



R-511

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 06, 2009 08:02 AM

Doc No(s) 2009-034141



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 Z12

AFTER RECORDATION, RETURN BY MAIL () PICK-UP ()

Kapalua Resort Association
700 Village Road
Lahaina HI 96761

Attention: Caroline Peters Belsom
Telephone: (808) 665-5433

TITLE OF DOCUMENT:

FIFTH 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.:

LAND COURT DOCUMENT NO.:

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.

REGULAR SYSTEM

LAND COURT SYSTEM

Return by Mail Pickup To:

Kapalua Resort Association
700 Village Road
Lahaina, Hawaii 96761

Attention: Caroline Peters Belsom
Telephone: (808) 665-5433

TITLE OF DOCUMENT:

FIFTH AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

PARTIES TO DOCUMENT:

KAPALUA RESORT ASSOCIATION, a nonprofit corporation

This document consists of ___ pages.

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

**FIFTH AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS**

**THIS FIFTH AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS** is made this 12th day of
December, 2008 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, 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, by Supplemental Declaration of Covenants and
Restrictions dated April 29, 2003, recorded in the Bureau as Document No. 2003-084252, by
Supplemental Declaration of Covenants and Restrictions dated February 26, 2004, recorded in
the Bureau as Document No. 2004-051724, by Supplemental Declaration of Covenants and
Restrictions dated August 23, 2004, recorded in the Bureau as Document Nos. 2004-175952
through 2004-175953, by Supplemental Declaration of Covenants and Restrictions with
Additional Covenants Requiring Payment of a Kapalua Resort Association Assessment upon
Future Transfers dated September 19, 2005, recorded in the Bureau as Document No. 2005-
190294, and by Fourth Amendment to Amended and Restated Declaration of Covenants and
Restrictions dated November 29, 2006, recorded in the Bureau as Document No. 2007-
109432. 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 Declaration
may be amended upon an affirmative vote of sixty-six and two-thirds percent (66-2/3%) of all
Voting Rights of the Owners as defined therein.

WHEREAS, at a meeting of the Kapalua Resort Association duly called and held on December 12, 2008, more than sixty-six and two-thirds percent (66 2/3%) of all Voting Rights of the Owners voted to amend the Declaration as provided herein.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article I Section 1(j) of the Declaration is amended by deleting the existing language and replacing it with the following:

(j) "Condominium Unit" and "Apartment" shall mean a unit within a condominium project established within Kapalua pursuant to the Act.

2. Article I Section 1 of the Declaration is amended by adding the following definitions:

(u) "Act" shall mean Chapter 514A or 514B of the Hawaii Revised Statutes, as amended.

(v) "Membership Units" shall mean Condominium Units or Apartments submitted to any vacation ownership or timeshare plan pursuant to Chapter 514E of the Hawaii Revised Statutes, as amended, and which are, at any given point in time, subject to such a plan, and Condominium Units or Apartments with interval ownership or joint ownership plans or that are part of a Non-Equity Club or similar programs permitted by law.

(w) "Hotel" shall mean a public facility, generally operating under a national trade name and reservation system, and providing nightly lodging and a complete line of guest services to the general public.

"Hotel Unit" shall mean a hotel room or condominium unit located within the hotel known as the Ritz-Carlton, Kapalua, Lot No. 2A of the Kapalua Central Resort Subdivision.

(x) "Non-Equity Club" shall mean a private non-deeded luxury residence membership club with members ("Club Members") who pay an initial fee and annual dues in exchange for rights to temporary occupancy of properties and the use of other services provided by the operator of such Non-Equity Club.

3. Article III Section 3 of the Declaration is amended by deleting the existing language and replacing it with the following:

Section 3. Voting Rights. Voting Rights shall be determined as follows at the time that action is required to be taken by the membership:

(a) The Declarant or Declarant's nominee, shall receive Voting Rights entitling it to one (1) vote for every ten thousand (10,000) square feet of undeveloped real property it owns in fee simple (whether or not under lease) which is subject to the Kapalua Protective Provisions; and

(b) All other Voting Rights shall be determined in accordance with the following schedule, provided that, for any interest in a parcel of real property, an Owner shall not have voting rights in more than one of the classes below :

One (1) vote for every Condominium Unit or Apartment;

One (1) vote for every single-family residence on a Single Family Residential Lot (excluding guest houses and servant's quarters);
One (1) vote for every unimproved Single-Family Residential Lot;
One (1) vote for each Hotel Unit in a Hotel;
One (1) vote for every Membership Unit;
One (1) vote for every ten thousand (10,000) square feet of golf course land;

One (1) vote for every one thousand (1,000) square feet of Floor Area in a building (other than those buildings identified in this section 3(b) above) used for recreational, commercial, restaurant or similar uses.

The Floor Area in buildings devoted to public utility purposes for the furnishing of gas, water, electricity, sewerage, or other utility services shall not be included in the computation of Voting Rights, nor shall Owners be entitled to any votes with respect to any Lot devoted primarily for such public utility purposes.

The voting rights of Owners of Condominium Units, Membership Units, and single family residences on Single Family Residential Lots shall be exercised by their respective Boards of Directors of the Association of Owners or Community Association, as the case may be, of the project in which the unit or lot is located. If merchants or similar associations are established at Kapalua, the voting rights of the Owners of the Floor Area included in such associations shall be exercised through the respective boards of directors of such associations.

For the purposes of this Section 3, the term "Floor Area" shall mean the actual number of gross square feet of floor space within the exterior face of the exterior walls of the building (except party and interior walls in which case the center thereof instead of the exterior face shall be used and except with respect to all entrances and exits as to which the exterior building line of the building shall be used). No deduction shall be made from "Floor Area" computed under the foregoing definition by reason of columns, stairs, escalators, elevators, or other interior construction or equipment. But the term "Floor Area" shall not include basements, parking areas (whether or not covered), separate parking buildings, temporary buildings, golf cart sheds, and maintenance sheds. In a multiple-use situation, Voting Rights shall be applied to each use (unless excluded above) – for example, in the case of a Lot with both a single-family detached residence and a store having 5,000 square feet of Floor Area, the Owner of the residence would be entitled to one vote and the owner of the store entitled to five votes.

(c) When more than one person owns an interest in a Lot, Condominium Unit, Membership Unit, hotel guest room, or Floor Area having Voting Rights, the Voting Rights shall be exercised as the Owners thereof determine, but such Voting Rights shall be cast by only one person.

4. Article IV Sections 1 and 2 of the Declaration are amended by deleting the existing language and replacing it with the following:

Section 1. Responsibility. Each Owner of any Lot, Condominium Unit or Apartment, by acceptance of a purchase and sale agreement, deed, lease or other conveyance document therefore, whether or not it shall be so expressed in any such deed, lease or any other conveyance, shall be deemed to covenant and agree to pay his proportionate share of

general and special maintenance assessments and assessments for capital contributions, such assessments to be fixed, allocated and collected from time to time as provided herein.

Section 2. General Assessment. At least thirty (30) days prior to the commencement of each calendar year or the fiscal year as may from time to time be established by the Board, the Board shall prepare a budget for operation of the Common Property in accordance with generally accepted accounting practices used with respect to books of account maintained on a cash, accrual or modified cash basis. Such budget shall include the estimated normal costs of the Common Property for such fiscal year, which costs shall include those costs permitted by Section 3 below, and shall also include any estimated receipts for such fiscal year. The excess of the estimated normal costs over the estimated receipts (the "General Assessment Budget") shall be allocated among the Owners as follows:

(a) The Owners of Hotels having Hotel Units and/or commercial Floor Areas (as defined in Article III, Section 3) and the Owners of Membership Units shall be responsible for not more than one-half (1/2) of the General Assessment Budget. Owners in this group shall pay their pro rata share based on the number of units held by each respective Owner, and the Board shall set the annual assessment for the members of this group.

(b) The Owners of Condominium Units and Apartments, Residential House Lots, Commercial Lots, Commercial Floor Areas and other Owners (except Owners of hotels and Membership Units referred to in this Section 2(a) above and Owners of Commercial Lots on which such hotels and Membership Units are located) shall be responsible for the remainder of the General Assessment Budget. The Board shall allocate this share among such Owners in a fair and equitable manner in the Board's discretion; provided, however, that the portion allocated to the Owners of Condominium Units, Apartments and Residential House Lots existing as of December 31, 2005, shall never exceed an amount measured by a fraction of the total General Assessment Budget, said fraction having as its *denominator* the then total Voting Rights of all Owners of the Association and as its *numerator* the then Voting Rights of the Owners of Condominium Units, Apartments and Residential House lots that existed as of December 31, 2005.

(c) The intent of the allocation of the General Assessment Budget is to fairly share the burden of the general assessment among the Owners who utilize and benefit from the activities of the Association and the Common Property (sometimes referred to as the "Proportionate share"), taking into consideration the opportunity that now exists, or that becomes available in the future, for Owners to benefit from transient vacation rentals and other visitor industry related uses.

(d) Each Owner shall pay assessments so levied to the Association in equal quarterly or monthly installments or in such other reasonable manner as the Board shall designate.

(e) Any unexpended amounts at the end of any year shall be applied toward such normal costs in the following year.

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

