

OFFICE OF THE
ASSISTANT REGISTRAR, LAND COURT
STATE OF HAWAII
Bureau of Conveyances

The original of this document was
recorded as follows:

DOCUMENT NO. 3660140
DATE SEP 26 2007 TIME 8:02
TCT _____

Return by: Mail [] Pickup [X] To:

NEELEY & ANDERSON LLP
A Limited Liability Law Partnership
Joyce Y. Neeley
733 Bishop Street, Suite 2301
Honolulu, Hawaii 96813 (808) 536-8177

**AMENDMENT TO THE DECLARATION SUBMITTING PROPERTY
TO THE CONDOMINIUM PROPERTY REGIME
THE PALMS AT WAILEA
(Condominium Map No. 725)**

WHEREAS, the Palms at Wailea ("the Project") was created by Declaration Submitting Property to the Condominium Property Regime filed on July 11, 1989 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1649066 and noted on Transfer Certificate of Title No. 315,856 (currently Transfer Certificate of Title Numbers attached hereto); and

WHEREAS, said Declaration, as amended (hereinafter referred to as the "Declaration"), provided for the organization of the ASSOCIATION OF APARTMENT OWNERS OF THE PALMS AT WAILEA (hereinafter referred to as the "Association") and established By-Laws therefor, which said By-Laws were filed on July 11, 1989 as aforesaid as Document No. 1649067 and noted on Transfer Certificate of Title Numbers attached hereto; and

WHEREAS, §514B-23, Hawaii Revised Statutes, provides that: "(a) the declaration, bylaws, condominium map, or other constituent documents of any condominium created before July 1, 2006 may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before July 1, 2006," and "(b) an amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section may be adopted by the vote or written consent of a majority of the owners;" and

WHEREAS, by written consent a majority of the owners voted to amend the Declaration to incorporate provisions of Chapter 514B, Hawaii Revised Statutes, as hereinafter set forth;

NOW, THEREFORE, the Declaration Submitting Property to the Condominium of Horizontal Property Regime of the Palms at Wailea is hereby amended as follows:

1. Paragraph 6 of the Declaration is amended to read as follows:

6. EASEMENTS. In addition to any easements herein designated in the limited common elements and the easements described in said Exhibit "A" attached hereto, the apartments and common elements shall also have and be subject to the following easements:

(a) Each apartment shall have appurtenant thereto nonexclusive easements in the common elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments and common elements of the building in which it is located for support.

(b) If any part of the common elements now or hereafter encroaches upon any apartment or limited common element, or if any apartment now or hereafter encroaches upon any other apartment or upon any portion of the common elements, a valid easement for such encroachment and the maintenance thereof shall and does exist for so long as such encroachment continues. In the event any building of the Project shall be partially or totally destroyed and then rebuilt, or in the event of any shifting, settlement or movement of any portion of any building of the Project, minor encroachments of any parts of the common elements, limited common elements or of any apartment due to the same shall be permitted and a valid easement for any such encroachment and the maintenance thereof shall and does exist for so long as such encroachment exists.

(c) The Association of Apartment Owners of the Project shall have the irrevocable right, to be exercised by its Board of Directors or the Managing Agent, to have access to each apartment and the limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein necessary to prevent damage to any apartments or common elements or for the installation, repair, maintenance or replacement of any common elements.

(d) The Association of Apartment Owners of the Project shall have the right, exercisable by its Board of Directors, to grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the common elements of the Project for any reasonable purpose, which may include, but shall not be limited to, those purposes which are necessary to the operation, care, upkeep, maintenance or repair of any apartment, the common elements or any limited common element or any easements for utilities or for any public purpose.

(e) The Association of Apartment Owners of the Project shall have the right, exercisable by its Board of Directors, to transfer, cancel, relocate and otherwise deal with any easement over, under, across or through any lands adjacent to the Project, which may be appurtenant to the Land of the Project, for any reasonable purpose, which may include, but shall not be limited to, any of the same purposes set forth in paragraph (3) above of this Section or for the reason that any owner of any such lands adjacent to the Project exercises any right to require the relocation of any such easement.

(f) The Developer shall have the right to conduct extensive sales activities on and at the Project, including the use of model apartments, sales and management offices, parking stalls and extensive sales displays and activities until the earlier to occur of: (i) twenty-four (24) months from the date of the filing in the Office of the Assistant Registrar of the Land Court of the State of Hawaii of the first apartment deed covering an apartment in the Project; or (ii) the closing of the sale of the last unsold apartment in the Project. In the event that the Developer is unable to sell all of the apartments within said twenty-four (24) month period, the Developer shall nevertheless, continue to have the right to conduct sales activities on and at the Project until the closing of the sale of the last unsold apartment in the Project, provided that such sales activities are conducted in an unobtrusive manner which will not unreasonably interfere with the use, possession, and aesthetic enjoyment of the Project by the other apartment owners. Notwithstanding the foregoing, in the event that the Developer's mortgage lender or any successor to or assignee of the Developer's mortgage lender shall acquire any portion of the Project in the course of any foreclosure or other legal proceeding or by an assignment or sale in lieu of foreclosure, such mortgage lender and its successors and assigns shall have the right to conduct such extensive sales activities on and at the Project until all of the apartments in the Project have been sold and such sales have been closed.

(g) The Developer, its agents, employees, contractors, licensees, successors and assigns shall have an easement over and upon any portion of the Project, including the common elements, limited common elements and any apartment, as may be reasonably necessary for the completion of any improvements to and correction of defects and other punch-list items in the common elements, limited common elements or any apartment. Such easement shall terminate twenty-four (24) months after the later to occur of: (i) the date of filing in said Office of the Assistant Registrar of the Land Court of the first apartment deed covering an apartment in the Project; or (ii) the date of substantial completion (as said term is used in Chapter 507, Part I, Hawaii Revised Statutes) of the improvement to be completed or corrected. In the event that Developer exercises its right to merge additional condominium projects with the Project as set forth in Section 22 hereof, the Developer, its agents, employees, contractors, licensees, successors and assigns shall have the easements provided for in said Section 22.

(h) Each unit owner may use the common elements in accordance with the purposes permitted herein, subject to:

(1) The rights of other unit owners to use the common elements;

(2) Any owner's exclusive right to use of the limited common elements as provided herein;

(3) The right of the owners to amend the Declaration to change the permitted uses of the common elements; provided that subject to subsection 514B-140(c), Hawaii Revised Statutes:

(A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the Declaration; and

(B) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or

alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the Board;

(4) Any rights reserved herein to amend the Declaration to change the permitted uses of the common elements;

(5) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the Board determines are not actually used by any of the unit owners for a purpose permitted in the Declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the Board or the lessee on no more than sixty days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d), Hawaii Revised Statutes; and

(6) The right of the Board, on behalf of the Association, to lease or otherwise use for the benefit of the Association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the Board reasonably determines actually use the common elements, and the owners' mortgagees; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d), Hawaii Revised Statutes.

2. Paragraph 21 of the Declaration is amended to read as follows:

21. AMENDMENT OF DECLARATION.

(a) Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by the approval of the owners of apartments to which are appurtenant at least sixty-seven percent (67%) of the common interests; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision. Any amendment shall be effective only upon the filing in the Office of the Assistant Registrar of the Land Court of an instrument setting forth such amendment and vote, duly executed by such owners or by the proper officers of the Association. Notwithstanding the foregoing, at any time prior to the filing in said Office of the Assistant Registrar of the Land Court or the first apartment deed or other conveyance conveying an apartment and its appurtenances or any interest therein to a party not a signatory to this Declaration and other than to any mortgagee of the Developer, the Developer hereby reserves the right to amend this Declaration, the By-Laws and the Condominium Map in any manner, without the approval, consent or joinder of any purchaser of an apartment or any interest therein.

(b) Notwithstanding the foregoing and until the filing in the Office of the Assistant Registrar of the Land Court of apartment deeds or other conveyances conveying all of the apartments in the Project to parties not a signatory to this Declaration and other than to any mortgagee of the Developer, the Developer hereby reserves the right to amend this Declaration, the By-Laws and the Condominium

Map, without the approval, consent or joinder of any owner, mortgagee or purchaser of an apartment or any interest therein, to make such amendments as may be required by law, by the Real Estate Commission of the State of Hawaii, by any title insurance company issuing a title insurance policy on the Project or any of the apartments or any interest therein or by any governmental agency of any state, territory, possession or foreign country or other foreign jurisdiction as a condition precedent to the marketing or sale of apartments or any interests therein in any such jurisdiction; provided, however, that no such amendment which would change the common interest appurtenant (except as provided in Section 22 hereof) to an apartment or substantially change the design, location or size of an apartment or the building in which it is located shall be made without the consent to such amendment by all persons having an interest in such apartment.

(c) Notwithstanding the foregoing and notwithstanding the recording of any or all apartment deeds or other conveyances conveying any or all of the apartments or any or all interests therein to any person, the Developer hereby reserves the right to successively amend this Declaration (including the By-Laws and, when applicable, the Condominium Map), without the approval, consent or joinder of any owner, mortgagee or purchaser of an apartment or any interest therein or any of the persons then owning, leasing, renting, or occupying any apartment or any interest therein, to file the "as-built" verified statement (with plans, if applicable) required by Section 514A-12 of said Condominium Property Act, (i) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed or being filed simultaneously with such amendment fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, or (ii) so long as any plans filed therewith involve only immaterial changes to the layout, location, apartment numbers or dimensions of or other changes to the apartments or common elements as built which the Developer is permitted to make in accordance with paragraph (b) of Section 19 of this Declaration.

(d) Notwithstanding the foregoing and notwithstanding the recording of any or all apartment deeds or other conveyances conveying any or all of the apartments or any or all interests therein to any person, the Developer hereby reserves the right successively to amend this Declaration (including the By-Laws and, when applicable, the Condominium Map) and to enter into one or more Certificates of Merger without the approval, consent or joinder of any owner, mortgagee or purchaser of an apartment or any interest therein or any of the persons then owning, leasing, renting, or occupying any apartment or any interest therein to effect the provisions of Section 22 of this Declaration.

In all other respects the Declaration, as amended, is hereby confirmed and shall be binding upon and inure to the benefit of owners and their respective successors and permitted assigns.

The undersigned officers of the Association hereby certify that the foregoing amendments were adopted by the written consent of a majority of the owners.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 27th day of August, 2007.

ASSOCIATION OF APARTMENT OWNERS
OF THE PALMS AT WAILEA

By: Charles W. Vogeler
Charles W. Vogeler
TYPE NAME: CHARLES W. VOGELER
TYPE TITLE: Vice President
VICE PRES. PALMS AT WAILEA AOA

By: Janis Davidson
Janis Davidson
TYPE NAME: JANIS DAVIDSON
TYPE TITLE: SECRETARY Secretary

STATE OF Hawaii)
COUNTY OF Maui) SS.

On this 27th day of August, 2007 before me personally appeared Charles W. Vogeler, to me personally known, who being by me duly sworn, did say that he is the Vice President of the ASSOCIATION OF APARTMENT OWNERS OF THE PALMS AT WAILEA and that said instrument signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association and that the Association has no seal.

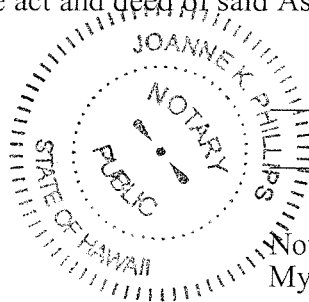
L.S.

Susan K. Kramwiede
(Signature)
Susan K. Kramwiede
(Printed or Typed Name)

Notary Public, State of Hawaii
My commission expires: Sept. 28, 2007

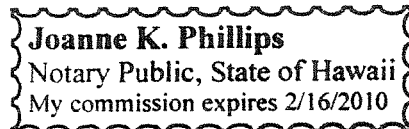
STATE OF HAWAII)
COUNTY OF MAUI) SS.

On this 7 day of August, 2007, before me personally appeared JANIS DAVIDSON, to me personally known, who being by me duly sworn, did say that she is the Secretary of the ASSOCIATION OF APARTMENT OWNERS OF THE PALMS AT WAILEA and that said instrument signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association and that the Association has no seal.



Joanne K. Phillips
(Signature)
Joanne K. Phillips
(Printed or Typed Name)

Notary Public, State of Hawaii
My commission expires: 2/16/2010



TRANSFER CERTIFICATE OF TITLE NOS.

Association of Apartment Owners
of the Palms at Wailea

Original TCT # 315,856

152 Apartments (150 residential, 2 nonresidential)

Condominium Map No. 725

APT. #	CTC #	APT. #	CTC #	APT. #	CTC #
101	636,802	601	533,936	1001	755,790
102	825,947	602	690,365	1002	532,206
103	618,346	603	679,226	1003	633,820
104	500,646	604	730,158	1004	856,617
201	365,939	605	708,774	1005	847,317
202	483,783	606	572,256	1006	486,808
203	365,424	607	502,008	1101	365,443
204	683,274	608	631,528	1102	856,170
205	480,342	609	531,115	1103	439,733
206	646,973	610	368,741	1104	365,743
207	689,858	701	692,050	1105	530,406
208	638,206	702	529,774	1106	652,533
301	809,124	703	818,599	1201	724,725
302	777,849	704	735,542	1202	853,259
303	840,027	705	596,153	1203	744,438
304	502,009	706	510,861	1204	537,331
305	642,673	801	641,660	1205	365,444
306	682,795	802	641,560	1206	748,126
307	534,858	803	487,465	1207	672,688
308	800,981	804	378,484	1208	460,395
401	639,227	805	801,827	1209	811,786
402	369,367	806	673,781	1210	847,358
403	629,796	901	535,822	1301	783,358
404	546,544	902	566,006	1302	522,847
405	685,157	903	724,149	1303	489,941
406	829,476	904	498,948	1304	861,292
501	824,875	905	694,690	1305	854,506
502	491,063	906	397,845	1306	785,969
503	403,147				
504	784,071				

TRANSFER CERTIFICATE OF TITLE NOS.

APT. #	CTC #	APT. #	CTC #	APT. #	CTC #
1401	594,119	1701	648,904	2101	516,833
1402	419,208	1702	361,267	2102	548,739
1403	679,679	1703	585,831	2103	373,750
1404	800,212	1704	856,075	2104	582,014
1405	611,156	1705	645,648	2105	849,875
1406	607,100	1706	854,138	2106	547,680
1501	470,743	1707	361,188	2107	482,476
1502	651,096	1708	546,533	2108	859,799
1503	795,425	1801	611,209	2201	680,649
1504	833,261	1802	361,187	2202	739,104
1505	492,588	1803	727,141	2203	715,183
1506	582,960	1804	809,467	2204	475,230
1507	718,352	1805	667,056	2205	703,064
1508	687,423	1806	539,260	2206	485,670
1509	814,120	1901	683,590	2301	599,807
1510	808,724	1902	840,687	2302	714,999
1601	536,749	1903	841,608	2303	681,165
1602	594,656	1904	720,973	2304	545,242
1603	611,338	1905	500,048	2305	808,583
1604	728,587	1906	520,013	2306	529,299
1605	665,305	2001	393,126	NR -1	479,291
1606	687,983	2002	593,435	NR-2	472,930