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Kapalua Resort Association
700 Village Road
Lahaina HI 96761

Attention: Caroline Peters Belson
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TITLE OF DOCUMENT:

FOURTH AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

PARTIES TO DOCUMENT:

KAPALUA RESORT ASSOCIATION, a nonprofit corporation

PROPERTY DESCRIPTION:

LIBER/PAGE/DOCUMENT NO.:

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TRANSFER CERTIFICATE OF
TITLE NO(S).:

Tax Map Key No. (2) 4-2-004-27, -28 & -29

This document consists of 6 pages

This document amends the Amended and Restated Declaration
Recorded in the Bureau of Conveyances in Liber 21185, Page 173.

FOURTH AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS is made this 29th day of November, 2006, by KAPALUA RESORT ASSOCIATION, a nonprofit corporation (hereinafter referred to as "the Association").

RECITALS

WHEREAS, Maui Land & Pineapple Company, Inc. submitted certain lands in Lahaina, Maui, Hawaii to the Declaration of Covenants and Restrictions dated December 30, 1976 and recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") in Liber 11922 at Page 26.

WHEREAS, said Declaration was amended and restated in its entirety by that certain Amended and Restated Declaration of Covenants and Restrictions dated September 30, 1987, and recorded in the Bureau in Liber 21185 at Page 173, and further amended by First Amendment to Amended and Restated Declaration of Covenants and Restrictions dated December 6, 1989, recorded in the Bureau in Liber 24012, Page 17, by Supplemental Declaration of Covenants and Restrictions dated April 5, 1990, recorded in the Bureau as Document No. 90-049427, by Second Amendment to Amended and Restated Declaration of Covenants and Restrictions dated October 22, 1990, recorded in the Bureau as Document No. 90-164621, by Supplemental Declaration of Covenants and Restrictions dated May 23, 1991, recorded in the Bureau as Document No. 91-067724, and by Third Amendment to Amended and Restated Declaration of Covenants and Restrictions dated October 4, 1999, recorded in the Bureau as Document No. 99-160407. Said Declaration, as amended, supplemented and restated to date is hereinafter called the "Declaration".

WHEREAS, Article VI, Section 1(b) of the Declaration provides that the members of the Association may amend the Declaration upon an affirmative vote of sixty-six and two-thirds percent (66-2/3%) of all Voting Rights of the Owners.

WHEREAS, at a meeting of the Kapalua Resort Association duly called and held on November 29, 2006, more than sixty-six and two-thirds percent (66-2/3%) of all Voting Rights of the Owners voted to amend the Declaration as follows:

1. Article III Section 5(g) of the Declaration is amended to read, in its entirety, as follows:

(g) Notwithstanding anything herein to the contrary, Section 5 of this Article III shall not apply to Lot A-4-A-1, Lot A-3-A-1 and Lot A-5-A-1 of the Kapalua Development Subdivision, and any improvements thereon; provided that future rules and regulations promulgated by the Board shall apply so long as such rules and regulations are fair and equitable to the owner of such lot and/or the improvements thereon, would not constitute

bad faith on the part of Declarant, its subsidiaries and/or the Association, and would not impose covenants, conditions and restrictions on the use, maintenance, alteration or occupancy of any of Lot A-4-A-1, Lot A-3-A-1 or Lot A-5-A-1 and any improvements thereon.

2. Article III Section 6(e)(5) of the Declaration is amended to read, in its entirety, as follows:

(5) Notwithstanding anything herein to the contrary, Section 6 of this Article III shall not apply to Lot A-4-A-1, Lot A-3-A-1 and Lot A-5-A-1 of the Kapalua Development Subdivision, and any improvements thereon; provided that future rules and regulations promulgated by the Association shall apply so long as such rules and regulations are fair and equitable to the owner of such lot and/or the improvements thereon, would not constitute bad faith on the part of Declarant, its subsidiaries and/or the Association, and would not impose covenants, conditions and restrictions on the use, maintenance, alteration or occupancy of any of Lot A-4-A-1, Lot A-3-A-1 or Lot A-5-A-1 and any improvements thereon.

3. Article V, Section 5 of the Declaration is amended to read, in its entirety, as follows:

Section 5. Exemption from Land Use Restrictions. The provisions of this Article V shall not apply to Lot A-4-A-1, Lot A-3-A-1 or Lot A-5-A-1 of the Kapalua Development Subdivision and any improvements thereon.

4. The following new Section 12 is added to Article IV of the Declaration:

Section 12. Transfer Assessment Applicable to the Kapalua Bay Condominium. The provisions of this Section apply to the Condominium Units developed at Lots A-4-A-1 and A-5-A-1 of the Kapalua Development Subdivision in the project known as the "Residences at Kapalua Bay", subject to certain exemptions described in subsection d below. For purposes of this Section, such Units are referred to as "KB Condominium Units". This Section 12 does not apply to any other Condominium Units or other properties within the Kapalua Resort.

a. Assessment. Upon each sale, transfer or conveyance of a KB Condominium Unit or an interest therein (a "Transfer"), the seller, transferor or conveyor (each, a "Transferor") shall pay to the Association an assessment (the "Enhancement Fee"). The Enhancement Fee shall be an amount equal to one-half of one percent (0.5%) of the actual and full consideration paid or to be paid in connection with the Transfer.

b. Applicability. The Enhancement Fee shall apply to any Transfer that is subject to the State of Hawaii Conveyance Tax imposed by Hawaii Revised Statutes Chapter 247, as amended from time to time (the "Hawaii Conveyance Tax"), unless an exemption set forth in subsection d below applies.

c. Purpose. The Enhancement Fee is intended to enhance the Kapalua community and the overall value of Owners' properties by providing funds and reserves for

purposes that the Board deems appropriate, including without limitation, (a) additions, improvements, renovations, repair and replacement of the amenities and infrastructure within or that benefit the Kapalua Resort, (b) preservation and maintenance of natural areas, conservation areas, and the watershed within and surrounding the Kapalua Resort, (c) sponsorship of educational and cultural programs and activities, (d) programs and services that protect the environment, including recycling programs, (e) programs and activities that promote a sense of community, including recreational leagues, festivals and holiday celebrations, (f) social services, community outreach programs or other charitable causes, and (g) costs of administering the programs and activities that the Board deems appropriate to fund.

d. Exemptions. The following Transfers shall be exempt from the Enhancement Fee:

- (1) A Transfer that is exempt from the Hawaii Conveyance Tax;
- (2) A Transfer following an Owner's death to the Owner's heir(s) pursuant to a probate court order or judgment;
- (3) A Transfer to a corporation, partnership, limited liability company or other entity that is wholly-owned by the Transferor;
- (4) A Transfer by foreclosure of a mortgage, a Transfer to a mortgagee by deed-in-lieu of foreclosure, or a Transfer by a mortgagee that acquired the property by deed-in-lieu of foreclosure;
- (5) A Transfer to the Association, to the Association of Apartment Owners of the Residences at Kapalua Bay, or to the Kapalua Bay Vacation Owners Association upon foreclosure of a lien or otherwise;
- (6) A Transfer by the developer of the Residences at Kapalua, Kapalua Bay, LLC, a Delaware limited liability company;
- (7) A Transfer by Exclusive Resorts, LLC or an affiliate thereof (collectively "ER"), of any interest in a KB Condominium Unit that ER acquires from Kapalua Bay, LLC, provided however that this exemption applies only to the initial Transfer of any such interest by ER; and
- (8) A Transfer that the Board, in the exercise of its sole discretion, deems to warrant classification as an exempt transfer, provided that the Board's grant of an exemption in one instance shall not be deemed to require a grant of exemption for any other or future transfer.

In order to qualify for the exemption specified under subsection (1), the Transferor must at the time of the recordation of the Transfer successfully file a claim for exemption from the Hawaii Conveyance Tax with the Hawaii Bureau of Conveyances or Department of Taxation. In order to qualify for an exemption specified under Sections

(2) through (8), the Transferor must submit to the Board documentation that establishes the applicability of the exemption to the Board's satisfaction.

5. Calculation of Assessment Amount. The "actual and full consideration" used for purposes of calculating the amount of the Enhancement Fee on any Transfer shall be the same as the "actual and full consideration" used for purposes of calculating the Hawaii Conveyance Tax for that Transfer.

6. Payment of Assessment; Lien. The Enhancement Fee shall be payable by the Transferor when the deed or other instrument conveying an interest in the Property or any portion thereof is recorded in the Bureau of Conveyances of the State of Hawaii. ~~While the duty to pay the Enhancement Fee is on the Transferor, each escrow agent~~ handling a sale, transfer or conveyance that is subject to the Enhancement Fee is hereby instructed to collect the Enhancement Fee from the proceeds of the Transferor's sale and to promptly remit it to the Association. Each Owner shall notify the Association's Executive Director, or designee, at least seven (7) days prior to the scheduled recording for instructions on where payment may be made. Such notice shall include the name of the purchaser, the planned date of Transfer, and any other information the Board may reasonably require. If a Transfer occurs that is subject to the Enhancement Fee but for which the Enhancement Fee is not paid, then the unpaid Enhancement Fee shall be a lien on the property Transferred enforceable in accordance with Section 7 of this Article IV.

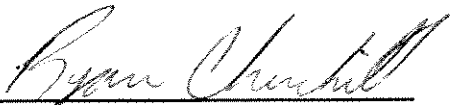
Except as expressly set forth herein, the Declaration remains in full force and effect.

CERTIFICATION

Ryan Churchill, Vice President of the Kapalua Resort Association, hereby certifies that the foregoing amendments to Article III, Section 5(g), Article III, Section 6(e)(5), and Article V, Section 5 of the Declaration, and the addition of new Section 12 to Article IV, were duly adopted by the members of the Kapalua Resort Association at a meeting duly called and held on November 29, 2006, pursuant to Article VI, Section 1(b) of the Declaration and that he has been duly authorized and directed to record this Fourth Amendment to the Amended and Restated Declaration of Covenants and Restrictions in the Bureau of Conveyances of the State of Hawaii.

DATED: Lahaina, Maui, Hawaii, this 13th day of June, 2007

KAPALUA RESORT ASSOCIATION

By: 
Name: Ryan Churchill
Title: Vice President

STATE OF HAWAII)
)SS:
COUNTY OF MAUI)

On this 1st day of June, 2007 before me appeared
Ryan Churchill, to me personally known (or proved to
me on the basis of satisfactory evidence), who, being by me duly sworn, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable in
the capacity shown, having been duly authorized to execute such instrument in such capacity.

Rhonda M. Pang
Print or Type Name: Rhonda M. Pang
Notary Public, State of Hawaii
My commission expires: 5/25/2011

L. P.