC,
a Hawaii limited liability company
By Birdie Investments, LLC, its managing member

By: _____
Name: Robert L. Leberman
Title: Manager

KA`UPULEHU MAKAL LLLP,
a Hawaii limited liability limited partnership

By: KKM Makai, LLLP
Its General Partner

By: Noble enterprises Inc.
Its General Partner

By: /s/ Terry Johnston
Terry Johnston
Its President

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By: /s/ Robert Leberman
Name: Robert L. Leberman
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KA`UPULEHU MAKAL LLLP,
a Hawaii limited liability limited partnership

By: KKM Makai, LLLP
Its General Partner

By: Noble enterprises Inc.
Its General Partner

By: _____
Terry Johnston
Its President

Exhibit No. 10.2

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

AGREEMENT WITH RESPECT TO RETAINED RIGHTS

THIS AGREEMENT WITH RESPECT TO RETAINED RIGHTS ("Agreement") is entered into this day of 7th day of March, 2019 by and between Kaupulehu Developments, a Hawaii general partnership ("KD"), on the one hand, and KD Acquisition II, LP, a Delaware limited partnership ("Acquisition II") on the other.

R E C I T A L S :

A. Acquisition II is the lessee under a ground lease entitled "Indenture of Lease", dated as of May 27, 2009, Lease No. 29,250, and made between the Trustees of the Estate of Bernice Pauahi Bishop as the lessor, and WB KD Acquisition II, LLC as the lessee, as modified by an Amendment of Bishop Estate Lease Nos. 29,250 and 29,251 dated March 7, 2016 (the lease as amended being referred to below as the "Increment 2 Lease"). The Increment 2 Lease leases and demises to Acquisition II certain land and related real property interests situated in the County of Hawaii which are described on Exhibit "A" attached hereto and incorporated herein by this reference, which land and interests are hereinafter referred to as "Increment 2". Increment 2 will further include any parcel hereafter conveyed from KD Acquisition, LLLP ("Acquisition I") to Acquisition II which presently comprises part of Lot 44 in File Plan 2438 (as recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau")), County of Hawaii, State of Hawaii.

B. Acquisition II (then known as WB KD Acquisition II, LLC) purchased certain interests related to Increment 2 from KD on terms and conditions set forth in that certain May 27, 2009 Amended and Restated Agreement as to Lot 4A, Increment 2, and made also with Acquisition I ("Increment 2 Sale Agreement").

C. The Increment 2 Sale Agreement also granted Acquisition II the right to drill wells on KD's leasehold Lot 4-C and the right to use a portion of Lot 4-C not to exceed 10 acres as a staging and storage area to support the development of Increment 2, all on terms and conditions set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference (the **Exhibit "B"** terms to be interpreted by reference to the full Increment 2 Sale Agreement), The rights

described in this Recital C and more fully set forth in **Exhibit "B"** are referred to below as "Acquisition II's Lot 4-C Rights".

D. In selling Acquisition II certain interests related to Increment 2 under the Increment 2 Sale Agreement, KD reserved or retained or was granted certain rights in relation to Increment 2 and the Increment 2 leasehold, including (1) the right to receive a percentage of the gross proceeds from Increment 2 lot or unit sales, (2) the right to receive "Distribution Payments". as defined in the Increment 2 Sale Agreement, (3) the right to approve changes in the Increment 2 Concept Plan, which plan identified the location and the number of units of each type which Acquisition 11 planned to develop within Increment 2, and (4) the right, upon certain conditions specified in the Increment 2 Sale Agreement, to step in and assume Acquisition II's rights under the increment 2 Lease. The rights described in items (1), (2), (3) and (4) above, and any other rights or interests that KD may hold under the Increment 2 Sale Agreement, or in relation to Increment 2 pursuant to the Increment 1 Purchase Agreement (as defined in the Increment 2 Sale Agreement), are referred to below collectively as "KD's Increment II Retained Rights" Increment 2 Sale Agreement), are referred to below collectively as "KD's Increment II Retained Rights".

E. Notice to third parties of KD's Increment II Retained Rights (and of its similar rights reserved with respect to Increment 1, which is referenced in the Increment 2 Sale Agreement) is provided by a Memorandum of Agreement dated February 13, 2004 recorded in the Bureau as Document No. 2004-031731, as amended by Amendment to Memorandum of Agreement dated May 27, 2009 recorded in the Bureau as Document No. 2009-096329 (collectively referred to below as "Notice of Retained Rights").

F. To date, only two (2) residential lots within Increment 2 have been developed and sold (KD acknowledges receipt of the payments due it in consideration of its release of KD's Increment II Retained Rights in the two lots sold), and much of the infrastructure and amenities needed to support the full development of Increment II have not yet been constructed and installed.

G. Acquisition II has agreed to admit Replay Kaupulehu Development LLC ("Replay") as an additional partner of the Acquisition II partnership to lend its depth of similar-project experience to Acquisition II in proceeding with the design, planning, financing: development, marketing and sale of lots or units in Increment 2 (the "Project"), the first contemplated phase of the Project, as further determined by Acquisition II, being referred to below as "Phase 2A".

H. The rights and obligations of Acquisition II's partners going forward, with Replay added as a partner, will be governed by that certain Amended and Restated Limited Partnership Agreement of KD Acquisition II, LP ("Partnership Agreement") dated on or about the date

hereof and made in the form attached hereto and incorporated herein by this reference as **Exhibit "C"**.

I. To facilitate the development and sale of lots or units within Increment 2, Acquisition II has requested that (1) KD release KD's Increment II Retained Rights, and (2) KD confirm the continuation in full force and effect of Acquisition II's Lot 4-C Rights.

J. KD is willing to release, relinquish and surrender KD's Increment II Retained Rights and to confirm the continuation of Acquisition II's Lot 4-C Rights for the consideration, and on the terms and conditions, described below.

NOW THEREFORE, for the consideration and mutual agreements described below, each of KD and Acquisition II covenants and agrees as follows:

1. Agreement to Release of Retained Rights. KD covenants and agrees to release KD's Increment II Retained Rights at Closing as hereinafter set forth (the term "Closing" is defined below).

2. Confirmation of Acquisition II's Lot 4-C Rights. KD acknowledges and confirms to and for the benefit of Acquisition II that the rights assigned or granted to Acquisition II under the Increment 2 Sale Agreement included Acquisition II's Lot 4-C Rights, that Acquisition II's Lot 4-C Rights continue in full force and effect and may be exercised by Acquisition II in connection with its development of Increment 2 at any time during the term of KD's lease of Lot 4-C, subject to any public regulatory requirements and the consent, if required, of KD's lessor for Lot 4-C.

3. Consideration for Release of Retained Rights. As consideration for KD's release of KD's Increment II Retained Rights and confirmation of Acquisition II's Lot 4-C Rights as hereinafter set forth, Acquisition II agrees:

(a) To pay KD the sum of ONE MILLION AND NO1100 DOLLARS ($1,000,000.00) at Closing (to be paid to KD by Acquisition II prior to admission of Replay as a partner of the Acquisition II partnership).

(b) To convey to KD three (3) subdivided residential single-family lots (each a "Residential Lot") in Phase 2A of the Project and four (4) such Residential Lots in subsequent phases of the Project, as and when Phase 2A and other phases are developed from time to time, on the terms and conditions as set forth in **Exhibit "D"** attached hereto.

(c) To (i) provide KD with copies of all financial and other reports and information provided to its Partners under Section 7.2 of the Partnership Agreement, such reports and other information to be provided to KD at the same times as they are provided to the Partners, and (ii) permit KD to audit Acquisition II's financial records to the extent required by public

regulatory authority because of KD's status as a publicly traded entity, with such regulatory requirement to be substantiated to Acquisition II to its reasonable satisfaction before any audit is undertaken. Any such audit shall be at KD's sole cost and expense, and KD shall reimburse Acquisition II for all costs and expenses (both out-of-pocket and an allocation of administration and overhead as determined by Acquisition II) that Acquisition II may incur in connection with such audit. KD shall be obligated to preserve the confidentiality of all reports and information received or obtained pursuant to the foregoing provisions in accordance with Section 7.4 of the Partnership Agreement, the terms of which are incorporated herein by this reference and made applicable to KD as if KD were a Partner under the Partnership Agreement.

(d) To make payments to KD as distributions are made to the Partners pursuant to Section 8.1(c) of the Partnership Agreement in the amounts that would be distributed to KD pursuant to such Section if KD were a Partner of Acquisition II with a 15% Percentage Interest, and the Percentage Interests of the other Partners totaled 85% (the "KD Distributions Interest"). The payments to KD pursuant to the KD Distributions Interest shall continue until Acquisition II, its successors and assigns as the Lessee under the Increment 2 Lease, is no longer generating revenues from Increment 2 or until such earlier date as Acquisition II sells all of its right, title and interest in Increment 2. KD acknowledges and agrees that, notwithstanding anything in this Agreement to the contrary, (i) the KD Distributions Interest does not and shall not entitle KD to any voting, consent, approval or other rights under the Partnership Agreement (or otherwise in connection with Acquisition II or the Project) other than the right to receive payment on account of the KD Distributions Interest (with KDK continuing to hold any attendant rights associated with the determination of and accounting for the payment and distribution amounts); (ii) Acquisition II and its Partners do not owe any duty (fiduciary or otherwise) to KD in connection with the KD Distributions Interest, whether pursuant to the Partnership Agreement or otherwise (subject only to Acquisition II's contractual undertakings hereunder); (iii) the KD Distributions Interest does not constitute any partnership or economic interest in Acquisition 11; and (iv) for the avoidance of doubt, the prior consent of KD shall not be required to amend or modify any of the terms of the Partnership Agreement (subject, however, to the terms of section 3(e) below). The foregoing provisions and limitations also apply to KD's rights to receive Residential Lot conveyances under section 3(b) above.

(e) KD's approval of any amendment of the Partnership Agreement that may have a material adverse effect on KD's rights hereunder shall be required, except that such approval shall not be required for any amendments to Section 8.1(a) or 8.1(b) of the Partnership Agreement, or related provisions therein, in favor of any party providing Third-Party Equity pursuant to the terms of the Partnership Agreement.

4. Conditions Precedent to Release of Retained Rights.

a. The payment to KD of the ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) pursuant to Section 3(a) above; and

b. The occurrence of the Effective Date of the Amended and Restated Limited Partnership Agreement as the term "Effective Date" is defined in the Partnership Agreement.

5. Closing; Form of Release; Release and Discharge. Upon and contemporaneously with the satisfaction of the latest to occur of the conditions precedent in subparagraphs 2.a and 2.b above ("Closing"), KD will execute and deliver to Acquisition II, for recordation in the Bureau, the Partial Release of Retained Rights (the "Recording Release") in the form attached hereto as **Exhibit "E"**. Upon Closing the terms of the Recording Release shall be deemed incorporated herein by this reference and shall run to the benefit of Acquisition II under this Agreement. Without limiting the scope or effect of the Recording Release (KD acknowledging that it also confirms the expiration or termination and release of certain rights respecting Increment 1), KD further specifically acknowledges and agrees that upon Closing, KD's Increment II Retained Rights shall be released and terminated and of no further force or effect, and the Increment 2 Sale Agreement shall be fully discharged and terminated except with respect to Acquisition II's Lot 4-C Rights.

6. Partnership Agreement; Incorporation of Certain Sections. The following provisions of the Partnership Agreement are hereby incorporated into this Agreement with any reference to "Agreement" or "Partner" or "Partners" in the incorporated sections to be read as a reference to this Agreement and to the parties hereunder:

Section 14.1 Addresses and Notice; Time Computation
Section 14.6 Binding Effect
Section 14.9 Counterparts
Section 14.10 Applicable Law
Section 14.11 Invalidity of Provisions
Section 14.12 Entire Agreement
Section 14.13 Additional Documents and Acts
Section 14.14 Amendments
Section 14.15 Attorney Fees; Damages

Notwithstanding the aforesaid Section 14.9, the Recording Release must be delivered in original executed and acknowledged form. In addition, the provisions of Section 14.10 of the Partnership Agreement entitled "Applicable Law" are incorporated herein by reference with, however, Hawaii law rather than Delaware law to apply. The address of each of the parties hereto for purposes of giving notice to the other party under Section 14.1 referenced as incorporated herein above shall be as follows:

All notices, requests and other communications hereunder (collectively, "Notices") shall be given and deemed received in accordance with the notice provisions of the Partnership Agreement, employing the following addresses or e-mail addresses:

If to Kaupulehu Developments:

c/o Barnwell Hawaiian Properties, Inc.
1100 Alakea Street, Suite 2900
Honolulu, Hawaii 96813
Attention: Alexander C. Kinzler

Phone: (808) 531-8400
Fax: (808) 531-7181
E-mail:

If to KD Acquisition II, LP:

KD Kaupulehu, LLLP
c/o Barnwell Hawaiian Properties, Inc.
1100 Alakea Street, Suite 2900
Honolulu, Hawaii 96813
Attention: Alexander C. Kinzler

Phone: (808) 531-8400
Fax: (808) 531-7181
E-mail:

With a copy to:

Ashford & Wriston LLP
999 Bishop Street, Suite 1400
Honolulu, HI 96813
Attention: Cuyler Shaw
E-mail:
Telecopy No (808) 539-4945

and

Replay Kaupulehu Development LLC
c/o Re:Play Management Ltd.
Suite 2150-745 Thurlow Street
Vancouver, BC V6E 005
Attn.: Mr. Paul Jorgensen
E-mail:

With a copy to:

Replay Kaupulehu Development LLC
c/o Replay Destinations Inc.
631 Center Street
Healdsburg, CA 95448
Attn: Mr. David Hill
E-mail:

7. Terms capitalized but not defined in this Agreement shall have the meanings assigned to them in the Partnership Agreement.

8. KD's rights and interests under this Agreement may not be assigned or transferred without the prior written consent of Acquisition II, which may be withheld in Acquisition II's discretion; provided, that this restriction on assignment will not apply to the "Remaining Increment 1 Payment Rights" defined in the Recording Release. If KD purports to make any assignment or transfer in violation of the foregoing provisions, then at the election of Acquisition II, the assignment or transfer shall be null and void ab initio.

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IN WITNESS WHEREOF, the parties have executed this Agreement to Release Retained Rights as of the date first written above.

Kaupulehu Developments,
a Hawaii general partnership

By: /s/ Alexander C. Kinzler
Name: Alexander C. Kinzler
Title: President, General Partner

"KD"

KD Acquisition II, LP,
a Delaware limited partnership

By: Kaupulehu II, LLC, a Delaware limited liability company, its general partner

By: Replay Kaupulehu Development LLC, a Delaware limited liability company, its Member

By: /s/ Paul Jorgensen
Name: Paul Jorgensen
Title: President

By: KD Kaupulehu, LLLP,
a Delaware limited liability limited partnership,
its Member

By: /s/ Terry Johnston
Name: Terry Johnston
Title: Chairman

"Acquisition II"

EXHIBIT "A"

Increment 2 Real Property (Leasehold)

FIRST:

All of those certain parcels of land (being portion of the land(s) described in and covered by Royal Patent Number 7843, Land Commission Award Number 7715, Apana 10 to L. Kamehameha) situate, lying and being at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii being:

> LOT 46A of the "KAUPULEHU LOT 4-A INCREMENT 2, PHASE 1 SUBDIVISION", containing an area of 147.768 acres, more or less;

All as shown on subdivision map prepared by Dan H. Hirota, Land Surveyor, dated August 26, 2015, approved by the Planning Director, County of Hawaii, on September 17, 2015, as SUB-13-001254-Revised, as shown in AFFIDAVIT dated September 25, 2015, recorded as Document No. A-57490755.

SECOND:

All of that certain parcel of land situate at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 45 of the "Kaupulehu LOT 4-A, INCREMENT 1, PHASE 2 SUBDIVISION", as shown on File Plan Number 2438, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 273.875 acres, more or less.

EXHIBIT "B"

Acquisition II's Lot 4-C Rights

10.2 Water Rights. WBKD shall have the right to drill such wells on Lot 4C as it deems reasonably necessary to provide non-potable water for the benefit of Lot 4A (including, without limitation, Increment 1 and Increment 2), subject, however, to KD's approval of the design and location of such non-potable water system, which approval will not be unreasonably withheld, conditioned or delayed. WBKD shall have the right to render non-potable watt: obtained from Lot 4C potable (whether through desalination or otherwise), subject, however, to KD's approval of the design, location and other matters relating to the extraction and delivery of the water, which approval will not be unreasonably withheld, conditioned or delayed. WBKD shall be responsible for obtaining all approvals for such processing, including a conditional use permit from the State of Hawaii; provided, however, that to the extent that any approvals from KS are required, KD shall use commercially reasonable efforts to assist WBKD to obtain such approvals from KS. At such time as WBKD completes the development of Increments 1 and 2 and the sale of all Units, Lots and Area in each such increment, WBKD shall reassign to KD, for use on Lot 4C or otherwise, all of its right, tide and interest in and to the Water Rights to the extent such rights include water that is in excess of (a) the amounts then committed by WBKD to any portion of Increment 1 and Increment 2 and (b) the amounts reasonably needed by WBKD to develop and operate Increments 1 and 2 substantially in accordance with the Concept Plan.

10.3 Other Rights. So long as Lease 12,260 between KS and KD (which now covers Lot 4C), the Lot 4A Lease and the Increment 2 Lease have not been terminated, 'WBKD shall have the right to use a portion of Lot 4C not to exceed ten (10) acres in such location as mutually agreed upon between WBKD and KD, subject to any required third patty approvals including, without limitation, any permits or approvals (including from KS, if applicable) required because Lot 4C is classified as "conservation" land, in connection with the development and maintenance of Lot 4A, including as a staging area (including parking) and for related storage. Upon the request of and to the extent reasonably required by, WBKD, KD shall] cooperate with WBKD in securing all third party approvals required for use of Lot 4C for such purposes; provided, however, that WBKD shall pay any third party costs and expenses incurred by KD in connection therewith.

EXHIBIT "C"

Limited Partnership Agreement of KD Acquisition II, LP

(see the attached)

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

OF

KD ACQUISITION II, LP

DATED: MARCH 7, 2019

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Page

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

OF

KD ACQUISITION II, LP

THIS LIMITED PARTNERSHIP AGREEMENT (this "**Agreement**"), dated effective as of March 7, 2019 (the "**Effective Date**"), is entered into by and among Replay Kaupulehu Development LLC, a Delaware limited liability company ("**Replay**"), KD Kaupulehu, LLLP, a Delaware limited liability limited partnership ("**KDK**"), Kaupulehu II, LLC, a Delaware limited liability company (the "**General Partner**"), and KD Acquisition II. LP, a Delaware limited partnership (the "**Partnership**").

RECITALS

WHEREAS, on or about June 27, 2018, the Partnership (formerly known as KD Acquisition II, LLLP) cancelled its existence as a Delaware limited liability limited partnership and filed an amended and restated certificate of limited partnership.

WHEREAS, prior to the Effective Date, the General Partner was the sole general partner of the Partnership and held [****] Partnership Units (as hereafter defined) in the Partnership.

WHEREAS, prior to the Effective Date, KDK was the sole limited partner of the Partnership and held [****] Partnership Units in the Partnership.

WHEREAS, effective as of the Effective Date, the Partnership authorized [****] new Partnership Units to be issued to Replay concurrently herewith, and has admitted Replay as a Limited Partner in the Partnership.

WHEREAS, the Partners wish to amend and restate the existing limited partnership agreement of the Partnership for the purpose of setting forth their agreements with respect to the development of the Project (as hereafter defined) and the various economic and management rights and obligations of the Partners with respect to the Partnership.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the recitals set forth above, which are incorporated herein by this reference, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

[****]=[CONFIDENTIAL PORTION HAS BEEN OMITTED BECAUSE IT (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED]

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Article 1 or as elsewhere provided in this Agreement.

"**Adjusted Capital Account Balance**" equal to the balance in such Partner's Capital Account at the end of the relevant Fiscal Year. after increasing the balance in such Partner's Capital Account by any amount which such Partner is deemed to be obligated to restore pursuant to Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5).

"**Adjusted Capital Account Deficit**" shall mean, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant Fiscal Year after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Treasury Regulation Sections 1.704-1(b)(2) and 1.704-2, and shall be interpreted consistently therewith.

"**Affiliate**", generally, means, with respect to any Person, (i) any Person directly or indirectly Controlling, Controlled by or under common Control with such Person; (ii) any Person beneficially, directly or indirectly, owning or controlling ten percent (10%) or more of the outstanding voting of such Person; (iii) any Person of which such Person beneficially, directly or indirectly, owns or Controls ten percent (10%) or more of the voting; (iv) any officer, director, member, manager, partner or trustee in such Person, or (v) a family member of such Person, an Entity Controlled by a family member of such Person, or a trust in which a family member of such Person is a beneficiary.

"**Agreement**" means this Limited Partnership Agreement, as it may be amended, supplemented or restated from time to time.

"**Bankruptcy**" means (i) the filing by a Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title II of the United States Code or any other federal, state or foreign insolvency law, or a Person's filing an answer consenting to or acquiescing in any such petition; (ii) the making by a Person of any assignment

for the benefit of its creditors with respect to substantially all of the assets of such Person; (iii) the earlier of (A) an entry of an order of relief or (13) the expiration of sixty (60) days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for substantially all of the assets of a Person, or any involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal, state or foreign insolvency law, provided that the same shall not have been dismissed, vacated, set aside, stayed or otherwise disposed of within such 60-day period, or (iv) the admission by a Person in writing of its inability to pay its debts as they become due.

"**Book Value**" of any asset of the Partnership means such asset's adjusted basis for federal income tax purposes, except that:

(i) the initial Book Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset (not reduced for any liabilities to which it is subject or which the Partnership assumes), as such value is determined and for which credit is given to the contributing Partner under this Agreement;

(ii) the Book Values of all assets of the Partnership shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, at and as of the following times:

(a) the acquisition of a Partnership Interest by a new or existing Partner in exchange for other than a *de minimis* Capital Contribution by such Partner, if the General Partner determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners;

(b) the distribution by the Partnership to a Partner of more than a *de minimis* amount of any asset of the Partnership (including cash or cash equivalents) as consideration for all or any portion of a Partnership Interest, if the General Partner determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners;

(c) the liquidation of the Partnership within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g);

(d) at such other times in accordance with Treasury Regulation section 1.704-1(b)(2)(iv) as the General Partner deems advisable;

(iii) The Book Value of any assets of the Partnership distributed to any Partner shall be adjusted to equal the gross fair market value (taking into account

Code Section 7701(g)) of such asset on the date of the distribution as determined by the General Partner; and

(iv) the Book Value of the assets of the Partnership shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, or in connection with any gross income special allocations or other special allocations to rectify an Adjusted Capital Account Deficit (whether made pursuant to Section 9.3(e) or otherwise) (but without double-counting), but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(rn); provided, however, that Book Value shall not be adjusted pursuant to this clause (iv) to the extent that the General Partner determines that an adjustment pursuant to clause (iii) hereof is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Book Value of an asset has been determined or adjusted pursuant to the preceding clauses (i), (ii), (iii) or (iv), such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profit and Loss, and the amount of the adjustment shall thereafter be taken into account as gain or loss from the distribution of such asset for purposes of computing Profit or Loss.

"**Business Day**" means any day except a Saturday, Sunday or other day on which, as applicable, national banks in Honolulu, Hawaii are not open for business.

"**Business Plan**" means the business plan approved by the General Partner that sets forth in reasonable detail the Partnership's strategies for the development, financing, construction, marketing and operation of the Project, including each contemplated Phase of the Project and the schedule for the initiation, subdivision and completion of the construction of the same, as the same may be modified from time to time by the General Partner.

"**Capital Account**" shall mean, with reference to a Partner, the account of the Partner established under Section 9.1, which is determined, maintained, and adjusted in accordance with the Code and the Treasury Regulations. including the Treasury Regulations under Sections 704(b) and (c) of the Code, and consistent therewith the Capital Account of each Partner will be determined and adjusted as follows:

(i) Each Partner's Capital Account shall be such Partner's initial Capital Contribution, increased by:

(a) any Capital Contributions consisting of cash made by such Partner plus the Book Value of any Capital Contributions made by such Partner

consisting of property other than cash (net of any liabilities to which such property is subject or which are assumed by the Partnership);

(b) such Partner's distributive share of Profit and any items in the nature of income and gain that are specially allocated to such Partner pursuant to Article 9 hereof; and

(c) any other increases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(ii) Each Partner's Capital Account will be decreased by:

(a) any distributions of cash made from the Partnership to such Partner plus the Book Value of any property (other than cash) distributed in kind to such Partner, as determined after the adjustment to be made pursuant to clause (ii)(b) of the definition of Book Value (net of any liabilities to which such property is subject or which are assumed by such Partner);

(b) such Partner's distributive share of Loss and any items in the nature of expenses or losses that are specially allocated to such Partner pursuant to Article 9 hereof; and

(c) any other decreases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

In determining the amount of any liability for purposes of subsections (i) and (ii) above, there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and Treasury Regulations.

The provisions of this definition relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the General Partner determines that it is necessary or prudent to modify the manner in which the Capital Accounts are maintained in order to comply with such Treasury Regulations, the General Partner may make such modification, provided that, notwithstanding any other provision in this Agreement, such modification will not affect the amounts distributable to any Partner. The General Partner shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet. as computed for book purposes, in accordance with Regulations Section 1.704-1(b) (2) (iv)(q), and (ii) make any appropriate modifications in the event that unanticipated events might otherwise cause this

Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2. The Capital Accounts of the Partners existing as of the Effective Date are set forth in Exhibit D attached hereto.

"**Capital Contribution**" means, with respect to any Partner, the aggregate amount of cash and, if applicable, the initial Book Value of any property which such Partner contributes or is deemed to contribute to the Partnership pursuant to Article 3, including the Partner's initial Capital Contribution and any additional Capital Contribution (including any Priority Capital Contributions), reduced by the amount of any liability assumed by the Partnership relating to any such property and any liability to which such property is subject.

"**Cash Flow**" shall mean [****].

"**Certificate**" means the Certificate of Limited Partnership of the Partnership previously filed in the office of the Delaware Secretary of State, as amended from time to time in accordance with the terms hereof and the LP Act.

"**Code**" means the Internal Revenue Code of 1986, as amended and in effect from time to time, as interpreted by the Treasury Regulations. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"**Condition Satisfaction Date**" means [****].

"**Condition Satisfaction Deadline**" has the meaning set forth in Section 3.1(b).

"**Confidential Information**" has the meaning set forth in Section 7.4.

"**Control**" or "**control**" means the ability, directly or indirectly, whether through ownership of partnership interests, manager or member interests. of voting securities, or otherwise, to direct the policies and management of any Entity.

"**Debt Financing**" means any loan, debt, mortgage or other financing to be provided to the Partnership, a Subsidiary or a JV Entity.

"**Depreciation**" means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted basis for U.S. Federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the U.S. federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period is zero, Depreciation for such Fiscal Year or other period shall

be determined with reference to such beginning Book Value using any reasonable method selected by the General Partner.

"**Development Agreement**" means that certain Development and Cost-Sharing Agreement made of even date herewith between the Partnership and KD Acquisition I.

"**Development Management Agreement**" means that certain Development Management Agreement, dated as of even date herewith, between Development Manager and the Partnership, and which sets forth the terms pursuant to which Development Manager shall provide development services in connection with the Project.

"**Development Manager**" means Re:Play Management Ltd., a corporation organized under the laws of the Province of British Columbia, Canada.

"**Development Plans**" means the Master Plan, a quarry remediation plan, and such other improvement, infrastructure, landscaping, and/or hardscaping plans as may be necessary for the completion of the Project, or any Phase thereof.

"**DPR**" means Dispute Prevention and Resolution, Inc.

"**Effective Date**" has the meaning set forth in the preamble.

"**Entitlements**" means all access easements, permits, development rights, approvals, agreements, licenses, certificates, authorizations, zoning changes and other entitlements necessary or desirable for the development, construction, ownership and operation of the Project. or any applicable Phase thereof.

"**Entity**" or "**Entities**" means any general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, trust, business trust, cooperative or association or any other form of incorporated or unincorporated entity which is a legal entity under applicable law.

"**Equity Commitment Election**" has the meaning set forth in Section 3.2(a).

"**Fiscal Year**" means (a) the period commencing on the Effective Date and ending on December 31, 2019, or (b) any subsequent twelve (12) month period commencing on January 1 and ending on December 31.

"**General Partner**" means Kaupulehu II, LLC, in its capacity as the General Partner of the Partnership, or its permitted successor, or the replacement General Partner of the Partnership.

"**Ground Lease**" means that certain Indenture of Lease, dated as of May 27, 2009, Lease No. 29,250, and made between the Trustees of the Estate of Bernice Pauahi Bishop, as modified by an Amendment of Bishop Estate Lease Nos. 29,250 and 29,251 dated March 7, 2016, and as

evidenced and memorialized of record by a Memorandum of Lease recorded in the Bureau of Conveyances for the State of Hawaii, as Document No. 2009-096327, or any replacement thereof, pursuant to which a portion of the Property is ground leased.

"**Ground Lessor**" means the "Lessor" under the Ground Lease.

"**Ground Lessor Documents**" means agreements, restrictions or covenants that encumber or pertain to the Property and which run in favor of the Ground Lessor or its Affiliates, to which they are a party or for which they would have rights to consent to any modifications.

"**Guarantee(s)**" has the meaning set forth in Section 3.2(e).

"**Guarantee Expense**" has the meaning set forth in Section 3.2(e).

"**Guarantee Payment**" has the meaning set forth in Section 3.2(e).

"**Indemnification Losses**" means all losses, claims, demands, causes of action, costs, damages, expenses (including, without limitation, reasonable fees and expenses of attorneys and other advisors and any court costs incurred) or liabilities.

"**Indemnitee**" has the meaning set forth in Section 4.6(a).

"**Independent Activities**" has the meaning set forth in Article 6.

"**Issuance Agreement**" means that certain issuance and Transfer Agreement made of even date herewith among the Partnership, the General Partner, and KDK, collectively as one party in interest, and Replay as the other party in interest.

"**IRS**" means the Internal Revenue Service, which administers the internal revenue laws of the United States.

"**JV Entity**" has the meaning set forth in Section 3.2(b).

"**KD**" means Kaupulehu Developments, a Hawaii general partnership.

"**KD Acquisition I**" means KD Acquisition, LLLP, a Delaware limited liability limited partnership in which KDK holds all partnership interests.

"**KD Distributions Interest**" has the meaning set forth in Section 11.1(c).

"**KDK**" has the meaning set forth in the preamble.

"**Limited Partner(s)**" means the limited partners of the Partnership from time to time and includes KDK and Replay, and any additional limited partners admitted to the Partnership in accordance with the provisions of this Agreement, and "Limited Partner" means any one of them.

"**LP Act**" means the Delaware Revised Uniform Limited Partnership Act, codified at Title 6, Chapter 17, §1-101, *et seq*., of the Delaware Code, as amended from time to time (or any corresponding provisions of succeeding law).

"**Master Plan**" means a master plan for the development of the Project, or any applicable Phase thereof, which generally depicts the locations of to-be-built improvements, access points, existing and to-be-built infrastructure and other matters related to the development and construction of the Project (or the applicable Phase thereof), as the same may be modified from time to time in accordance with this Agreement. The Partners acknowledge and agree that the initial Master Plan may not have detailed information for any Phases beyond Phase 2A, and the plans for such subsequent Phases shall be subject to modification.

"**Non-Discretionary Guarantee**" has the meaning set forth in Section 3.2(e).

"**Nonrecourse Deductions**" has the meaning set forth in Treasury Regulation Sections 1.704-2(b)(1) and 1.704-2(c).

"**Notices**" has the meaning set forth in Section 14.1(a).

"**Partner**" shall mean each of the Partners from time to time admitted to the Partnership in any such Person's capacity as a Partner of the Partnership, whether as a General Partner or as a Limited Partner, or its successors as the Partners of the Partnership, or any substitute Partner, in such Person's capacity as a Partner of the Partnership.

"**Partner Nonrecourse Debt**" has the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

"**Partner Nonrecourse Debt Minimum Gain**" has the meaning set forth in Treasury Regulation Section 1.704-2(i).

"**Partner Nonrecourse Deductions**" has the meaning set forth in Treasury Regulation Section 1.704-2(1).

"**Partnership**" means the limited partnership formed under the LP Act pursuant to the Certificate, as constituted under the terms of this Agreement, as this Agreement may be amended and restated, and any successor thereto.

"**Partnership Interest**" means, with reference to a Partner, the interest in the Limited Partnership held by that Partner at any time and from time to time in accordance with the terms herein contained, including such Partners Partnership Units and Percentage Interest, such Partner's rights and interests under this Agreement, including rights to distributions, Preferred Return, Unreturned Priority Capital Contributions, Capital Accounts and allocations of Profit and Loss, and "**Partnership Interests**" means the aggregate of all Partners' Partnership Interests.

"**Partnership Minimum Gain**" has the meaning set forth in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"**Partnership Purpose**" has the meaning set forth in Section 2.3.

"**Partnership Units**" means, with respect to each Partner, the equity interest of such Partner in the Partnership (expressed as a number of units of ownership). As of the date hereof, the following Partners have been issued the following number of Partnership Units:

Partner	Partnership Units
KDK	[****]
Replay	[****]
General Partner	[****]

"**Percentage Interest**" means, with respect to each Partner, the percentage that such Partner's Partnership Units represents of the aggregate Partnership Units of all of the Partners. As of the Effective Date, the Partners have the following Percentage Interests:

Partner	Percentage Interest
KDK	[****]
Replay	[****]
General Partner	[****]

"**Person**" means a natural person or a corporation, partnership (general or limited), limited liability limited partnership, limited liability company, trust, unincorporated organization, association or other Entity.

"**Phase**" means a phase of construction for the Project or any portion thereof.

"**Phase 2A**" means the initial Phase of the Project to be developed on the portion of the Property depicted as "Phase 2A" on **Exhibit A** attached hereto.

"**Phase 2A Pre-Development Budget**" means the budget attached hereto as **Exhibit C** which sets forth in reasonable detail the estimated Phase 2A Pre-Development Costs, as the same may be modified from time to time by the General Partner.

"**Phase 2A Pre-Development Costs**" means [****].

"**Phase 2A Pre-Development Loan**" has the meaning set forth in Section 3.1.

"**Preferred Return**" means, as of the date of any determination, an accrued cumulative amount equal to the Unreturned Priority Capital Contributions of a Partner from time-to-time multiplied by the rate of fifteen percent (15%) per annum, compounded annually, with respect to Priority Capital Contributions funded pursuant to Section 3.2(c). The Preferred Return shall be determined in the same manner as interest due on a loan, based on a 365 day year.

"**Priority Capital Contributions**" means additional Capital Contributions made for purposes of funding Project Costs.

"**Profit**" **or** "**Loss**" means, for each Fiscal Year or other period, an amount equal to the Partnership's taxable income or loss (as the case may be) for such year or period, determined in accordance with Code Section 703(a) (for this period, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(I) shall be included in taxable income or loss), with the following adjustments:

(1) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss pursuant to this definition shall be added to such taxable income or loss;

(2) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss pursuant to this definition, shall be subtracted from such taxable income or loss (including amounts paid or incurred to organize the Partnership (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of interests in the Partnership and by treating deductions for any losses incurred in connection with the sale or exchange of Partnership property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code);

(3) Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from such Book Value;

(4) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of "Depreciation" herein;

(5) In the event that any item of income, gain, loss or deduction that has been included in the initial computation of Profit or Loss is subject to the special allocation rules of Section 9.3 and Section 9.4 hereof, Profit or Loss shall be recomputed without regard to such item; and

(6) In the event of an adjustment of the Book Value of any Partnership asset which requires that the Capital Accounts of the Partnership be adjusted pursuant to Treasury Regulation Sections 1.704-1(b)(2)(iv)(e), (f) and (m), the amount of such adjustment is to be taken into account as additional Profit or Loss pursuant to Article 9 hereof.

If the Partnership's taxable income or loss for such Fiscal Year, as adjusted in the manner provided above, is a positive amount, such amount shall be the Partnership's Profits for such Fiscal Year; and if negative, such amount shall be the Partnership's Loss for such Fiscal Year.

"**Project**" means the development, marketing and sale of the Property, or portions thereof, in accordance with the Development Plans.

"**Project Budget**" means [****].

"**Project Costs**" means [****].

"**Property**" means that certain real property situated at Kaupulehu, North Kona, Big Island, Hawaii, as described and depicted in **Exhibit A** attached hereto, together with all related real and personal property and development rights.

"**Proposed Equity Amount**" has the meaning set forth in Section 3.2(a).

"**Proposed Equity Notice**" has the meaning set forth in Section 3.2(a).

"**Proposed Equity Terms**" has the meaning set forth in Section 3.2(a).

"**Regulatory Allocations**" has the meaning set forth in Section 9.4.

"**Replay**" has the meaning set forth in the preamble.

"**Reserves**" means [****].

"**Residential Lot(s)**" has the meaning set forth in Section 8.3(a).

"**Retained Rights Agreement**" has the meaning set forth in Section 11.1(c).

"**Sales Consulting Agreement**" means that certain Sales and Consulting Agreement, dated as of even date herewith, between Development Manager and the Partnership, and which sets forth the terms pursuant to which Development Manager shall provide sales and marketing services in connection with the Project.

"**Sole Responsibility Matter**" has the meaning set forth in Section 3.2(e).

"**Subsidiary**" means or "**Subsidiaries**" means, at any time, the Entity or Entities that own the Project (or any Phase or any portion thereof) and which are, in turn, directly or indirectly majority-owned and controlled by the Partnership in accordance with this Agreement.

"**Targeted Distribution Amounts**" has the meaning set forth in Section 9.2(d).

"**Tax Representative**" has the meaning set forth in Section 10.3.

"**Transfer**" when used in this Agreement with respect to any Partnership Interest, means a transaction in which a Partner assigns, absolutely, conditionally, as security or otherwise, all or any part of its Partnership Interest (legal and/or beneficial) to another Person, and includes any sale, assignment, gift, pledge, mortgage, exchange, hypothecation, encumbrance or other disposition, including any such matter occurring by operation of law (such as, but not limited to. a statutory merger) or otherwise.

"**Treasury Regulations**" means the income tax regulations promulgated under the Code, as such regulations may be amended from time to time.

"**Unanimous Approval**" means [****].

"**Unreturned Priority Capital Contributions**" means the total of all Priority Capital Contributions made by a Partner, reduced by all distributions made to such Partner pursuant to Section 8.1(b) of this Agreement, as applicable.

ARTICLE 2
ORGANIZATIONAL MATTERS

Section 2.1 LP Act; Certificate.

(a) The rights and liabilities of the Partners in the Partnership and as among them as to the Partnership shall be determined pursuant to the LP Act and this Agreement. To the extent the rights or obligations of any Partner are different by reason of any provision of this Agreement than they would be under the LP Act in the absence of any such provision, or even if this Agreement is inconsistent with the LP Act, this Agreement shall control, except to the extent the LP Act prohibits any such provision of the LP Act to be waived or modified by the Partners, in which event any contrary provisions of this Agreement shall be valid to the extent permitted under the LP Act, except where such partial validity is clearly inconsistent with the intent of the Partners, in which event the entire contrary provision shall be invalid.

(b) The General Partner shall cause to be filed such certificates and documents as are necessary to comply with the applicable requirements for the organization and operation of a limited partnership in accordance with the laws of the State of Delaware. Additionally, the General Partner shall cause the Partnership to be qualified, pursuant to Chapter 425 of the Hawaii Revised Statutes, to conduct business in the State of Hawaii. The General Partner shall maintain such organization and qualification for as long as the Partnership exists or, as the case may be, conducts business in such jurisdictions. To the extent required by law or as determined by the General Partner in its discretion, the General Partner shall appoint, and change, agents for service of process in all jurisdictions in which the Partnership shall conduct business or is organized, registered or qualified. The initial principal place of business of the Partnership shall be at 87 MM Queen Ka'ahumanu Hwy. Kai lua-Kona, HI 96740, with a mailing address of PO Box 5349, Kailua-Kona, HI 96745. The General Partner shall promptly deliver to the Limited Partners a copy of any amendment, restatement or other change to the Certificate.

Section 2.2 Name. The name of the Partnership shall be KD Acquisition II, LP. The Partnership's business and affairs shall not be conducted under any other name or names.

Section 2.3 Purposes. The sole purposes and nature of the business to be conducted by the Partnership shall be limited to engaging in the following activities: (i) the acquisition, ownership, development, construction, operation, maintenance, leasing, management, encumbering, mortgaging, borrowing, financing, refinancing, selling, transferring, conveying and otherwise dealing with the Property and the Project, or any portion thereof, and any other assets of the Partnership or any Subsidiary or JV Entity related thereto, and (ii) engaging in and performing any and all other acts and activities as may be necessary, incidental or convenient to carry out the foregoing (the "Partnership Purpose").

Section 2.4 Powers. The Partnership is empowered to do any and all acts and things permitted by law that are necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the Partnership Purpose and for the protection and benefit of the Partnership and/or its assets.

Section 2.5 Term. The term of the Partnership commenced on the date the Certificate was filed with the Secretary of State of the State of Delaware and shall continue unless and until the Partnership is terminated pursuant to the provisions of Article 12 or as otherwise provided by law or agreed to by the Partners in a signed writing.

Section 2.6 Title to Partnership Assets. Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an Entity, and no Partner, individually or collectively, shall have any ownership interest in any

Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 2.7 Representations and Warranties. Each Partner (including, without limitation, each permitted transferee as a condition to becoming a Partner), for itself only, represents and warrants to the Partnership and to each other Partner it has all requisite power, authority and legal capacity to enter into and to perform its obligations under this Agreement.

Section 2.8 Entity Characterization. It is the intention of the Partners that the Partnership constitute a partnership for U.S. federal, state and local income tax purposes. The General Partner therefore agrees that it: (a) will not knowingly cause or permit the Partnership to elect, without the consent of the Partners, (1) to be excluded from the provisions of Subchapter K of the Code, or (2) to be treated as a U.S. corporation for federal, state and local income tax purposes; and (b) will cause the Partnership to make any election requested by a Partner that is reasonably necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for U.S. federal, state and local income tax purposes as long as such election does not cause a material adverse effect to the other Partners.

ARTICLE 3

CAPITAL CONTRIBUTIONS AND ADDITIONAL FUNDING

Section 3.1 Phase 2A Pre-Development Costs.

(a) [****].

(b) [****].

Section 3.2 Project Costs. [****].

(a) [****].

(b) [****].

(c) [****].

(d) [****].

(e) [****].

Section 3.3 Return of Capital. [****].

Section 3.4 No Other Contributions. Except as expressly required by this Article 3 or by the LP Act, no Partner shall have any obligation to make any Capital Contributions to the Partnership or to advance or loan any funds to the Partnership. No advance or loan made to the Partnership by a Partner shall constitute a Capital Contribution to the Partnership.

Section 3.5 No Interest Payable. No Partner shall receive any interest or preferred return on its contributions to the capital of the Partnership, nor any credit balance in such Partner's Capital Account, except as may be otherwise provided herein.

Section 3.6 Deficit Capital Accounts. No Partner shall have any obligation to restore any deficit balance in its Capital Account upon the liquidation and dissolution of the Partnership or if such Partner's Partnership Interest is liquidated.

ARTICLE 4
MANAGEMENT AND OPERATIONS OF BUSINESS

Section 4.1 Management Vested in General Partner. [****].

(a) Conduct Consistent with Business Plan and Budgets. [****].

(b) Project Duties. [****].

Section 4.2 Powers of General Partner. [****]

Section 4.3 Right to Rely on General Partner. Any Person dealing with the Partnership may rely (without duty of further inquiry) upon a certificate signed by the General Partner as to:

(a) the identity of any Partner;

(b) any conditions precedent to acts on behalf of the Partnership by the General Partner or other matters which are germane to the affairs of the Partnership;

(c) any instrument or document obligating the Partnership; or

(d) any act or omission by the Partnership or any other matter related to the Partnership.

Section 4.4 Transactions Involving Affiliates. [****]

Section 4.5 Reimbursement of General Partner. [****]

Section 4.6 Indemnification. [****]

Section 4.7 General Partner Standard of Conduct. [****]

Section 4.8 Replacement of General Partner. [****]

ARTICLE 5

NO MANAGEMENT RIGHTS, LIMITED LIABILITY OF LIMITED PARTNERS

Section 5.1 Limitation of Liability. No Limited Partners shall be personally liable in any manner whatsoever for any debts, liabilities or obligations of the Partnership, whether arising under Federal or State statute, regulation, contract, tort, or otherwise. The liability of each Limited Partner shall be limited to the amount of Capital Contributions made by such Limited Partner in accordance with the provisions of this Agreement. Furthermore. failure of the Partnership to observe any corporate, procedural or other formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Agreement or the LP Act shall not be grounds for any Limited Partner or any Affiliate thereof to be held liable or obligated for any debt, obligation or other liability of the Partnership. Except as otherwise expressly set forth in this Agreement, (i) none of the actions taken by any Limited Partner hereunder or in connection with the formation of the Partnership shall constitute participation in the control of the business of the Partnership within the meaning of the LP Act, (ii) no Limited Partner shall have any rights hereunder to manage or govern the affairs of the Partnership, a Subsidiary or a JV Entity and (iii) no Limited Partner shall have any authority hereunder to bind the Partnership, a Subsidiary or a JV Entity.

ARTICLE 6

INDEPENDENT ACTIVITIES OF PARTNERS

Section 6.1 General Scope of Independent Activities. [****].

Section 6.2 Waiver of Rights with Respect to Independent Activities. [****]

Section 6.3 Limitation on Partnership Opportunities. [****].

Section 6.4 Acknowledgment of Reasonableness. Each Partner expressly acknowledges, represents and warrants to the other Partners that the representing Partner is a sophisticated investor, understands the terms, conditions and waivers set forth in this Article 6 and that the provisions of this Article 6 are reasonable, taking into account the relative sophistication and bargaining position of the Partners.

ARTICLE 7

FISCAL MATTERS

Section 7.1 Records and Accounting.

(a) The Partnership shall maintain at the principal office address of the General Partner or the principal office address of any Affiliate of the General Partner (and/or electronically), at the expense of the Partnership, the following documents: (a) a current list of the full name and last known business address of each Partner; (b) a copy of the Certificate and any amendments thereto, together with executed copies of any powers of attorney pursuant to which the Certificate or any amendment thereto has been executed; (c) copies of the Partnership's federal, state and local income tax returns and reports, if any, for the most recent Fiscal Year and for the seven (7) prior Fiscal Years; (d) copies of this Agreement as then in effect and of all Financial statements of the Partnership for the most recent Fiscal Year and for the seven (7) prior Fiscal Years; and (e) books of account with respect to the Partnership's business. Such documents are subject to inspection and copying at the request and expense of any Partner and/or its agents or representatives during ordinary business hours and on reasonable prior written notice.

(b) The Partnership shall adopt a method of accounting, to be consistently applied, as selected by the General Partner after consultation with the accountants and/or tax advisers for the Partnership.

Section 7.2 Reports. The General Partner shall cause to be prepared and/or distributed to each Person who was a Partner during any Fiscal Year of the Partnership, on a quarterly basis and within 30 days of the month end of the previous quarter, at the expense of the Partnership, (i) a balance sheet, operating statement, statement of cash flows and statements of the Partner's Capital Accounts, (ii) all other information, financial reports and other reports delivered to any lender under any credit or loan agreement and (iii) any status, professional, or consultant reports, or other information or reports reasonably requested by a Partner, provided that year-end financial reports shall be provided within 120 days of the end of the applicable Fiscal Year. Any Partner that requests that that the Partnership's financial reports be audited shall be responsible, and shall reimburse the Partnership, for (or share in proportion to their respective Percentage Interests if more than one Partner so requires) the expense of the audit (and such expense shall not be treated as a Capital Contribution). Additionally, to the extent that any reporting requirements (in addition to those expressly set forth in this Agreement) are requested of, or imposed upon, the Partnership or the General Partner by virtue of such Partner, such Partner's Affiliates, or any direct or indirect owner or partner thereof, being a publicly traded company, then such Partner shall be solely responsible, and shall reimburse the Partnership, for all additional expenses arising from such additional reporting requirements (and such expenses shall not be treated as a Capital Contribution).

Section 7.3 Additional Information. In addition to the other rights specifically set forth in this Agreement, each Partner is entitled to all information to which that Partner is required to have access pursuant to a non-waivable provision of the LP Act, under the circumstances and subject to the conditions therein stated.

Section 7.4 Confidentiality. Each Partner agrees that during the period of this Agreement and following the termination of this Agreement, except as required by law, regulation, or rule (including rules of an organized stock exchange) it shall use Confidential Information (as defined below) only for the purposes of fulfilling its obligations hereunder and that it shall not, except as required by law or except as such Partner in good faith believes necessary or appropriate in the course of conducting the Partnership's business, directly or indirectly, disclose, divulge, reveal, report, publish, transfer or use any Confidential Information for any other purpose whatsoever; provided that this shall not prevent a Partner from disclosing Confidential Information to its advisors, accountants, attorneys, to bona fide potential transferees of the Partner's Partnership Interest and to bona fide potential investors in a Partner or an Affiliate of a Partner, provided that in any such case the Person to whom Confidential Information is disclosed is advised of the proprietary nature of the Confidential Information and the restrictions contained in this Section and the disclosing Partner shall be responsible for any breach of this Section by such Person. For purposes of this Agreement, the term "**Confidential Information**" shall mean the terms of this Agreement and all other business, financial or other information relating to the conduct of the Project and the acquisition of the Property or the relative or absolute rights or interests of the Partners that has not been publicly disclosed pursuant to authorization by such Partner or is already in the public domain or available to the public through other sources other than as a result of a violation of this Section.

ARTICLE 8

DISTRIBUTIONS

Section 8.1 Distribution of Cash Flow. After the Phase 2A Pre-Development Loan has been repaid in full, Cash Flow will be distributed to the Partners in the following order of priority at such times as the General Partner considers appropriate:

(a) First, to the Partners who have made Priority Capital Contributions (*pari passu* in proportion to their respective accrued and unpaid Preferred Returns) until each such Partner has received distributions pursuant to this Section 8.1(a) in an amount equal to its Preferred Return;

(b) Second, to the Partners who have made Priority Capital Contributions (*pari passu* in proportion to their respective Unreturned Priority Capital Contributions) until each Partner's Unreturned Priority Capital Contributions have been reduced to zero; and

(c) Third, to the Partners in proportion to their respective Percentage Interests.

Section 8.2 Withholding. If the Partnership is required to withhold any portion of any distribution or allocation to a Partner by applicable federal, state, local or foreign tax laws, the Partnership shall withhold such amounts and make such payments to such taxing authorities as are necessary to ensure compliance with such tax laws. Any funds withheld by reason of this Section

shall nonetheless be deemed distributed or allocated (as the case may be) to the Partner in question for all purposes of this Agreement. If the Partnership makes any payment to a taxing authority in respect of a Partner hereunder that is not withheld from actual distributions to the Partner, then the Partnership may. at the option of the General Partner. (i) require the Partner to reimburse the Partnership for such withholding, or (ii) reduce any subsequent distributions to such Partner by the amount of such withholding. The obligation of a Partner to reimburse the Partnership for taxes that were required to be withheld shall continue after such Partner Transfers its interest in the Partnership or after a withdrawal by such Partner until the reimbursement is made in full. Each Partner agrees to furnish the Partnership with any representations and forms as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, any withholding obligations it may have.

Section 8.3 Special Distribution or Conveyance of Lots.

(a) Subject to receipt of any necessary approvals under the Ground Lease, the Partnership shall cause to be transferred (i) to KD, or its designee, pursuant to the Retained Rights Agreement, three (3) subdivided residential, single-family lots (each a "**Residential Lot**") in Phase 2A and a total of four (4) additional Residential Lots in subsequent Phases, and (ii) [****].

(b) Subject to receipt of any necessary approvals under the Ground Lease, all transfers shall be made by way of special warranty deed, conveying fee simple title to the applicable Residential Lots, free and clear of liens and monetary encumbrances, but subject to all other matters of public record or other items that would be shown on a current survey of such Residential Lots, including any obligation to pay any amounts owed under the Ground Lease upon a sale of the Residential Lot (together with all applicable improvements thereon) to the ultimate purchaser thereof. To the extent that a fee transfer cannot be accomplished, the Partnership and the applicable transferee shall cooperate to transfer the Partnership's (or its Subsidiary's or JV Entity's) interest in the applicable Residential Lot by way of an assignment of rights under the Ground Lease, or otherwise. The transferee (i.e., KD, [****]) shall be responsible for the payment of the costs of all title insurance, escrow fees, transfer taxes, recording fees, or amounts owed pursuant to the Ground Lease with respect to such transfer of the Residential Lot. Real property taxes and assessments shall be prorated as of the date of the transfer. The Partners agree to take all actions and to execute all documents as may be reasonably necessary or appropriate in order to effectuate the intent and purpose of this Section 8.3.

(c) All Residential Lots to be transferred pursuant to this Section 8.3 shall be serviced by utilities. As a condition to the closing of any Residential Lot transfer pursuant to this Section 8.3, the transferee shall commit (i) with respect Residential Lots to be

transferred in phases of the Project subsequent to Phase 2A, to commence construction of approved improvements on such Residential Lots within ninety (90) days of the closing of such transfer, (ii) to be subject to all construction and other requirements as may be set forth in the Ground Lease, any Entitlements or any architectural review requirements or covenants or restrictions affecting the Project, and (iii) to construct improvements on the Residential Lot in a manner consistent with the Development Plans. The location of the Residential Lots to be transferred pursuant to this Section 8.3, and the timing of the transfers, shall be determined by the General Partner, after giving good faith consideration to input from KD [****].

(d) [****].

ARTICLE 9

CAPITAL ACCOUNTS; ALLOCATIONS TO PARTNERS

Section 9.1 Capital Accounts. The Partnership will establish and maintain a separate Capital Account on the books of the Partnership for each Partner. The Capital Accounts of the Partners will be restated by the General Partner as of the Effective Date in accordance with the definition of Book Value, and the restated Capital Account balance of each Partner will be reflected in the books and records of the Partnership as set forth in **Exhibit D** attached hereto.

Section 9.2 Tax Allocations.

(a) *General Rule*. For each Fiscal Year of the Partnership, after the application of Section 9.3 and Section 9.4 below, Profits and Losses shall be allocated to the Partners in a manner which causes each Partner's Adjusted Capital Account Balance to equal the amount that would be distributed to such Partner pursuant to Section 12.2 upon a hypothetical liquidation of the Partnership in accordance with Section 9.2(b).

(b) *Hypothetical Liquidation Defined*. In determining the amounts distributable to the Partners under Section 12.2 upon a hypothetical liquidation, it shall be presumed that (i) all of the Partnership's assets are sold at their respective Book Values without further adjustment, (ii) payments to any holder of a nonrecourse debt are limited to the Book Value of the assets securing repayment of such debt, (iii) the proceeds of such hypothetical sale are applied and distributed in accordance with Section 12.2, and (iv) there will be permitted adjustments for any previously made special or regulatory allocations under Section 9.3 and Section 9.4, as appropriate under the circumstances in consultation with the Partnership's tax advisors.

(c) *Item Allocations*. To the extent the General Partner determines that allocations of Profits and Losses over the term of the Partnership are not likely to produce

the Adjusted Capital Account Balances intended under this Section 9.2, then special allocations of income, gain, loss andlor deduction shall be made as deemed necessary by the General Partner to achieve the intended Adjusted Capital Account Balances. It is the intention of the Partners that this Section 9.2 shall be applied so that upon the occurrence of the liquidation of the Partnership, the balances in the Partners' respective Capital Accounts will have been established to the extent feasible under this Section 9.2 to equal the amounts that are distributed to the Partners respectively pursuant to Section 12.2, in order that distributions in liquidation of the Partnership effectively will meet the requirements of Treas. Reg. § 1.704-1(b)(2)(ii)(b)(2).

(d) *Special Allocations on Liquidation*. It is intended that the amount to be distributed to each Partner upon the liquidation and dissolution of the Partnership should equal the amount such Partner would receive if liquidation proceeds were distributed in accordance with the provisions set forth in Section 8.1 These intended distribution amounts for each Partner are referred to as such Partner's "**Targeted Distribution Amounts**." Notwithstanding any provision of the Agreement, if upon a dissolution and liquidation of the Partnership, any Partner's ending Capital Account balance immediately prior to the distribution to be made pursuant to Section 12.2 of the Agreement otherwise would be less than the balance required to ensure that such Partner receives its Targeted Distribution Amount, then, for such Fiscal Year of liquidation and dissolution and, to the extent amended tax returns can be filed for prior Fiscal Years of the Partnership (if necessary), such Partner shall be specially allocated items of income or gain for such current or prior years, and items of loss or deduction for such current or prior years shall be allocated away from such Partner to the other Partners, until Profits or Losses for the year of liquidation and dissolution of the Partnership can be allocated so as to cause such Partner's actual Capital Account balance to equal the Targeted Distribution Amount for such Partner.

Section 9.3 Special Allocations. The following special allocations shall be made in the following order:

(a) *Nonrecourse Deductions*. Nonrecourse Deductions for any Fiscal Year or other period shall be allocated among the Partners in proportion to each Partner's relative Unreturned Priority Capital Contributions, or, if none exist, the Partner's relative Percentage Interests, unless a different allocation is determined to be required under the Code after consultation with the Partnership's tax advisors. Solely for purposes of determining each Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Partner's interest in Partnership profits shall be equal to its Percentage Interests, unless a different allocation is determined to be required under the Code after consultation with the Partnership's tax advisors.

(b) *Partnership Minimum Gain Chargeback*. Except as otherwise provided in Treasury Regulation Section 1.704-2(f), notwithstanding any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to each such Partner's share of the net decrease in Partnership Minimum Gain, as such share is determined in accordance with Treasury Regulation Section 1.704-2(g). The items of Partnership income and gain to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section is intended to comply with the minimum gain chargeback requirement of Treasury Regulation 1.704-2(f) and shall be interpreted consistently therewith, including the exceptions to the minimum gain chargeback requirements set forth in Treasury Regulation Sections 1.704-2(f)(2) and (3).

(c) *Partner Nonrecourse Deductions*. Any Partner Nonrecourse Deductions, as defined in and determined under Treasury Regulation Section 1.704-2(i)(2). for any Fiscal Year or other period shall be allocated to the Partner or Partners which bear the economic risk of loss with respect to Partner Nonrecourse Debt, to which such Partner Nonrecourse Deductions are attributable, in accordance with Treasury Regulation Section 1.704-2(i)(1).

(d) *Partner Nonrecourse Debt Minimum Gain Chargeback*. Except as otherwise provided in Treasury Regulation Section 1.704-2(i)(4), notwithstanding any other provision of this Article 9 (other than Section 9.3(b).), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain, determined in accordance with Treasury Regulation § 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to each such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain, said aggregate net decrease determined in accordance with Treasury Regulation Section 1.704-2(i)(4). The items of Partnership income and gain to be so allocated shall be determined in accordance with Treasury Regulation Section 1.704-2(i)(4) and 1.704-2(j)(2)(ii). This Section is intended to comply with the partnership minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith, including the exceptions set forth in Treasury Regulation Section 1.704(f)(2) and (3) to the extent applicable.

(e) *Qualified Income Offset*. In the event any Partner unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), respectively, items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of

such Partner as quickly as possible, provided that an allocation pursuant to this Section shall be made only if and to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 9 have been tentatively made as if this Section 9.3(e) were not in this Agreement.

The allocation contained in this Section is intended to be a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d), and shall be applied consistently therewith.

(f) *Section 754 Adjustments*. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to said Section of the Treasury Regulations.

(g) *Recapture*. In the event there is any recapture of Depreciation or item of tax credit, the allocation thereof shall be made among the Partners in the same proportion as the deduction for such Depreciation or item of tax credit was allocated.

Section 9.4 Regulatory Compliance; Curative Allocations. The allocations set forth in Section 9.3 (the "**Regulatory Allocations**") are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2, and shall be interpreted in a manner consistent with such Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Partners intend to divide Partnership distributions, as reflected by Article 8. Accordingly, but subject in all events to the requirements of Section 9.3(g), the General Partner, is authorized to further allocate Profit, Loss, items of each thereof and other items among the Partners in a reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which Partnership distributions would be divided among the Partners under Article 8 but for application of the Regulatory Allocations. In general, such reallocation will be accomplished by specially allocating other Profit, Loss and items of income, gain, loss and deduction, to the extent they exist, among the Partners so that the net amount of the Regulatory Allocations and the special allocations made under Section 9.3 to each Partner is zero. This may be accomplished in any reasonable manner that is consistent with Code Section 704 and the Treasury Regulations thereunder.

Section 9.5 Tax Allocations.

(a) In accordance with Code Section 704(c) and the Treasury Regulations thereunder, Depreciation, gain, loss, and deduction with respect to any property contributed

to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Book Value, such allocation to be made using any of the methods described in Treasury Regulation Section 1.704-3, as selected by the General Partner in its sole discretion, or as otherwise determined by the Partners.

(b) In the event the Book Value of any Partnership asset is adjusted pursuant to the definition thereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder, using the method described in Treasury Regulation Section 1.704-3 selected by the General Partner.

(c) Except as otherwise provided in Section 9.5(a) and Section 9.5(b), for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction has been allocated pursuant to the other provisions of this Agreement.

(d) Any elections or other decisions relating to such allocations shall be made in a manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to Section 9.5(a) through Section 9.5(c) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profit, Loss or items of either thereof, or distributions pursuant to any provision of this Agreement.

Section 9.6 Other Allocation Rules.

(a) For purposes of determining the Profit, Loss, or any other items allocable to any period, Profit, Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

(b) All matters concerning the computation and maintenance of Capital Accounts, the allocation of Profit (and items thereof) and Loss (and items thereof), the allocation of items of Partnership income, gain, loss, deduction and expense for tax purposes, and the adoption of any tax methods or accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner.

ARTICLE 10

TAX MATTERS

Section 10.1 Preparation of Tax Returns. The General Partner, at the expense of the Partnership, shall prepare or cause to be prepared all federal and Hawaii income tax returns for the Partnership and shall further cause such returns to be timely filed (including, if necessary, seeking appropriate extensions) with the appropriate authorities. The General Partner shall use reasonable good faith efforts to cause the Partnership to issue a Schedule K-1 with respect to each Fiscal Year to each Partner by April 1st of the following Fiscal Year. It is contemplated that the Partnership will be classified as a "partnership" for federal, state and local income tax purposes. The Partnership and the Partners will take such reasonable action as may be necessary or advisable, and as reasonably determined by the General Partner, including the amendment of this Agreement, to cause or ensure that the Partnership shall be treated as a "partnership" for federal, state and local income tax purposes. To the extent that additional foreign reporting requirements arise as a result of a specific Partner (or its Affiliates), such Partner will be responsible for and shall reimburse the Partnership and the General Partner for any additional cost incurred by either in order to comply with such reporting requirements (and such costs shall not be treated as a Capital Contribution).

Section 10.2 Tax Elections. The General Partner may cause the Partnership to make any election permitted to be made for tax purposes.

Section 10.3 Tax Representative.

(a) The General Partner shall act as the tax matters partner of the Partnership (if applicable), as such term is defined in Section 6231(a)(7) of the Code in effect for years prior to 2019. and as the partnership representative of the Partnership, as such term is defined in Section 6223 of the Code (collectively, the "**Tax Representative**"), and shall have all the powers and duties assigned to a "tax matters partner" (if applicable) and/or a "partnership representative" under the Code and the Regulations promulgated thereunder. The Partners agree to perform all acts necessary under Section 6223 of the Code and the Regulations thereunder to designate the General Partner as the Tax Representative and, if applicable, under Section 6231 of the Code and the regulations thereunder in effect for years prior to 2019. Notwithstanding anything herein to the contrary, the Tax Representative shall, upon receipt of notice from the IRS, give notice of an administrative proceeding with respect to the Partnership to all Partners in accordance with, and as if such Partners were each a "notice partner" pursuant to, Section 6231(a)(8) of the Code in effect for years prior to 2019.

(b) The Tax Representative shall be entitled to reimbursement from the Partnership for such expenses as are necessary in fulfilling its role as the Tax Representative. The provisions relating to indemnification of the General Partner set forth in Section 4.6 of this Agreement shall be fully applicable to the Tax Representative in its capacity as such.

(c) The Tax Representative shall receive no compensation for its services. All third party costs and expenses incurred by the Tax Representative in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership. Nothing herein shall be construed to restrict the Partnership from engaging an accounting, legal and/or other firm to assist the Tax Representative in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable.

Section 10.4 Taxes Attributable to Current or Former Partners. The General Partner may cause the Partnership to pay any taxes (and any penalties, interest, and other assessments and charges in respect thereof) that the Partnership is required to pay with respect to a current or former Partner's Partnership Interest (including any Partnership Interests previously held by such Partner), including any taxes the Partnership may be obligated to pay under Code § 6225 (as amended from time to time, including by Bipartisan Budget Act of 2015 (Pub. L. 114-74)). The General Partner shall determine, in its reasonable discretion, each Partner's share of any imputed underpayment of taxes. Each Partner shall pay such tax obligation (either directly or to the Partnership) upon demand from the General Partner and shall take such other actions as the General Partner may reasonably direct. including. but not limited to filing an amended return for any "reviewed year" to account for all adjustments under Code § 6225(a) (as amended from time to time), and if such tax obligation is not paid to the Partnership within thirty (30) days following the request therefor, the same shall begin to accrue interest at the higher of (i) the interest rate charged by the Internal Revenue Service on such unpaid tax obligation, or (ii) eighteen percent (18%), compounded annually. For the avoidance of doubt, payments made to the Partnership for any such tax obligations shall not constitute Capital Contributions. Failure to pay such tax obligation shall entitle the General Partner to pursue (on behalf of the Partnership) any and all remedies under applicable law against the defaulting Partner, including, but not limited to, offsetting any future distributions payable to such Partner pursuant to this Agreement or any payments payable to an Affiliate of such Partner pursuant to any agreement between such Affiliate and the Partnership. Each such Partner shall indemnify and hold the Partnership and the other Partners harmless against any costs, penalties, payments, or other losses (including attorneys' fees, expert fees and costs) incurred in connection with a breach of this Section 10.4. This Section 10.4 shall survive the termination, dissolution, liquidation and winding up of the Partnership (or the transfer of all or any portion of Partner's Partnership Interest), and for purposes of this Section 10.4 the Partnership shall be treated as continuing in existence.

ARTICLE 11

TRANSFERS AND WITHDRAWALS

Section 11.1 Transfer Restrictions.

(a) [****].

(b) [****].

(c) [****].

Section 11.2 General Provisions for Transfers.

(a) Any permitted Transfer shall not relieve the transferor of any of its obligations which accrued or arose prior to such Transfer. The admission of any Person as an additional and/or substitute Partner shall become effective as of the date upon which the name of such Person is recorded on the books and records of the Partnership. Following the Transfer, but subject in all events to continued liability for tax obligations of the transferring Partner pursuant to Section 10.4, the transferor will be relieved of all on-going liability under this Agreement relating to the Partnership Interest transferred, including any obligations in respect of the requirement for additional Capital Contributions, if any, related to such Partnership Interest, to the extent permitted by law, and the transferee will assume all such liabilities.

(b) Any Person who acquires in any manner whatsoever a Partnership Interest (or any part thereof) in the Partnership, whether or not such Person has accepted and assumed in writing the terms and provisions of this Agreement, shall be deemed, by acceptance of the acquisition of any such Partnership Interest, to have agreed to be subject to and bound by, and shall be deemed to have assumed all of the obligations of this Agreement with respect to such Partnership Interest and shall be subject to the provisions of this Agreement with respect to any subsequent Transfer of such Partnership Interest.

(c) Any Person who acquires a Partnership Interest under operation of law shall not have any management or approval rights in the Partnership, but shall only be entitled to receive distributions in accordance with their pro rata share, unless all other Partners provide their prior written consent, which may be withheld for any reason.

(d) If any Partnership Interest is transferred or assigned during any portion of a Fiscal Year on any day other than the first day of a Fiscal Year, then Profit and Loss, each item thereof and all other items attributable to such interest for such Fiscal Year shall be divided and allocated between the transferor Partner and the transferee Partner or assignee by taking into account their varying interests during the Fiscal Year on such basis as the General Partner shall determine, and which is permitted under the Code. All distributions attributable to such Partnership Interest before the date of such Transfer shall be made to the transferor Partner, and all distributions thereafter attributable to such Partnership Interest shall be made to the transferee.

(e) Each transferee shall execute such instruments, amendments, certificates, or other forms as shall be reasonably required by the General Partner in connection with any Transfer.

(f) Upon the admission or withdrawal of a Partner (whether by reason of a Transfer or otherwise), this Agreement and the Certificate, to the extent required under the LP Act, shall be amended appropriately to reflect the then existing names and addresses of the Partners, any change in the General Partner and other appropriate and necessary information.

(g) Any Transfer or purported Transfer in contravention of any of the provisions of this Agreement shall be null and void and ineffective to Transfer any Partnership Interest, and shall not bind, or be recognized by, or on the books of, the Partnership.

(h) The death, legal disability, Bankruptcy or dissolution of a Partner or the Transfer by any Partner of all or any part of its Partnership Interest in the Partnership (whether or not in compliance with the terms of this Agreement) shall not dissolve the Partnership.

(i) The Partnership shall have the right to collect from any Partner who Transfers a Partnership Interest reasonable reimbursement of accounting, legal and other expenses incurred by the Partnership incident to the Transfer.

Section 11.3 Withdrawal. No Partner may withdraw from the Partnership other than as a result of a permitted Transfer of all of such Partner's Partnership Interest in accordance with this Article 11.

ARTICLE 12
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 12.1 Dissolution.

(a) The Partnership shall be dissolved and its affairs wound up upon the earliest to occur of the following:

(i) the sale of all or substantially all of the assets of the Partnership, as permitted hereunder;

(ii) it is not reasonably practicable to carry on the Partnership Purpose;

(iii) an election made by a Partner to dissolve the Partnership in accordance with Section 3.1(b);

(iv) the entry of a decree of judicial dissolution of the Partnership;

(v) Unanimous Approval;

(vi) an event of withdrawal of the last remaining General Partner has occurred under the LP Act, unless the business of the Partnership is continued in accordance with this Agreement or the LP Act; or

(vii) at any time there are no limited partners of the Partnership, unless the business of the Partnership is continued in accordance with the LP Act.

Section 12.2 Winding Up.

(a) Upon the dissolution of the Partnership, the General Partner shall proceed. within a reasonable time, to sell or otherwise liquidate the assets of the Partnership consistent with the provisions of this Agreement and, after paying or making due provision by the setting up of reserves for all liabilities to creditors of the Partnership, to distribute the remaining assets to the Partners in accordance with Section 8.1.

(b) Upon the dissolution of the Partnership. the Partners shall look solely to the assets of the Partnership for the return of their Capital Contributions. The winding up of the affairs of the Partnership and the distribution of its assets shall be conducted consistent with the provisions of this Agreement by the General Partner, who is hereby authorized to do any and all acts and things authorized by law for these purposes.

(c) The General Partner shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the net proceeds therefrom, after paying or making due provision by the setting up of Reserves for all liabilities to creditors of the Partnership, shall be applied and distributed in the order and priority set forth in Section 8.1. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to this Article 12 in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

(d) Notwithstanding the provisions of Section 12.2(a) which require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the General Partner determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the General Partner may defer for a reasonable time the liquidation of any

assets except those necessary to satisfy liabilities of the Partnership (including to those Partners and their Affiliates as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 12.2(a), undivided interests in such Partnership assets as the General Partner deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the General Partner, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the General Partner deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The General Partner shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

Section 12.3 Termination of Partnership and Cancellation of Certificate of the Partnership. Upon the completion of the liquidation of the Partnership's assets, as provided in Section 12.2, the Partnership shall be terminated, a certificate of cancellation shall be filed, and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be cancelled and such other actions as may be necessary to terminate the Partnership shall be taken.

ARTICLE 13

ARBITRATION

Section 13.1 Waiver of Court Action. EXCEPT AS NECESSARY TO ENFORCE THE PROVISIONS OF THIS ARTICLE 13, TO COLLECT ON AN ARBITRATION AWARD, AND/OR TO OBTAIN PRELIMINARY OR PERMANENT INJUNCTIVE RELIEF, EACH OF THE PARTNERS ON THEIR OWN BEHALF AND ON BEHALF OF THE PARTNERSHIP HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO COMMENCE ANY LEGAL OR EQUITABLE ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT RELATING TO, ARISING UNDER, THIS AGREEMENT AND SHALL PROCEED AS SET FORTH IN THIS ARTICLE 13.

Section 13.2 Consent to Mediation and Arbitration. All disputes or claims between the Partners or the Partnership and any Partner, shall be submitted to mediation and, if not resolved as set forth herein, to binding arbitration as set forth in this Article 13.

(a) All disputes, controversies or claims between or among the Partners with respect to the application or interpretation of this Agreement, or otherwise concerning the rights and obligations of the Partners hereunder shall, upon written notice given by any party hereto to each other party (a "Mediation Notice"), be submitted to mediation as provided below.

(i) The parties to any dispute shall, immediately following the giving of a Mediation Notice, undertake to agree upon a mediator to assist in resolution of such dispute.

(ii) If within ten (10) consecutive, calendar days of the giving of a Mediation Notice, the parties have not agreed upon a mediator, any party may request appointment of a mediator pursuant to the procedures of the DPR. Such mediator shall be trained in mediation and shall be experienced in matters relating to sophisticated business transactions. The mediation shall proceed in Honolulu, Hawaii.

(b) Notwithstanding anything to the contrary contained herein, if following the commencement of the mediation process referred to in this Article 13, the subject in dispute has not been resolved to the satisfaction of the disputants within forty-five (45) consecutive calendar days after the Mediation Notice, the parties agree to submit to binding arbitration any and all such claims, disputes and controversies arising under or relating in any way to this Agreement all of which shall be fully, completely and conclusively resolved by such binding arbitration. Such binding arbitration shall proceed in Honolulu, Hawaii, and shall be governed by the "Arbitration Rules, Procedures and Protocols" of the DPR. Judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction.

(i) Arbitration hereunder shall be before a single neutral arbitrator who is an attorney with at least ten (10) years' experience in connection with residential real estate development projects (whether in the litigation or transactional context), or a retired judge of any United States District Court. The DPR shall submit a list of persons meeting the criteria outlined above for each category of arbitrator, and the parties shall select one person from each category in the manner established by the DPR.

(ii) The hearing on any arbitration to be conducted hereunder shall be commenced within one hundred twenty (120) consecutive, calendar days of the service of any party's election to arbitrate and shall be completed within two hundred ten (210) consecutive, calendar days of such tiling, unless agreed otherwise by the parties. During the period after initiation of the arbitration proceeding and the scheduled hearing, the parties shall be entitled to proceed with discovery to the same extent as in a court proceeding in the State of Hawaii, including depositions and document discovery. In connection therewith, the arbitrator shall issue such subpoenas as either party requests and as are permitted by applicable law.

(iii) The arbitrator shall use the "Arbitration Rules, Procedures and Protocols" of the DPR but is encouraged to adopt such rules as the arbitrator deems appropriate to accomplish the arbitration in the quickest and least expensive manner possible. Accordingly, the arbitrator may: (a) dispense with any formal rules of evidence and allow hearsay testimony so as to limit the number of witnesses required; (b) establish time limits for discovery procedures as the arbitrator deems appropriate; (c) limit the time for presentation of any party's case as well as the amount of presentation of any party's case as well as the amount of information or number of witnesses to be presented in connection with any hearing; and (d) impose any other rules which the arbitrator believes appropriate to effect a resolution of the dispute as quickly and inexpensively as possible.

(iv) In the event that any subsequent or further controversy, claim or dispute arising out of, or relating in any way to, this Agreement arises while any arbitration demand under this Agreement is pending, but before the arbitrator appointed as a result thereof has rendered its final decision, such arbitrator shall have exclusive jurisdiction over the resolution of such subsequent or further controversies, claims or disputes and shall consolidate all such matters.

(v) The arbitrator shall have the exclusive authority to determine and award costs of arbitration and the costs incurred by any party for their attorneys. advisors and consultants, including specifically, but without limitation, damages and sanctions against any party to an arbitration found by the arbitrator to have failed to comply with, or abused, the applicable arbitration provisions or rules, and the award of attorneys' fees and costs to the prevailing party in any such arbitration.

ARTICLE 14

GENERAL PROVISIONS

Section 14.1 Addresses and Notice; Time Computation.

(a) All notices, requests and other communications hereunder (collectively, "**Notices**") must be in writing and shall be deemed to have been duly given only if delivered personally against written receipt or mailed by overnight courier prepaid, to the parties at the following addresses or e-mail addresses:

If to KDK:

c/o Barnwell Hawaiian Properties, Inc.
1100 Alakea Street, Suite 2900
Honolulu, Hawaii 96813
Attn: Mr. Alexander Kinzler

E-mail:

With a copy to:

Mr. John Nees
1325 Airmotive Way, Suite 160
Reno, Nevada 89502
E-mail:

If to Replay:

Replay Kaupulehu Development LLC
c/o Re:Play Management Ltd.
Suite 2150-745 Thurlow Street
Vancouver, BC V6E 005
Attn.: Mr. Paul Jorgensen
E-mail:

With a copy to:

Replay Kaupulehu Development LLC
c/o Replay Destinations Inc.
631 Center Street
Healdsburg. CA 95448
Attn: Mr. David Hill
E-mail:

If to the General Partner:

Kaupulehu II, LLC
c/o Barnwell Hawaiian Properties, Inc.
1100 Alakea Street, Suite 2900
Honolulu, Hawaii 96813
Attn: Mr. Alexander Kinzler
E-mail:

and

Kaupulehu II, LLC
c/o Replay Destinations Inc.
631 Center Street
Healdsburg, CA 95448
Attn: Mr. David Hill
E-mail:

With an additional copy to:

Kaupulehu II, LLC
c/o Re:Play Management Ltd.
Suite 2150-745 Thurlow Street
Vancouver, BC V6E 005
Attn.: Mr. Paul Jorgensen
E-mail:

(b) All such Notices shall (i) if delivered personally to the address as provided in this Section, be deemed given on the Business Day of delivery and (ii) if delivered by overnight courier to the address as provided in this Section, be deemed given on the earlier of the first Business Day following the date sent by such overnight courier or upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party from time to time may change its address or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto. If any party refuses to accept delivery of a notice hereunder, such notice shall be deemed to have been received on the day such delivery is refused. Email is not a satisfactory method of delivery. E-mail may be used for delivery of reports, budgets, tax returns and other similar materials, for requesting approval of any matter, and as is specifically provided for in this Agreement (and as to such items, regardless of the manner of delivery, any copy to parties who are the outside counsel for a party shall not be required recipients) but e-mail may not be used for any required notices as to defaults, alleged defaults, or any matter NA, hich, directly or indirectly, potentially involves any guarantee of any obligation of any party hereof or any Affiliate of any party hereto.

(c) In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period shall run until the next Business Day.

Section 14.2 Titles and Captions. Section titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

Section 14.3 Pronouns and Plurals; Word Meanings. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The words such as “herein”, “hereinafter”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise

requires. References to a paragraph shall only be to the grammatical paragraph referred to unless there is a specific paragraph and/or Section designated. The use in this Agreement of the word "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation", or "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. Whenever in this Agreement any Person is permitted or required to make a decision in its "good faith" or discretion or sole discretion or under another express standard as to any such decision, such Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or other applicable law or in equity.

Section 14.4 No Partition. Except as set forth in Article 12, no Partner shall have the right to terminate this Agreement or dissolve the Partnership by its express will or by withdrawal without the consent of the other Partners, and each Partner agrees that irreparable damage would be done to the Partnership if any Partner brought an action in court to dissolve the Partnership or partition or apportion the assets of the Partnership. Accordingly, except as set forth in Article 12, each Partner agrees that it shall not, either directly or indirectly, and each Partner hereby waives any rights it might otherwise have to (i) commence any proceeding or otherwise take any action to request, cause or to require the partition or appraisement of the Partnership, or any of the direct or indirect assets of the Partnership, (ii) cause the appointment of a receiver for all or any portion of the assets of the Partnership, (iii) compel any sale or partition of all or any portion of the direct or indirect assets of the Partnership pursuant to any applicable law, (iv) file a complaint, or institute any proceeding at law or in equity, for the purpose, directly or indirectly, of causing or seeking to cause the termination, dissolution or liquidation of the Partnership, or (v) withdraw from the Partnership, except as otherwise specifically provided elsewhere in this Agreement, without the consent of the other Partners in their sole discretion. Notwithstanding any provisions of this Agreement to the contrary. each Partner accepts the provisions of the Agreement as its sole entitlement as to withdrawal by a Partner and as to the termination, dissolution and/or liquidation of the Partnership, and hereby irrevocably waives any and all right to withdraw from the Partnership or to maintain any action for dissolution or partition or to compel any sale or other liquidation with respect to its Partnership Interest or any properties of the Partnership not in accordance with the provisions of this Agreement; and each Partner agrees that it will not petition a court for the dissolution, termination or liquidation of the Partnership other than in accordance with the provisions of this Agreement.

Section 14.5 Money or Currency. Any reference to money, funds or currency means United States currency.

Section 14.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors, legal representatives and assigns.

Section 14.7 No Third Party Rights. Except for those Persons entitled to indemnification as set forth in this Agreement, who shall be express third party beneficiaries, the terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights, and this Agreement does not confer any such rights.

Section 14.8 Remedies; Waiver. Each Partner acknowledges that certain violations of the provisions of this Agreement may result in irreparable harm to a Partner or to the business or assets of the Partnership for which money damages alone would not adequately compensate. Accordingly, each Partner consents and agrees that if there is any breach or violation, or threatened breach or violation, of any of the terms, covenants and other provisions of this Agreement, the Partnership and the other Partners shall be entitled to an injunction, specific performance or other equitable remedy, all without limitation of or effect upon any other remedies and rights which may otherwise be available hereunder or under applicable law or at equity, all such rights and remedies being cumulative and non-exclusive. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

Section 14.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument. This Agreement may be executed by the parties and transmitted by facsimile or electronic mail and when it is executed and transmitted in such manner this Agreement shall be for all purposes as effective as if the party(s) had delivered an executed original of this Agreement.

Section 14.10 Applicable Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware, without regard to any conflict of law principles.

Section 14.11 Invalidity of Provisions. If any one or more of the provisions contained in this Agreement or any application thereof shall be invalid. illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and other application thereof shall not in any way be affected or impaired thereby.

Section 14.12 Entire Agreement. This Agreement supersedes all prior discussions, term sheets and agreements between the parties with respect to the subject matter hereof and thereof and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof and thereof.

Section 14.13 Additional Documents and Acts. In connection with this Agreement as well as all transactions contemplated by this Agreement, each Partner agrees to from time to time, at any other Partner's request, execute and deliver such additional documents and instruments, and perform such additional acts, as the other Partner may deem to be necessary or desirable to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions. All approvals of any Partner hereunder shall be in writing.

Section 14.14 Amendments. [****].

Section 14.15 Attorney Fees; Damages. If the Partnership or any Partner institutes any arbitration, legal or equitable action or proceeding against any Partner or the Partnership by reason of the breach of this Agreement or the failure to comply with the terms of this Agreement, or as to the interpretation of this Agreement or any other matter relating to this Agreement, the party substantially prevailing in such proceeding shall be entitled to recover its reasonable attorneys' fees and costs (including expert witness fees). **Notwithstanding anything to the contrary contained herein, in no event shall any Partner or the Partnership be liable hereunder for any consequential, special, punitive or indirect damages, the Partners and the Partnership agreeing that the sole damages due hereunder shall be direct damages.**

Section 14.16 Construction. The parties hereto agree that this Agreement is the product of negotiation between sophisticated parties and individuals, all of whom were represented by counsel, and each of whom had an opportunity to participate in and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party hereto but rather shall be given a fair and reasonable construction.

Section 14.17 Survival of Certain Provisions. The Partners acknowledge and agree that this Agreement contains certain terms and conditions which are intended to survive the dissolution and termination of the Partnership; provided that the provisions of this sentence shall not be interpreted to mean that assets of the Partnership, after distribution to a Partner or Partners, continue to be assets of the Partnership for purposes of this Agreement. The Partners agree that the provisions of this Agreement which by their terms require, given their context, that they survive the dissolution and termination of the Partnership so as to effectuate the intended purposes and agreements of the Partners shall survive notwithstanding that such provisions had not been specifically identified as surviving and notwithstanding the dissolution and termination of the Partnership or the execution

of any document terminating this Agreement, unless such termination document specifically provides for nonsurvival by reference to this Section and to specific nonsurviving provisions.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the Partnership and the Partners have executed this Limited Partnership Agreement as of the date first written above.

GENERAL PARTNER

Kaupulehu II, LLC,
a Delaware limited liability company

By: Replay Kaupulehu Development LLC,
a Delaware limited liability company, its
Member

By: /s/ Paul Jorgensen
Paul Jorgensen, its President

AND

By: KD Kaupulehu, LLLP, a Delaware limited
liability limited partnership, its Member

By: Ka'upulehu Makai, LLLP, its General Partner

By: KKM Makai, LLLP, its General Partner

By: Noble Enterprises Inc., its General Partner

By: /s/ Terry Johnston
Name: Terry Johnston
Title: President

LIMITED PARTNERS:

Replay Kaupulehu Development LLC,
a Delaware limited liability company

By: /s/ Paul Jorgensen
Paul Jorgensen, its President

KD Kaupulehu, LLLP, a Delaware limited liability limited partnership

By: Ka'upulehu Makai, LLLP, its General Partner

By: KKM Makai, LLLP., its General Partner

By: Noble Enterprises Inc., its General Partner

By:/s/ Terry Johnston
Name: Terry Johnston
Title: Chairman, President

THE PARTNERSHIP:

KD Acquisition II, LP,
a Delaware limited partnership

By: Kaupulehu II, LLC, a Delaware limited liability company, its General Partner

By: Replay Kaupulehu Development LLC, a Delaware limited liability company, its Member

By: /s/ Paul Jorgensen
Paul Jorgensen, its President

AND

By: KD Kaupulehu, LLLP, a Delaware limited liability limited partnership, its Member

By: Ka'upulehu Makai, LLLP, its General Partner

By: KKM Makai, LLLP., its General Partner

By: Noble Enterprises Inc., its General Partner

By: /s/ Terry Johnston
Name: Terry Johnston
Title: President

Exhibit A
Property Description and Depiction

[See Attached]

Legal Description of portion of Property subject to Ground Lease:

All of that certain parcel of land situate at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 45, KAUPULEHU LOT 4-A INCREMENT 1, PHASE 2 SUBDIVISION, as shown on File Plan Number 2438, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 273.875 acres, more or less: and

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 7843, Land Commission Award Number 7715, Apana 10 to L. Kamehameha) situate, lying and being at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 46A of the KAUPULEHU LOT 4-A INCREMENT 2, PHASE 1 SUBDIVISION, containing an area of 147.768 acres, more or less, as shown on subdivision map prepared by Dan H. Hirota, Land Surveyor, dated August 26, 2015, approved by the Planning Director, County of Hawaii, on September 17, 2015, as SUB-13-001254-Revised, as shown in AFFIDAVIT dated September 25, 2015, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-57490755.

Depiction of Property (i.e. Increment 2):

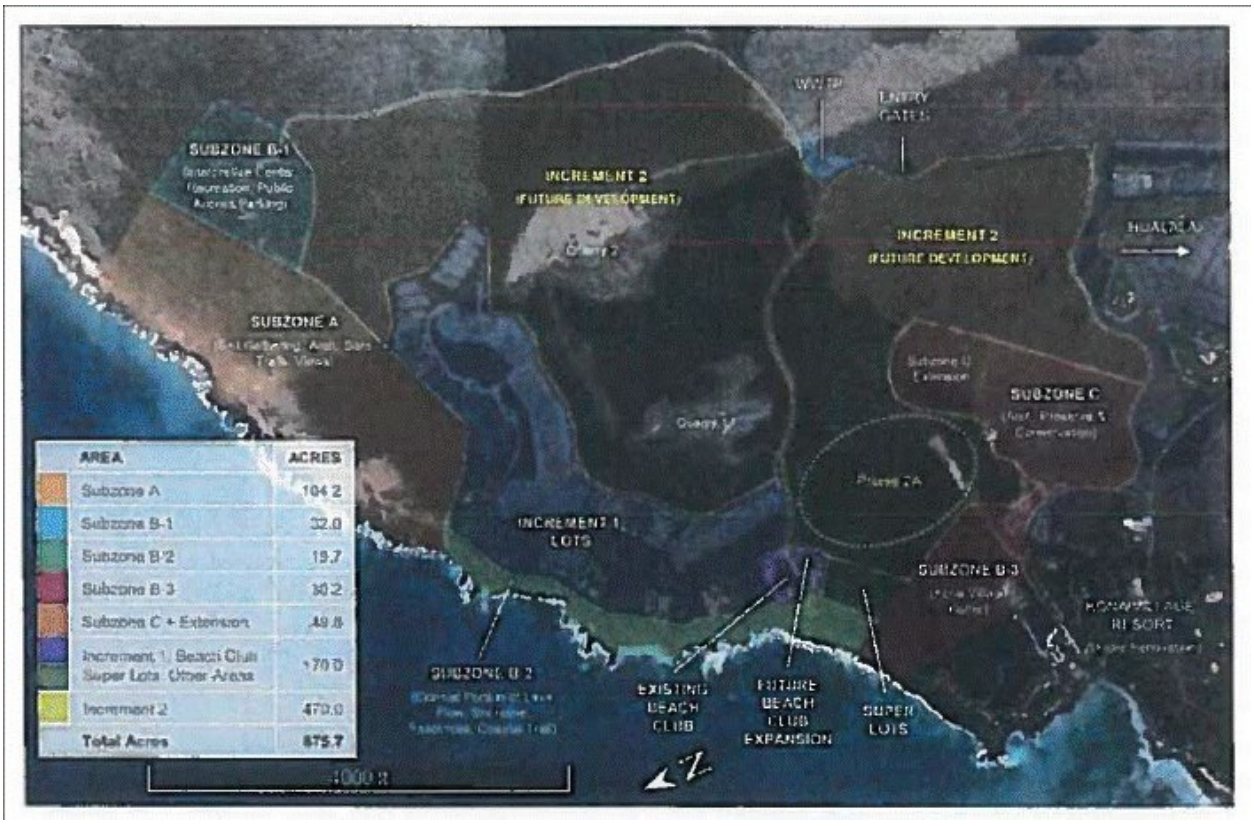

EXHIBIT B

Advances Made as of Effective Date under

Phase 2A Pre-Development Loan

[****]

Exhibit C
Phase 2A Pre-Development Budget

[See Attached]

Exhibit D
Capital Accounts of Partners as of Effective Date

The following are the Capital Account balances of the Partners existing as of the Effective Date:

Replay - [****]

KDK - [****]

GP - [****]

EXHIBIT “D”

Terms and Conditions of Conveyance of Lots to KD

[****]

EXHIBIT "E"

Partial Release of Retained Rights

LAND COURT SYSTEM	REGULAR SYSTEM
AFTER RECORDATION, RETURN TO:	RETURN BY: MAIL e PICKUP e
KAUPULEHU DEVELOPMENTS Attention: Alexander Kinzler 1100 Alakea Street, Suite 2900 Honolulu, Hawaii 96813	Total Pages:

TMK Nos. _____

PARTIAL RELEASE OF RETAINED RIGHTS

THIS PARTIAL RELEASE OF RETAINED RIGHTS ("Partial Release") is entered into and made this ____ day of _____, 2018 by Kaupulehu Developments, a Hawaii general partnership, whose address is 1100 Alakea Street, Suite 2900, Honolulu, Hawaii 96813 ("KD"), to and for the benefit of KD Acquisition II, LP, a Delaware limited partnership ("KD Acquisition II") and all holders of interests in Increment 1 and Increment 2 (defined hereinafter).

R E C I T A L S :

A. KD Acquisition II is the "Lessee" under a ground lease entitled "Indenture of Lease", dated as of May 27, 2009, Lease No. 29,250, and made between the Trustees of the Estate of Bernice Pauahi Bishop, collectively (and referred to herein) as the "Lessor", as modified by an Amendment of Bishop Estate Lease Nos. 29,250 and 29,251 dated March 7, 2016 (the "Increment 2/Beach Club Lease Amendment"), and as evidenced and memorialized of record by a Memorandum of Lease recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau"), as Document No. 2009-096327; said Memorandum is modified by an Amendment of Memorandum of Lease recorded in the Bureau as Document No. A-59130256 (collectively the "Increment 2 Lease"). The Increment 2 Lease demises to KD Acquisition II certain land and related real property interests situated in the County of Hawaii and described on **Exhibit "A"** attached hereto and incorporated herein by this reference, which land and interests are sometimes hereinafter referred to as "Increment 2". As also referenced on **Exhibit "A"**, Increment 2 will further include any portion of Lot 44, Kaupulehu Lot 4-A Phase 1, Increment 2 Subdivision, File Plan 2438 (as filed in the Bureau), which is hereafter conveyed to KD Acquisition II by KD Acquisition I (defined below).

B. KD Acquisition II's affiliate, KD Acquisition, LLLP, a Delaware limited liability limited partnership ("KD Acquisition I"), has been and continues to be the developer of certain real property adjoining Increment 2 and referred to hereinafter as "Increment 1". KD Acquisition l's interests in Increment 1 arose as leasehold rights under that certain Indenture of Lease, Lease No. 29,032, dated February 13, 2004, and made between Lessor and KD Acquisition I, as the lessee thereunder, as such ground lease was evidenced and memorialized by a Memorandum recorded in the Bureau as Document No. 2004-031733, and has been amended by (1) an Amendment of Lease and Mutual Quitclaim dated September 26, 2007, and recorded in the Bureau as Document No. 2007-170877, and (ii) a First Amendment to Indenture of Lease made by the same parties and dated May 27, 2009, as evidenced by a Memorandum recorded in the Bureau as Document No. 2009-096326 (collectively the "Increment 1 Lease"). KD Acquisition I acquired fee title to certain single-family residential subdivision lots within Increment 1 pursuant to the deed dated December 12, 2005, and recorded in the Bureau on December 23, 2005 as Document No. 2005-262400, and another deed recorded in the Bureau on September 26, 2007, as Document No. 2007-170887. Increment 1 is comprised of the land legally described in the original Increment 1 Lease, net of the land now demised under the Increment 2 Lease, and includes the fee interests still held by KD Acquisition 1 in and to the unsold residential lots which are described on **Exhibit "B"** hereto (the "Remaining Increment 1 Lots").

C. By a Purchase and Sale Agreement dated February 13, 2004 ("Increment 1 Sale Agreement"), KD sold certain interests associated with Increment 1 to KD Acquisition I (then known as WB KD Acquisition, LLC). By an Amended and Restated Agreement As To Lot 4A, Increment 2 dated May 27, 2009 ("Increment 2 Sale Agreement"), KD sold certain interests associated with Increment 2 to KD Acquisition II (then known as WB KD Acquisition II, LLC). Under those Sale Agreements, KD reserved or retained or was granted certain rights, which included (1) the right to receive a percentage of the gross proceeds from lot or unit sales within each Increment ("Percentage Payments"), (2) under the Increment 2 Sale Agreement, the right to certain "Distribution Payments" as defined therein, (3) the right to approve changes in the applicable Concept Plan, which plan identified the location and the number of units of each type which KD Acquisition I or KD Acquisition II planned to develop within Increment 1 and Increment 2, respectively, and (4) the right upon certain conditions, to step in and assume the lessee's rights under the Increment 2 Lease. The rights described in items (1), (2), (3) and (4) above, together with any and all other rights and interests that KD may hold under the Increment 1 Sale Agreement and the Increment 2 Sale Agreement, are referred to below as "KD's Retained Rights".

D. Notice to third parties of KD's Retained Rights in Increment 1 and Increment 2 is provided by a Memorandum of Agreement (the "Memorandum") dated February 13, 2004 and recorded in the Bureau as Document No. 2004-031731, as amended by Amendment to

Memorandum of Agreement dated May 27, 2009 and recorded in the Bureau as Document No. 2009-096329 (the Memorandum as amended being referred to below as the "Notice of KD's Retained Rights"). The Memorandum refers to the Increment 1 Sale Agreement as the "Purchase and Sale Agreement", and the Amendment thereto noted above refers to the Increment 2 Sale Agreement as the "Increment 2 PSA".

E. To facilitate the development and sale of lots or units within Increment 2, KD Acquisition II has requested that (1) KD release KD's Retained Rights in Increment 2, and (2) KD confirm what KD's Retained Rights it still holds with respect to Increment 1, and KD has agreed to do so in accordance with the following provisions.

PARTIAL RELEASE

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged:

1. KD hereby releases and terminates all of KD's Retained Rights as they pertain or relate to Increment 2 as described on **Exhibit "A"** hereto, and pursuant thereto agrees that the Increment 2 Sale Agreement is fully discharged and of no further force or effect, except with respect to (and only to) certain rights in favor of KD Acquisition II affecting Lot 4-C, Subdivision No. 7571-Revised, and included in the Affidavit of Robert W. Cunningham, LPLS, filed in the Bureau on April 4, 2003, as Doc. No. 2003-062370, County of Hawaii, State of Hawaii (the "Lot 4-C Rights").

2. KD hereby confirms and agrees that all of KD's Retained Rights as they pertain or relate to Increment 1 have terminated and are hereby released of record, except for (and only for) KD's rights to receive Percentage Payments under the increment 1 Sale Agreement with respect to the sale of each of the Remaining Increment 1 Lots (as described on **Exhibit "B"** hereto), which rights to Percentage Payments (the "Remaining Increment 1 Payment Rights") are expressly excepted from this Partial Release and reserved to KD. KD further acknowledges and agrees that the Increment 1 Sale Agreement remains in effect only with respect to the Remaining Increment 1 Payment Rights, and specifically that it is terminated in all respects as it may pertain to Increment 2.

3. Pursuant to sections 1 and 2 above, KD's Retained Rights are all extinguished and terminated, excepting only the Remaining Increment 1 Payment Rights. The Notice of KD's Retained Rights is hereby released, terminated and extinguished, and shall no longer constitute any encumbrance or record notice affecting increment 1 or Increment 2, except that it shall remain in effect only as record notice of the Remaining Increment 1 Payment Rights affecting the Remaining Increment 1 Lots described on **Exhibit "B"** hereto, and as record notice of the Lot 4-C Rights.

IN WITNESS WHEREOF, KD has executed this Partial Release of Retained Rights as of the date first written above.

KAUPULEHU DEVELOPMENTS,
a Hawaii general partnership

By BARNWELL HAWAIIAN PROPERTIES, INC.,
a Delaware corporation
Its General Partner

By
Alexander C. Kinzler
Its President

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 2018, in the First Circuit, State of Hawaii, before me personally appeared ALEXANDER C. KINZLER, to me personally known, who, being by me duly sworn or affirmed, did say that he is the President of BARNWELL HAWAIIAN PROPERTIES, INC., a Delaware corporation, one of the General Partners of KAUPULEHU DEVELOPMENTS, a Hawaii general partnership, and that he executed the foregoing instrument identified as PARTIAL RELEASE OF RETAINED RIGHTS as his free act and deed, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated _____, 2018, and contains _____ (__) pages at the time of this acknowledgment/certification.

Notary Public, State of Hawaii
Print Name:
My Commission Expires:

EXHIBIT "A"

Increment 2 Real Property

Demised Under Increment 2 Lease

FIRST:

All of those certain parcels of land (being portion of the land(s) described in and covered by Royal Patent Number 7843, Land Commission Award Number 7715, Apana 10 to L. Kamehameha) situate, lying and being at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii being:

> LOT 46A of the "KAUPULEHU LOT 4-A INCREMENT 2, PHASE 1 SUBDIVISION", containing an area of 147.768 acres, more or less;

All as shown on subdivision map prepared by Dan H. Hirota, Land Surveyor, dated August 26. 2015, approved by the Planning Director, County of Hawaii, on September 17, 2015, as SUB-13-001254-Revised, as shown in AFFIDAVIT dated September 25, 2015, recorded as Document No. A-57490755.

SECOND:

All of that certain parcel of land situate at Kaupulehu, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 45 of the "Kaupulehu LOT 4-A, INCREMENT 1, PHASE 2 SUBDIVISION", as shown on File Plan Number 2438, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 273.875 acres, more or less.

Additional Parcel

Any land within Lot 44, KAUPULEHU LOT 4-A, INCREMENT 1, PHASE 2 SUBDIVISION, File Plan 2438, hereafter conveyed to KD Acquisition II, LP;

All in the County of Hawaii, State of Hawaii

EXHIBIT "B"

Remaining Increment 1 Lots

LOT NO.	AREA	TAX MAP KEY NUMBER
1	1.271 acres	(3) 7-2-032-009
5	1.140 acres	(3) 7-2-032-017
9	1.032 acres	(3) 7-2-032-020
10	1.008 acres	(3) 7-2-032-021
11	1.014 acres	(3) 7-2-032-022
12	1.005 acres	(3) 7-2-032-023
13	1.000 acre	(3) 7-2-032-024
14	1.001 acres	(3) 7-2-032-025
15	1.002 acres	(3) 7-2-032-026
27	1.003 acres	(3) 7-2-032-038
29	1.023 acres	(3) 7-2-032-040
31	1.008 acres	(3) 7-2-032-042
32	1.143 acres	(3) 7-2-032-043
33	1.005 acres	(3) 7-2-032-044
34	1.003 acres	(3) 7-2-032-045
35	1.004 acres	(3) 7-2-032-046
36	1.069 acres	(3) 7-2-032-047
38	1.091 acres	(3) 7-2-032-049
39	1.160 acres	(3) 7-2-032-050
40	1.009 acres	(3) 7-2-032-051
41	1.001 acres	(3) 7-2-032-052
42	1.031 acres	(3) 7-2-032-053

Exhibit No. 31.1

Certifications

I, Alexander C. Kinzler, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Barnwell Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 14, 2019

/s/ Alexander C. Kinzler

Alexander C. Kinzler

President, Chief Executive Officer, Chief Operating Officer, General Counsel

Exhibit No. 31.2

Certifications

I, Russell M. Gifford, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Barnwell Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 14, 2019

/s/ Russell M. Gifford

Russell M. Gifford

Executive Vice President, Chief Financial Officer

Exhibit No. 32

Barnwell Industries, Inc.

Certification Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Barnwell Industries, Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2019 as filed with the Securities and Exchange Commission (the "Report"), each of the undersigned officers of the Company does hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 14, 2019

/s/ Alexander C. Kinzler

Alexander C. Kinzler

Title: President, Chief Executive Officer, Chief Operating Officer, General Counsel

Dated: May 14, 2019

/s/ Russell M. Gifford

Name: Russell M. Gifford

Title: Executive Vice President, Chief Financial Officer

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Form 10-Q or as a separate disclosure document.

A signed original of the written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.