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S. FURUKAWA, REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (✓) To:

GOODSILL ANDERSON QUINN & STIFEL (LJHSY)
130 Merchant St., Suite 1600
Honolulu, Hawaii 96813

THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR WAIKOLOA BEACH RESORT

I, the undersigned, hereby certify:

A. That I am the Secretary of Waikoloa Resort Association (the "Association"); and

B. That WAIKOLOA DEVELOPMENT CO., a Hawaii limited partnership (the "Declarant"), by that certain Supplemental Declaration dated May 1, 1989, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 23179 at Page 433, is the assignee of the rights and obligations of Transcontinental Development Co., a Texas partnership, the declarant under that certain Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort dated April 1, 1980, but effective as of April 23, 1980, recorded in said Bureau in Liber 14670 at Page 531, as supplemented and amended (the "Declaration"); and

C. That on the 14th day of March, 1991, at a duly called and held meeting of the Association, by an Affirmative Vote of a Majority of the Voting Power of the Association, pursuant to Section 2 of Article XIV of the Declaration, the members of the Association did consent to the amendment in several particulars of the

Declaration, to be effective upon recordation of this Third Amendment to Declaration of Protective Covenants, Conditions and Restrictions for Waikoloa Beach Resort (the "Amendment"); and

D. That said amendments have been approved pursuant to Section 2 of Article XIV of the Declaration; and

E. That the following constitute the amendments so made, which amendments shall become effective on the date on which this Amendment is recorded in the Bureau of Conveyances of the State of Hawaii (unless otherwise specified in this Amendment, all terms used herein shall have the same meanings as are ascribed to them in the Declaration):

1. The second sentence of Section 3 of Article II (on page 12) of the Declaration is hereby amended in its entirety to read as follows:

The designation of property as Covered Property shall be effective upon the Declarant or Association filing in the Bureau of Conveyances of the State of Hawaii a Supplemental Declaration citing this Declaration and the liber and page at which it is recorded, and (a) describing the real property to be subjected hereto, (b) setting forth such additional or different limitations, covenants, conditions and restrictions if any as are applicable to the annexed property, and (c) declaring the annexed property to be subject to the covenants, conditions and restrictions of this Declaration, as modified by the Supplemental Declaration.

2. The first two sentences of Section 4(c) of Article III (on page 14) of the Declaration are hereby amended in their entirety to read as follows:

Category C Owners shall be all Owners (except for Owners of commercial zoned and hotel zoned lots) of Living Units, and shall, notwithstanding the foregoing, include all Owners of Condominiums located in Hotel Condominium Projects which have been designated as Living Units pursuant to Paragraph 37 of Article I hereof. Category C Owners shall be entitled to votes equal to

the number of Living Units owned by them; provided, however, that each Condominium Project and each Hotel Condominium Project shall be required to have a Condominium Association, of which each Owner of a Living Unit therein is a member, which Condominium Association shall exercise the votes of all Owners of Living Units in such Condominium Project.

3. Section 2 of Article V (on pages 25 and 26) of the Declaration is hereby amended in its entirety to read as follows:

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Declarant covenants and agrees to pay, and each Owner, by acceptance of a conveyance of an Interest (whether or not the conveyance refers to this Declaration or to these Assessments, liens and obligations), is deemed to covenant and agree to pay, directly or indirectly to the Association as hereinafter provided, his assessed share of Association Expenses, Association Capital Costs and any Special Assessment, and, irrespective of whether such Assessments are paid directly or indirectly to the Association, hereby grants to the Association a lien, with power of sale, on such Owner's Interest to secure the obligation to pay said Assessments. Each Owner of a Living Unit in a Condominium Project and each Owner of a Condominium in a Hotel Condominium Project which has been designated as a Living Unit pursuant to Paragraph 37 of Article I hereof, shall pay the amount of his Assessment to the Condominium Association to which such Owner belongs, and shall cause such Condominium Association to pay to the Association all Assessments payable by its members. All other Owners shall pay the amount of their Assessments directly to the Association. Such Assessments shall be fixed, established and collected from time to time as hereinafter provided. All Assessments, together with Charges on Collection, shall be a charge on the land and shall be a continuing lien upon the Interest against which each such Assessment

was made. Each Assessment, together with Charges on Collection, shall also be the personal obligation of the Owner (and if the Owner consists of two or more persons or entities, each jointly and severally) commencing when the Assessment falls due. The Owner's personal obligation shall not pass to his successors in title unless expressly assumed by such successors.

4. Section 8 of Article V (on page 29) of the Declaration is hereby amended in its entirety to read as follows:

Section 8. Notices of Assessments.
The Association shall, within thirty (30) days after establishment thereof, give notice to each Owner of the Assessment for Association Expenses and Association Capital Costs and any Special Assessment levied against such Owner and his Interest (the "Notice of Assessment") and may record the Notice of Assessment pursuant to Article VI, Section 2 hereof; provided, however, that Notices of Assessments for (i) Owners of Living Units in Condominium Projects and (ii) Owners of condominiums in Hotel Condominium Projects which have been designated as Living Units pursuant to Paragraph 37 of Article I hereof will be sent to the Condominium Association of which such Owners are members.

5. Section 9 of Article V (on page 29) of the Declaration is hereby amended in its entirety to read as follows:

Section 9. Payment of Assessments.
All Assessments shall be due and payable to the Association on or before such date or dates as are designated in the Notices of Assessments which date or dates shall, however, be not less than thirty (30) calendar days after delivery of the Notices of Assessments. Assessments shall be paid in one or more installments as specified by the Association.

6. The first two sentences of Section 3(f) (1) of Article VII (on page 47) of the Declaration are hereby amended in their entirety to read as follows:

Additional of different restrictions on Lots of various use or zoning categories may be set forth in Supplemental Declarations and shall be applicable to all lots designated for such use or bearing such zoning within the Covered Property. Without limiting the generality of the foregoing, there may be additional or different restrictions by Supplemental Declarations concerning Common Use Property, service, hotel, commercial, multi-family residential and single-family residential lots.

7. Except as amended hereby, the Declaration, as supplemented and amended, shall remain in full force and effect; and

F. That the provisions of the foregoing are in conformity with the Articles of Incorporation and Bylaws of the Association and that said vote has not been rescinded, modified or amended in any respect but is in full force and effect on the date hereof.

Dated: October 9, 1991 *Gary S. Campbell*
Secretary

Declarant hereby consents to the above-stated amendments:

WAIKOLOA DEVELOPMENT CO.,
a Hawaii limited partnership

By: WAIKOLOA MANAGEMENT CO.
Its Managing General Partner

By: WAIKOLOA LAND COMPANY, INC.
Its General Partner

By: *[Signature]*
Its President

By: *[Signature]*
Its Vice President

STATE OF Hawaii)
City and)
COUNTY OF Honolulu) SS.

On this 10 day of October, 1991,

before me appeared Thos Rohr, to me personally known, who, being by me duly sworn, did say that

he is the President of WAIKOLOA LAND COMPANY, INC., a Hawaii corporation, the General Partner of WAIKOLOA MANAGEMENT CO., a Hawaii limited partnership; that WAIKOLOA MANAGEMENT CO. is the Managing General Partner of WAIKOLOA DEVELOPMENT CO., a Hawaii limited partnership; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors in behalf of said partnerships by authority of the respective Partnership Agreements of said partnerships; and said officer acknowledged that instrument to be the free act and deed of said corporation and said partnerships.

Nally Mylen
Notary Public
State of Hawaii

My Commission expires: 6-7-93

STATE OF Hawaii)
COUNTY OF Hawaii) SS.

On this 9th day of October, 1991,

before me appeared Carl A. Cordes, to me personally known, who, being by me duly sworn, did say that

he is the Vice President of WAIKOLOA LAND COMPANY, INC., a Hawaii corporation, the General Partner of WAIKOLOA MANAGEMENT CO., a Hawaii limited partnership; that WAIKOLOA MANAGEMENT CO. is the Managing General Partner of WAIKOLOA DEVELOPMENT CO., a Hawaii limited partnership; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors in behalf of said partnerships by authority of the respective Partnership Agreements of said partnerships; and said officer acknowledged that instrument to be the free act and deed of said corporation and said partnerships.

Anna Haggerty d 2
Notary Public
State of Hawaii

My Commission expires: 4/13/95

STATE OF Hawaii)
COUNTY OF Hawaii) SS.

On this 9th day of October, 1991, before me personally appeared Dary H. Campbell, to me known to be the person described in and who executed the foregoing instrument as Secretary of WAIKOLOA RESORT ASSOCIATION, and acknowledged that he executed the same as he free act and deed as such Secretary.

James Haggerty
Notary Public
State of Hawaii

My Commission expires: 4/13/95