

Wailea Community Association



No Time Share ownership plan or time share use plan (as those terms are defined in Chapter 514E, HRS), shall be permitted to exist within any Lot or with respect to the use, occupancy, or ownership of any Lot.

Recorded on
ALL properties

REGULAR SYSTEM
MAIL () PICK-UP ()
RECEIVED BY:
Carla AAL, LLC (539-1133)
100 Bishop Street
1400 Paohi Tower
Honolulu, Hawaii 96813

TMK Nos. (See attached Schedule "1")

Total Pages:

**AMENDMENT OF
WAILEA COMMUNITY ASSOCIATION
DECLARATION OF COVENANTS AND RESTRICTIONS**

WHEREAS, Wailea Development Company, Inc., a Hawaii corporation, executed that certain Wailea Community Association Declaration of Covenants and Restrictions dated December 19, 1986, which Declaration was filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1427923 and is noted on the Transfer Certificates of Title described in Schedule "1" attached hereto and made a part hereof, which Transfer Certificates of Title represent all of the property covered by the Declaration (as defined below); and

WHEREAS, the Declaration was amended by (i) that certain Amendment of Wailea Community Association Declaration of Covenants and Restrictions dated September 2, 1994, and filed as aforesaid as Document No. 2180541, (ii) that certain Amendment to Amendment of Wailea Community Association Declaration of Covenants and Restrictions dated September 29, 1997, and filed as aforesaid as Document No. 2408259, (iii) that certain Wailea Community Amended and Restated Declaration of Covenants and Restrictions dated July 13, 1998, and filed as aforesaid as Document No. 2479882 ("1998 Amended and Restated Declaration"), and (iv) that certain Amendment of Wailea Community Association Declaration of Covenants and

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ed April 6, 2004, and filed as aforesaid as Document No. 3114057 (collectively, and

EAS, Article XI, Section 9.a. of the 1998 Amended and Restated Declaration e Declaration may be amended upon the vote or written consent of fifty-one of the total votes of all Owners; and

EAS, through a mailing to the Owners on May 20, 2022, for the purpose of eclaration, the vote of more than fifty-one percent (51%) of the total votes of all tained to amend the Declaration in the manner set forth in this instrument and pecial meeting of the Board of Directors on July 22, 2022, by the Secretary of rectors of the Association.

therwise defined, all capitalized terms used in this document have the same orth in the Declaration)

HEREFORE, the Declaration is hereby amended in the following respects:

V, Section 1.u. *No Time Sharing* is hereby amended to add the following after the tion 1.u.:

Condominium Unit, Lot, nor a Single-Family Residential Lot, of any real-estate to this Declaration, shall be sold, transferred, conveyed, owned, leased, licensed, or used at any time under a time share ownership plan or time share use plan (as those in Chapter 514E, Hawaii Revised Statutes, as amended), or similar arrangement or shall be no time share plans of any kind established, set-up, developed or otherwise or transfer of interests or of use rights or privileges in a Condominium Unit, Lot, or esidential Lot. Use or occupancy of any Condominium Unit, Lot, or a Single-Family or, in connection with, or pursuant to any time share plan is expressly prohibited. "Time is any legal or equitable estate or interest in any Condominium Unit, Lot, or a Single-lot pursuant to a plan or program in which the right to use, occupy, or possess such a tes among two or more persons or entities, on a periodically recurring or other basis, g to a fixed or floating time schedule or otherwise, for less than a sixty-day period in any apant. The term time-share plan shall include both timeshare ownership plans and time-s follows:

Time share ownership plan" means any arrangement whether by tenancy in common, ther means, whereby the purchaser receives an ownership interest and the right to use specific or discernible period by temporal division.

Time share use plan" means any arrangement, excluding normal hotel operations, bership agreement, lease, rental agreement, license, use agreement, security or other the purchaser receives a right to use accommodations or facilities, or both, in a time-specific or discernible period by temporal division, but does not receive an ownership

to control, use or occupy any Condominium Unit, Lot, or a Single-Family Residential

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e divided among the unit or lot's owners by a specific or discernible temporal division ner is entitled to the exclusive control, use or occupancy of the unit or lot for any fixed ecific number of days). The prohibitions set forth in the immediately preceding sentence not be limited to "time share", "time interval ownership", "interval ownership", ship", "vacation license", "membership club", or other types of plans that are similar in

a Condominium Unit, Lot, or a Single-Family Residential Lot is not held by one person nt in severalty, then (i) the title to the unit or lot may be divided into no more than three erts, and the aggregate number of persons or entities holding title to the three (3) ts shall not exceed six (6) or (ii) title to the unit or lot may be held by no more than six

er of a Condominium Unit, Lot, nor a Single-Family Residential Lot, which is an entity, o more than three individuals who shall be the "unit or lot owners" for purposes of xercising all of such entity's rights and privileges as a unit or lot owner at the Project as eclaration and the Bylaws. Any other individuals occupying such entity's unit or lot shall quest or a tenant subject to the provisions of the Declaration and the Bylaws concerning

ociation shall have the right and power, to be exercised by the Board of Directors of the eny any person entry to, or possession of, any Condominium Unit, Lot, or a Single-al Lot, for which a time share plan has been created in violation of this section, so long shall continue. The Association may bring an action by the Board of Directors of the tain appropriate injunctive relief to prevent any violation of this section, or to require the s section, without being required to post a bond or other security as a condition to junctive relief, whether a temporary restraining order or a preliminary or permanent shall the Association be required to show in any such action that other relief is inadequate es suffered by the Association or by any unit or lot owner are or may be irreparable.

Except as amended by this instrument, the Declaration is ratified and confirmed ue in full force and effect in accordance with its terms.

The undersigned Secretary of the Association hereby certifies that the foregoing re duly adopted at the meeting described above.

NESS WHEREOF, the undersigned has executed these on this ____ day of _____, 2022.

Runs with
the land

Article V, Section 1.u. *No Time Sharing* is hereby amended to add the following after the sentence in Section 1.u.:

Neither a Condominium Unit, Lot, nor a Single-Family Residential Lot, of any real-estate property subject to this Declaration, shall be sold, transferred, conveyed, owned, leased, licensed, occupied, rented or used at any time under a time share ownership plan or time share use plan (as those terms are defined in Chapter 514E, Hawaii Revised Statutes, as amended), or similar arrangement or program. There shall be no time share plans of any kind established, set-up, developed or otherwise existing for sales or transfer of interests or of use rights or privileges in a Condominium Unit, Lot, or Single-Family Residential Lot. Use or occupancy of any Condominium Unit, Lot, or a Single-Family Residential Lot for, in connection with, or pursuant to any time share plan is expressly prohibited. "Time share plan" means any legal or equitable estate or interest in any Condominium Unit, Lot, or a Single-Family Residential Lot pursuant to a plan or program in which the right to use, occupy, or possess such a unit or lot circulates among two or more persons or entities, on a periodically recurring or other basis, whether according to a fixed or floating time schedule or otherwise, for less than a sixty-day period in any year, for any occupant. The term time-share plan shall include both timeshare ownership plans and time-share use plans, as follows:

(1) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed or by other means, whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(2) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time-share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

The right to control, use or occupy any Condominium Unit, Lot, or a Single-Family Residential Lot shall never be divided among the unit or lot's owners by a specific or discernible temporal division whereby each owner is entitled to the exclusive control, use or occupancy of the unit or lot for any fixed period (e.g., a specific number of days). The prohibitions set forth in the immediately preceding sentence shall include but not be limited to "time share", "time interval ownership", "interval ownership", "fractional ownership", "vacation license", "membership club", or other types of plans that are similar in nature or use.

If title to a Condominium Unit, Lot, or a Single-Family Residential Lot is not held by one person or entity as a tenant in severalty, then (i) the title to the unit or lot may be divided into no more than three (3) undivided interests, and the aggregate number of persons or entities holding title to the three (3) undivided interests shall not exceed six (6) or (ii) title to the unit or lot may be held by no more than six (6) joint tenants.

The owner of a Condominium Unit, Lot, nor a Single-Family Residential Lot, which is an entity, must designate no more than three individuals who shall be the "unit or lot owners" for purposes of possessing and exercising all of such entity's rights and privileges as a unit or lot owner at the Project as set forth in the Declaration and the Bylaws. Any other individuals occupying such entity's unit or lot shall be considered a guest or a tenant subject to the provisions of the Declaration and the Bylaws concerning guests or leasing.

The Association shall have the right and power, to be exercised by the Board of Directors of the Association, to deny any person entry to, or possession of, any Condominium Unit, Lot, or a Single-Family Residential Lot, for which a time share plan has been created in violation of this section, so long as such violation shall continue. The Association may bring an action by the Board of Directors of the Association to obtain appropriate injunctive relief to prevent any violation of this section, or to require the observance of this section, without being required to post a bond or other security as a condition to obtaining such injunctive relief, whether a temporary restraining order or a preliminary or permanent injunction. Nor shall the Association be required to show in any such action that other relief is inadequate or that the damages suffered by the Association or by any unit or lot owner are or may be irreparable.

Except as amended by this instrument, the Declaration is ratified and confirmed and shall continue in full force and effect in accordance with its terms.

Let me start by explaining a little about what WCA is and how it operates to help understand how this came about and continues to work. Wailea was created as an economic hub for Maui. As it was being developed the developer created the 1500 acre Wailea Master Plan which had designated boundaries and parcels for homes, condos, hotels, and commercial properties. A Planned Unit Development.

It is typical that at some point the developer would no longer take on the maintenance of the common area and neither would the County. So, the answer was an association of property owners that would share the responsibilities relieving the County of such responsibility. The Wailea Community Association was chartered in 1987 to manage the resort much like a town. To ensure that this corporation would remain in perpetuity, a set of Covenants and Restrictions was created and recorded on all the properties in Wailea.

The association CC&Rs included many rules to maintain the aesthetics and standards desired in the community. One particular rule was the prohibition of timeshare stating that:

No Time Share ownership plan or time share use plan (as those terms are defined in Chapter 514E, HRS), shall be permitted to exist within any Lot or with respect to the use, occupancy, or ownership of any Lot.

This was recorded on all properties including hotels and undeveloped land. The only way for any member property to change this would be to have the documents amended by a vote of the membership. However, we recently amended the docs to strengthen the timeshare language to include, among other things, clubs and fractional ownership. This was passed by the WCA membership including ALL 7 hotels and recorded on all deeds and runs with the land.

The community understands the importance of cooperation – we say we’re like a three-legged stool (Residential, Commercial and hotel), if one leg fails the stool collapses. Communication about the importance of such topics, which are meant to preserve property values along with quiet neighborhoods, and maintain the luxury resort image, helps garner the support needed from all property groups to make this work.

PSLU Committee

From: Frank "Bud" Pikrone <gm@wcamaui.com>
Sent: Wednesday, November 2, 2022 3:11 PM
To: PSLU Committee
Subject: PSLU-59, Bill 131 (2022)
Attachments: WCA Timeshare.pptx; Timeshare script.docx

Aloha,
Attached is the slides for my presentation and script as requested.

Frank "Bud" Pikrone
General Manager

Wailea Community Association
Wailea Resort Association

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