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FOR ORIGINAL OF THE RECORDS
DEPARTMENT OF LAND & NATURAL RESOURCES
BUREAU OF CONVEYANCES
DATE 2004-04-19 160
DOCUMENT NO. 2004-041975

LAND COURT SYSTEM

REGULAR SYSTEM

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TITLE OF DOCUMENT:

**RESTATED
BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS
OF
KONA MAKAI**

CONDOMINIUM MAP NO. 519

WHEREAS, by Declaration of Horizontal Property Regime of Kona Makai dated October 18, 1977, recorded on October 20, 1977 in the Bureau of Conveyances of the State of Hawaii in Liber 12500, Page 486 ("Declaration"), the property described in said Declaration was submitted to the provisions of the Horizontal Property Act, Chapter 514A, Hawaii Revised Statutes, as amended (now known as the Condominium Property Act), under the name of "KONA MAKAI"; and

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WHEREAS, the aforesaid Declaration provided for the organization of an Association of Apartment Owners (hereinafter the "Association") and established bylaws therefor, which said bylaws were recorded contemporaneously with said Declaration; and

WHEREAS, the bylaws of the Association were subsequently amended and replaced in their entirety by instrument dated May 31, 1978 recorded in the Bureau of Conveyances of the State of Hawaii in Liber 13090 at Page 728, and further amended by instrument dated July 10, 1979 recorded in said Bureau in Liber 13842, Page 211, by instrument dated October 16, 1984 recorded in said Bureau as Document No. 84-120775, by instrument dated October 29, 1987 recorded in said Bureau as Document No. 87-169334, and by instrument dated July 19, 1990 recorded in said Bureau as Document No. 90-119734; and

WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, ("HRS") provides that the Bylaws of the Association may be restated to set forth the amendments thereof and to conform with the provisions of HRS Chapter 514A or of any other statute, ordinance, rule or regulation enacted by any governmental authority; and

WHEREAS, the Board of Directors of the Association has determined that it is in the best interest of the Association to restate the Association's Bylaws to set forth the amendments thereof and to conform with HRS Chapter 514A and other applicable statutes; and

WHEREAS, said Bylaws are hereby restated as the Bylaws adopted by the Board of Directors pursuant to §514A-82.2(a), HRS, to set forth all of the above-cited amendments to: Article I "Membership", Section 3 "Annual Meetings", Section 5 "Notice of Meetings; Proxy", Section 8 "Proxies and Pledges", Section 10 "Order of Business", Section 11 "Conduct of Meetings"; Article II "Board of Directors", Section 1 "Number, Qualifications and Term", Section 3 "Election and Term", Section 4 "Vacancies", Section 5 "Removal of Directors", Section 7 "Regular Meetings", Section 11 "Conduct of Meetings; Minutes", Section 12 "Fidelity Bonds"; Article III "Officers", Section 8 "Auditor"; Article IV "Administration", Section 1(g), Section 2 "Managing Agent"; Article V "Obligations of Apartment Owners", Section "Assessments", Sections 3(l) and (q), 4 and 8; and Article VI, Section 1 "Amendment".

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WHEREAS, said Bylaws are hereby restated as the Bylaws adopted by the Board of Directors pursuant to §514A-82.2(b), HRS, to conform with the provisions of Hawaii Revised Statutes Chapter 514A;

NOW, THEREFORE, pursuant to §514A-82.2(c), Hawaii Revised Statutes, BE IT RESOLVED that the aforesaid restated Bylaws attached hereto as Exhibit 1 shall be, and hereby are, adopted as the Bylaws of the Association of Apartment Owners of Kona Makai.

The portions of said Bylaws so restated solely for purposes of information and convenience pursuant to HRS Section 514A-82.2 are as follows: References to the "Horizontal Property Act" were changed to "Condominium Property Act"; Article I "Membership", Section 5 "Notice of Meetings, Proxy", subsections (a), (b) and (c), Section 7 "Voting"; Article II "Board of Directors", Section 2 "Powers", Section 5 "Removal of Directors", Section 7 "Regular Meetings", Section 12 "Fidelity Bonds"; Article III "Officers", Section 1 "Designation", Section 8 "Auditor"; Article IV "Administration", Section 1 "Management", subsections (e), (f), (g), (h), (m), (n), and (o), Section 2 "Managing Agent"; Article V "Obligations of Apartment Owners", Section 2 "Liens Securing Assessments", Section 9 "Collection from Tenant"; Article VI "Miscellaneous", Section 2 "Documents", and Section 6 "Restatement of Bylaws".

The statute, ordinance, rule or regulation implemented by the amendments made for purposes of conformance are designated in parentheses following the text of such restated provisions. The restated Bylaws correctly set forth without change the corresponding provisions of the Bylaws, as amended, and the restated Bylaws supersede the original Bylaws and all prior amendments thereto.

In the event of any conflict, the restated Bylaws shall be subordinate to any cited statute, ordinance, rule or regulation, and the original Bylaws and all amendments thereto.

Upon recordation at the Bureau of Conveyances of the State of Hawaii, this instrument shall be deemed to be an amendment to the Declaration for purposes of Article VI, Section 1 of the Bylaws.

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The Restated Bylaws of the Association of Apartment Owners of Kona Makai attached hereto as Exhibit I are hereby adopted this 24 day of February, 2004.

THE BOARD OF DIRECTORS OF THE
ASSOCIATION OF APARTMENT OWNERS
OF KONA MAKAI by and through its Authorized
Officers

Robert L. Schmitz
By: Robert L. Schmitz
Its: Vice President

Susan Proctor
By: Susan Proctor
Its: Secretary

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STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 24 day of February, 2004, before me personally appeared Robert L. Schatz, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he/she is the Vice President of the Association of Apartment Owners of Kona Makai and that such person executed the foregoing instrument as the free act and deed of such Association, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Bernadine U. Helora
Name: Bernadine U. Helora
Notary Public
State of Hawaii

My commission expires: 01/06/2006

STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

On this 24 day of February, 2004, before me personally appeared Susan Proctor, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he/she is the Secretary of the Association of Apartment Owners of Kona Makai and that such person executed the foregoing instrument as the free act and deed of such Association, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Bernadine U. Helora
Name: Bernadine U. Helora
Notary Public
State of Hawaii

My commission expires: 01/06/2006

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RESTATED BYLAWS OF THE ASSOCIATION OF
APARTMENT OWNERS OF
KONA MAKAI

The following bylaws shall apply to the condominium project known as KONA MAKAI (herein called the "project"), situated at Kahului, Second District of North Kona, Island, County and State of Hawaii, as described in and created by Declaration of Condominium Property Regime (herein called the "Declaration"), to be recorded in the Bureau of Conveyances of the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project:

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; PROVIDED, HOWEVER, that to such extent and for such purposes including voting, as shall be provided by lease of any apartment filed with the Board of Directors of the Association, the lessee of such apartment shall be deemed to be the owner thereof. The "Grantor" under any Condominium Conveyance Document from the Fee Owner shall be deemed to be an owner of an apartment during the period of his ownership.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place within the State convenient to the apartment owners as may be designated by the Board.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held as soon as practicable after recording of the Declaration and these bylaws upon the call of at least ten percent (10%) of the apartment owners, and in no event shall it be held later than 180 days after a certificate of occupancy for the project has been issued by the appropriate county agency. Thereafter, the annual meetings of the Association shall be held within six months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President or a petition signed by at least twenty-five percent (25%) of the apartment owners and presented to the Secretary.

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Section 5. Notice of Meetings; Proxy. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner, according to the Association's record of ownership, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the items on the agenda for such meeting, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. Each such notice shall also contain a standard proxy form authorized by the Association, if any, which shall be valid only for the meeting to which the notice pertains and its adjournment. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owners unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

(a) A proxy, to be valid, must be delivered to the secretary of the Association of apartment owners or the Managing Agent, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains, and must contain at least: the name of the Association of apartment owners, the date of the meeting of the Association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, the printed name of the person or entity to whom the proxy is given, and the date that the proxy is given.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit. (HRS § 514A-83.2(b))

(c) Proxies may be given to the Board of Directors; provided that the proxy form shall contain boxes wherein the owner may indicate that the proxy is given: (1) for quorum purposes only; (2) to the individual whose name is printed on a line next to this box; (3) to the Board of Directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or (4) to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage. (HRS § 514A-83.2(a), (e))

(d) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association

