

January 5, 2023

Aloha Royal Mauian Owners,

At the December 20, 2022 meeting of the Royal Mauian Board of Directors, the attached resolution to implement a rental registration fee was passed by unanimous vote of the Board. Two significant modifications were made to the draft resolution that was previously distributed to all Owners:

- 1) **The fee per registration will be \$35** to account for the cost of the office personnel, administration and excise tax. This fee amount is calculated on projections of the annual number of registrations considering 70% of the fully burdened cost of the homeowner's office staff spent on guest services as well as supplies, administrative accounting costs and general excise tax. Direct support to rental guests includes registration assistance, registration follow-up with guests for forms missing or lacking complete information, parking pass issuance, answering numerous guest questions throughout the day, printing boarding passes, providing pool access codes, assisting with paddle/surfboard cage temporary storage. Additional support for rental units includes compiling upcoming reservation data from more than 40 different sources, resolving discrepancies in reservations/registrations, communications to and from rental agencies and self-managed owners on property activities and policies applicable to rentals. The registration fee and costs will be reevaluated annually as part of the budget process.
- 2) **The effective date of the fee is April 1, 2023, however, any rental reservation for 2023 calendar year, contracted prior to April 1, 2023 will not be charged the fee,** provided the owner/agent supplies a list of all such committed reservations to the Association (name of renter/dates of stay) by that date. This will allow ample time to update online reservation systems to pass-through the fee to the renter at the discretion of the owner/management agent.

There were many questions asked before and during the discussion of this topic. The following summarizes the major topics of discussion and further explanations as needed.

- The bylaws and statutes that support this action are referenced in the final resolution which was drafted by the Association's legal counsel. This resolution has no impact on the apportionment of expenses for common elements. All Owners are encouraged to read the resolution and the complete statute as necessary for context.
- Similar to the 5% decrease in maintenance fees and budget that occurred in 2022 when Maui County's monthly \$37.50 per unit sewer service charge was removed from the budget as a common expense, offsetting the payroll and other costs attributed to time spent on registrations will essentially result in a corresponding decrease in the budget by a percentage amount equivalent to the dollars offset, at least in the first year of full implementation. This will accordingly result in a decrease in revenue requirements that will be made up by the registration fees. Thus, the statement in the December 1 notice to all owners that a portion of the recommended maintenance fee increase for 2023 could have been offset if the registration fee had been in place in 2022 is not inconsistent with the cost offset nature of this fee.
- The budget and tax implications have been examined by Carbanaro CPAs and Management Group, the Association's accounting firm and will have no deleterious effect on the Association's tax status. See attached letter from Carbanaro for further discussion on this topic.
- Per AOA legal counsel, the Board has the authority both in Royal Mauian Bylaws and Hawaii Revised Statutes to charge for services rendered to specific owners. The Board felt it was important to obtain owner input on this issue and a letter soliciting that input was sent December 1. In response, input was received from 44 owners with 33 expressing support for the fee. This was as broad of a response as we've seen on any issue and owner responses were well prepared. Delaying the Board vote would have unnecessarily delayed the positive results of the resolution.

Sincerely,

Royal Mauian Board of Directors

FINAL

Resolution: RM2022-02

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ASSOCIATION OF APARTMENT OWNERS OF ROYAL MAUIAN RELATING TO
GUEST REGISTRATION FEES

WHEREAS:

The Board of Directors of the Association of Apartment Owners of Royal Mauian ("Board") is authorized to oversee the administration and operation of the Royal Mauian condominium project ("Project");

The Project is governed by the Condominium Property Act, Hawai'i Revised Statutes ("HRS") Chapter 514B; the Declaration of Horizontal Property Regime Royal Mauian ("Declaration"); the Declaration of Covenants, Conditions and Restrictions and Bylaws of the Association of Apartment Owners of Royal Mauian, A Condominium Property Regime ("Bylaws"); and the Royal Maui House Rules and Information ("House Rules"), as amended;

Section 7 of the Bylaws: (i) gives the Board all powers necessary for the administration of the affairs of the Association; and (ii) allows the Board to do all acts and things necessary to fulfill those responsibilities, *except such acts and things as by law, the Declaration or these Bylaws are expressly reserved to the voting owners or to the unit owners.*"

Sections 7(a) and (d) make the Board responsible for the supervision of the management and operation of the Project and authorize the Board to employ the personnel necessary for the operation of the Project.

The Association employs personnel that currently register guests, process parking passes for the guests' use of the limited parking at the Project, and collect information to confirm that the guests are complying with the minimum five night stay and occupancy limits imposed by the rules of the Project. The Association front desk personnel also provide advice, information, and additional services to short-term renters and guests.

The Board conducted an analysis of the workload of the front desk personnel and determined that in the past 12 months, Association front desk personnel had spent approximately 60% to 70% of their workday dealing with short-term rental guests and the remainder of their time dealing with owners or Association business. The Board also determined that if the front desk personnel were only providing service to owners or the Association, not short-term guests, the time and expense of staffing the front desk would be reduced from 40 hours to 12 to 15 hours per week.

Section 7 (b) states that the Board is responsible for determining the common expenses required for the administration of the affairs of the Project and for the operation, care, upkeep, security, and maintenance of the common elements. The Board has determined that the expense of managing and operating the front desk is not a common expense because, as outlined above, that expense is incurred primarily to provide visitor registration, parking pass services and other assistance to short-term renters of the unit.

Section 514B-104, which governs the operation of the Project, allows the Board to charge individual owners for services provided to the owners, such as the services provided to

FINAL

Resolution: RM2022-02

the renters and guests of those owners who rent their units on a short-term basis. More specifically, the section reads as follows:

§514B-104 Association; powers. (a) *Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:*

* * *

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;

(Emphasis added.)

On that statutory basis, the Board has determined that those owners who engage in renting their units on a short-term basis receive a large part of the benefit of the services provided by the front desk personnel, so it is only fair that the cost of those services should be billed per transaction, and not as a common expense based on the common interest of each of the owners.

Therefore, the Board has decided to impose a registration fee for those renters and guests of owners who are using the services of the front desk personnel.

NOW, THEREFORE, BE IT RESOLVED that the Board, upon careful consideration of all the information available to it, adopts the following policy relating to registration fees:

I. RESOLVED, EFFECTIVE APRIL 1, 2023:

- (a) Every tenant or guest of an owner who comes to occupy the owner's unit at the Project must register at the front desk of the Project within 24 hours of arrival and provide the Association personnel at the front desk with the following information:
 - (i) Name, home address, cell phone number;
 - (ii) Names of all unit occupants; number of adults/number of children
 - (iii) Unit number rented; Dates of arrival and departure
 - (iv) Make, model and license of vehicle (if any)

- (b) Every unit owner shall pay a registration fee of \$35 for every tenant or guest, other than the owner(s) listed on the deed of record, that registers at the front desk to occupy the unit of the owner; provided that a group of tenants or guests registering at the same time, for the same period of occupancy in the same unit shall pay only a single registration fee for the group. Each unit will be allowed four (4) waivers of registration fees per year to allow for non-owner family or friends to occupy the unit of the owner. These waivers are not transferable to any unit other than the one to which they were issued.

FINAL

Resolution: RM2022-02

- (c) The registration fee shall be charged to the account of the owner of the unit whose tenant or guest registers at the front desk. The effective date of the fee is April 1, 2023, however, any rental reservation for 2023 calendar year, contracted prior to April 1, 2023 will not be charged the fee, provided the owner/agent supplies a list of all such committed reservations to the Association (name of renter/dates of stay) by April 1, 2023.
- II. RESOLVED FURTHER, that if the owner fails to pay the registration fee, it will be deemed a special assessment against the owner's unit.
- III. RESOLVED FURTHER, that if an owner or their agent fails to notify the front desk of occupancy by a guest or a guest fails to register in order to avoid the registration fee, the owner's unit will be assessed the fee and may incur an additional House Rule violation fine as determined by the Board.
- IV. RESOLVED FURTHER, that the rights, powers, and authority which this resolution provides shall become effective as of the date of the Board's adoption of this resolution and shall remain effective until this resolution is revoked in writing by the Board or changed by an amendment to the Association's Declaration or Bylaws.

CERTIFICATE

I, Kevin Faris, hereby certify that the above resolution was adopted pursuant to the BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF "ROYAL MAUIAN, by the Board of Directors of the Association, at a Board meeting on December 20 2022.

DATED: Kihei, Hawai'i, _____, 2022.

Secretary, Association of
Apartment Owners of Royal Mauian



Certified Public Accountants
Member: AICPA
HSCPA

January 4, 2023

To the Board of Directors of
Royal Mauian Homeowners Association
2430 S. Kihei Road
Kihei, HI 96753

Ladies and Gentlemen,

We have prepared this letter to address the impact of the recent board decision to implement rental registration fees, and provide related information on income tax considerations.

Taxation of the Association

Royal Mauian Homeowners Association is a type of Common Interest Realty Association (CIRA). As a CIRA, the Association is taxed as a corporation under IRC Section 277. While the Association's by-laws note that the entity will operate as a nonprofit organization, it is not considered tax exempt, and has not received an exempt determination by the Internal Revenue Service. As such, the Association annually files a Form 1120, US Corporation Income Tax Return.

Membership and Non-Membership Income

Membership income is the gross income received by a membership organization from its members in consideration for membership activities. Membership income includes assessments and other amounts that are "ratably assessed" to members. Non-membership income is defined by exception, it is the gross income exclusive of membership income. At the close of the tax years, the Association segregates the various revenue sources, identifies each as membership or non-membership income, and allocates expenses to each category. After segregating both income and expense into membership and non-membership categories, the association will arrive at net membership income or loss.

In the case where the Association has a net loss of membership activity, excess deductions must be carried forward to offset net membership income in future year. Alternatively, should the Association have excess membership income, Revenue Ruling 70-604 allows the Association to apply the excess of membership income over membership expenses to the following year's assessment, or refund the excess to the association's members. Note that the IRS has specifically stated that the ruling allows only a one-year carryover of excess membership income.

At the end of tax year 2021, the Association reported \$153,309 of excess membership deductions available to offset excess membership income in future tax years.

Rental Registration Fees

Given that the \$35 fee will be ratably assessed to owners based on executed registrations, it meets the criteria to be considered membership income. Rental Registration Fee revenue will be included in the calculation of net membership activity, and at the end of each year will effect the computation of whether there is excess membership income or loss. As noted above, the Association presently has \$153,309 in excess membership deductions available to offset potential excess membership income for 2022. This figure will be revised annually based on the Association's activity, and should be carefully monitored in light of the limit of the one-year carry forward of excess membership income. These fees will have no effect on the taxable status of the Association.

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General Excise Tax

General excise tax (GET) is a tax on gross receipts of business activities in the State of Hawaii. It is the tax imposed on all Hawaii income before deducting business expenses. It is important to note that all receipts are subject to GET unless an approved exemption is received. Per *Hawaii Revised Statutes §237-24.3(2)*, maintenance fees are specifically exempted from GET. However, the Rental Registration Fee revenue will be subject to GET as there is no specific exemption in the Statutes.

Please do not hesitate to contact us with any additional questions.

Sincerely,

Carbonaro CPAs & Management Group