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This document contains 9 pages

FOURTH 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 4th day of June, 2001, 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 Fourth 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. Paragraph 2 of Article I of the Declaration is hereby amended in its entirety to read as follows:

2. "Assessments" shall mean any amounts levied against any Owner or Lot pursuant to this Declaration, including amounts levied to defray or cover Association Expenses, to defray or cover Capital Costs, to defray or cover costs and expenses upon which Special Assessments are based, and to establish reasonable working reserves to defray or cover Association Expenses, Capital Costs or costs and expenses upon which Special Assessments are based.

2. Article I of the Declaration is hereby amended by adding thereto a new Paragraph 38 immediately following Paragraph 37 of Article I of the Declaration, which new Paragraph 38 provides as follows:

38. "Special Assessments" shall mean the amounts from time to time levied against particular Owners or groups of Owners as provided in this Declaration, including amounts levied (a) to defray or cover costs and expenses of enforcing this Declaration against a particular Owner and costs and expenses of any specific work performed by the Association on behalf of a particular Owner, (b) to defray or cover Association Expenses which benefit fewer than all Owners or which disproportionately benefit certain Owners, (c) to defray or cover costs and expenses incurred by the Association as a result of the specific actions or activities of a particular Owner or group of Owners, specific uses of any Common Use Property by a particular Owner or group of Owners, or specific services rendered to or benefits or privileges conferred upon a particular Owner or groups of Owners, and (d) to cover or defray costs and expenses of repairing or addressing any damage to Common Use Property or nuisance resulting from the specific actions or activities of a particular Owner or group of Owners. Special Assessments may be based upon the actual costs and expenses incurred by the Association in connection with such specific work,

action, activities, uses, services, benefits, privileges, repairs or enforcement action, or may be based on a reasonable estimate of such costs and expenses, and in determining the amount of any Special Assessment the Association may establish reasonable reserves to cover or defray any such actual or estimated costs and expenses. Without limitation Special Assessments shall include "Special Development Assessments", which are intended to cover wear and tear on project roadways and other Common Use Areas resulting from construction activities.

3. Section 7 of Article V of the Declaration is hereby amended in its entirety to read as follows:

Section 7. Special Assessments.

(a) The Association shall also levy an assessment against any Owner and his Interest for all monies expended by the Association or the Declarant (including, without limitation, reasonable engineers', architects', attorneys' and accountants' fees) in enforcing this Declaration, the Charter or the By-Laws against any Owner or in performing any functions or carrying out any action under the Declaration, which functions or actions were directly or indirectly necessitated by such Owner's failure to comply with this Declaration, the Charter or By-Laws of the Association or the Association Rules.

(b) The Association may also levy Special Assessments against some or all of the Owners, payable in such amounts, or in accordance with such formulas and over such period of time as the Association may reasonably determine, for Association Expenses which benefit fewer than all of the Owners or which disproportionately benefit certain Owners; provided, however, that no Special Assessments pursuant to this Subsection (b) of this Section 7, shall be levied against any Owner without the consent of such Owner if such Special Assessment is greater than the amount of the Special Assessment which would have been levied against such Owner for such expenses if such expenses had been divided into the number of Assessment Shares equal to the number of votes that all Owners of Lots or Interests which are so benefited or disproportionately benefited are entitled, and such Owner were required to pay one such Assessment Share for each vote to which his Lot(s) or Interest(s) thus benefited are entitled.

(c) The Association may also levy Special Assessments against some or all of the Owners, payable in such amounts, or in accordance with such formulas and over such period of time as the

Association may reasonably determine, to cover or defray costs and expenses incurred by the Association as a result of the specific actions or activities of a particular Owner or group of Owners, specific uses of any Common Use Property by a particular Owner or group of Owners, or specific services rendered to or benefits or privileges conferred upon a particular Owner or group of Owners, or to cover costs and expenses of repairing or addressing any damage to Common Use Property or nuisance resulting from the specific actions or activities of a particular Owner or group of Owners.

(d) Notwithstanding anything herein to the contrary, and without limiting the generality of the foregoing subsections, the Association shall levy, with respect to any Lot on which grading or construction activity has commenced, Special Development Assessments against the Owner of such Lot. Said Special Development Assessments shall commence upon commencement of any grading or construction work upon the Lot in question and in the absence of any specific determination to the contrary by the Association, shall continue until the improvements planned for such Lot are completed and voting rights attributable to the improvements have commenced. The amount of Special Development Assessments payable with respect to each Lot on which construction or grading activity has commenced shall be payable in such amounts or in accordance with such formulas and over such period of time, as the Association may reasonably determine, but in the absence of such specific determination, the amount of Special Development Assessment payable with respect to any Lot upon which grading or construction has commenced shall be equal to one-half ($\frac{1}{2}$) of the then applicable monthly Assessments payable with respect to each Assessment Share, multiplied by the number of Assessment Shares which would result from the development of the Lot in question as approved by the Architectural Committee, or in the absence of such approval by the Architectural Committee, multiplied by the number of Assessment Shares which would result if the Lot were to be developed to the maximum extent permitted under all applicable zoning restrictions, deed restrictions, the Declaration and any Supplemental Declaration. In the absence of any determination to the contrary by the Association, Special Development Assessments will be payable monthly in advance.

4. Article V of the Declaration is hereby amended by deleting Section 17 thereof in its entirety.

5. The first two paragraphs of Section 3(b)(1) of Article VII of the Declaration are hereby amended in their entirety to read as follows, it being understood and agreed that the third paragraph of Section 3(b)(1) of Article VII of the Declaration shall remain unchanged by this Amendment:

(b) Construction and Alteration of Improvements:
Change in Topography; Approval of Plans.

1. An Owner shall not commence the building of any structure on any Lot without the Architectural Committee's prior written approval of the Owner's site plan, grading plan, building plan, landscape plan and construction schedule. No alteration of the exterior of any improvements as to shape, color, finish, etc. shall commence without the Architectural Committee's prior written approval of plans therefor. No alteration of the landscape plan of any Lot shall commence and no grading on any Lot shall commence without the Architectural Committee's prior written approval thereof. The Owner must perform all grading, landscaping, construction and alterations described in this paragraph in complete compliance with plans and schedules for which the Architectural Committee's prior written approval has been given.

If an Owner undertakes any of the above actions without the Architectural Committee's approval, or commences but does not diligently proceed to complete any actions which the Architectural Committee has approved, the Architectural Committee or the Association may remedy the violation by removing or restoring such work, or completing such work in accordance with the approved plans and in all events charging the Owner for all expenses incurred. The cost of such removal, restoration or completion work shall be paid by the Association. The Owner's obligation to reimburse the Association shall be a Special Assessment against the Owner's Interest enforceable in the same manner as other liens established under this Declaration. If reimbursement is due to the Association, the Association shall place a Special Assessment against the Owner's Interest, and shall take all steps which the Architectural Committee requests (at the defaulting Owner's expense) to collect such Special Assessments.

6. Section 3(c)(3) of Article VII of the Declaration is hereby amended in its entirety to read as follows:

3. All improvements shall be constructed in accordance with all setback and other requirements prescribed by State or County laws, ordinances, rules or regulations, or by any Supplemental

Declaration. No Owner shall seek or petition for any zoning variance, conditional use permit, subdivision approval, land use redistricting, or environmental law or regulation permit, approval variance or condominium property regime without the advance written approval of the Architectural Committee in its sole and absolute discretion. In addition, no Owner shall seek or petition for any subdivision approval or condominium property regime without the advance written approval of the Declarant, in its sole and absolute discretion, and as a condition to such approval, Declarant may require that the Owner of the Lot being subdivided or subjected to condominium property regime agree, execute and record in the Bureau of Conveyances of the State of Hawaii, a document in form and substance acceptable to Declarant, which provides that the votes of all resulting subdivided Lots or Condominiums be exercised by a single representative (or by such other number of representatives as Declarant deems appropriate), that any notice to be given to the Owners of the subdivided Lots or Condominiums (including Notice of Assessments) may be given to such representative(s), that notice to the representative(s) shall constitute effective notice to all such Owners, and that the Owners of the subdivided Lots and/or Condominiums shall pay their share of Assessments to a Condominium Association or other owners association and shall cause such Condominium Association or owners association to pay such assessments to the Association. The provisions of this Subsection (c) shall not apply to Service Lots.

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

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: June 6, 2001

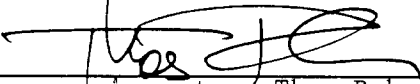
Waikoloa Resort Association
Holly M. Green
Secretary Holly M. Green

Declarant hereby consents to the above-stated amendments:

WAIKOLOA DEVELOPMENT CO.,
a Hawaii limited partnership

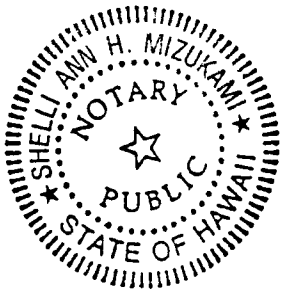
By: WAIKOLOA MANAGEMENT CO.
Its Managing General Partner

By: WAIKOLOA LAND COMPANY, INC.
Its General Partner

By 
Its President Thos Rohr

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 6th day of June, 2001, before me personally appeared HOLLY M. GREEN, to me known to be the person described in and who executed the foregoing instrument as Secretary of WAIKOLOA RESORT ASSOCIATION, and acknowledged that she executed the same as her free act and deed as such Secretary.



A handwritten signature in cursive script that reads "Shelli Ann H. Mizukami".

Print Name: Shelli Ann H. Mizukami
Notary Public, State of Hawaii

My Commission expires: 1/4/02

STATE OF Hawaii)
CITY AND) SS.
COUNTY OF Honolulu)

On this 5 day of June, 2001, before me appeared

Thos Rchr, 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 foregoing instrument was signed 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.

Holly M. Green

Print Name: Holly M. Green
Notary Public, State of Hawaii

My Commission expires: 6-7-2005

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