

/s/ LESLIE T. KOBATA, Registrar
ICL 8

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICK-UP :

Shannon S. Sheldon, Esq.
McKeon Sheldon Mehling
A Limited Liability Law Company
2145 Kaohu Street, Suite 203
Wailuku, Hawaii 96793
808-242-6644
shannon@msmhawaii.com

TMK No. (2)390041350000

Total pages: 6

**AMENDMENT OF THE SECOND RESTATED DECLARATION OF CONDOMINIUM
PROPERTY REGIME OF KIHEI SHORES**

(Condominium Map No. 1920)

This AMENDMENT OF THE SECOND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KIHEI SHORES ("Amendment") is made by the ASSOCIATION OF APARTMENT OWNERS OF KIHEI SHORES, INC., a Hawai'i nonprofit corporation ("Association").

WHEREAS, by Declaration of Condominium Property Regime of Maui Court ("Original Declaration") dated June 30, 1993, recorded in the Bureau of conveyances of the State of Hawai'i ("Bureau") as Document No. 93-145239, together with Condominium Map No. 1920, the Condominium Property Regime known as Maui Court was created by Developer, Maui Court Apartment Limited Partnership, a Hawai'i limited partnership; and

WHEREAS, the Declaration was most recently restated as the Second Restated Declaration of Condominium Property Regime recorded on February 12, 2020 as Document No. 2002-025029 in the Bureau (“Declaration”);

WHEREAS, the Declaration was amended by instruments recorded in the Bureau on November 23, 2007 as Document No. 2007-204181 (“2007 Declaration Amendment”) and September 13, 2012 as Document No. A-46390802;

WHEREAS, the Original Declaration and restated Declaration provided in Section 9(a) that the apartments shall not be rented for transient or hotel purposes;

WHEREAS, the 2007 Declaration Amendment purported to amend Section 9(a) of the Declaration to allow apartments to be rented for transient or hotel purposes and eliminate the restrictions against time-sharing;

WHEREAS, the 2007 Declaration Amendment does not conform to Maui County codes governing zoning and use of the apartments and Hawai‘i Revised Statutes (“HRS”) Chapters 514B and 514E;

WHEREAS, HRS § 514B-5 states: “Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county”;

WHEREAS, HRS §§ 514E-5 and -6 restricts time share units, time share plans, and transient vacation rentals in areas designated for apartment use;

WHEREAS, Maui County Code § 19.12.010(C) states: “Buildings and structures within the apartment district shall be occupied on a long term residential basis”, and § 19.04.040 defines “Long-term residential” or “long-term residential basis” as “occupancy of a dwelling unit or lodging unit by an owner, family, lessee, or tenant for one hundred eighty days or more per year.”;

WHEREAS, advertising a short-term rental home (less than 180 days) without a permit is in violation of Maui County Code § 19.65.040, and operating a short-term rental without first obtaining a permit is in violation of Maui County Code Chapters/Sections 19.12, 19.37, 19.40 and 19.65;

WHEREAS, Maui County Code § 19.37.010 restricts time share units, time share plans and transient vacation rentals in areas designated for apartment use;

WHEREAS, Section 514B-109(b), Hawai‘i Revised Statutes, provides that an association of unit owners may at any time restate the declaration of the association to amend the declaration as may be required in order to conform with the provisions of Chapter 514B, Hawaii Revised Statutes, or any other statute, ordinance, rule, or regulation enacted by any governmental authority, by resolution adopted by the board of directors, and the restated declaration shall be as

fully effective for all purposes as if adopted by the vote or written consent of the unit owners;
and

WHEREAS, the Board of Directors of the Association by adoption of a resolution at a duly noticed meeting held on April 30, 2020 voted to amend the Declaration to conform to the law, specifically Maui County Code Title 19 and HRS Chapters 514B and 514E.

NOW, THEREFORE, BE IT RESOLVED THAT Section 9(a) of the Declaration shall be amended in its entirety to read as follows:

(a) No Apartment shall be used in connection with the carrying on of any business, trade or profession whatsoever. The Apartments shall not be rented for transient or hotel purposes, which are defined as (i) use or rental of the Apartment, or any portion thereof, by any person other than the owner of the Apartment for less than one hundred eighty (180) days, or (ii) any rental in which the occupants of an Apartment are provided customary hotel services such as room service for food and beverages, maid service, laundry and linen or bellboy service. The Apartments in the Project or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-share purpose or under any time-sharing plan, arrangement or program, including, without limitation, any so-called "vacation license", "travel club membership" or "time interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, without limitation, any plan, program or arrangement under which the right to use, occupy, own or possess an Apartment or Apartments in the Project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed lease association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise. All use of Apartments or portions thereof shall be made in accordance with any applicable zoning ordinances and other applicable laws, including but not limited to Hawai'i Revised Statutes Chapters 514B and 514E and Maui County Code, Title 19. The respective Apartment owners shall otherwise have the absolute right to rent or lease such Apartments subject to all provisions of the Act, this Declaration and the Bylaws.

Section 9(a) has been restated solely for purposes of information and convenience and amended to implement HRS Chapters 514B and 514E and Maui County Code, Title 19. To the extent that there is any conflict between the amended provisions of the Declaration and the statute, ordinance, or rule enacted by any governmental authority being implemented, the provisions of the Declaration shall be subordinate to said statute, ordinance, or rule enacted by any governmental authority. This amended Declaration shall supersede the original Declaration, and all prior amendments and restatements thereto.

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

Each of the undersigned officers of the Association hereby warrants and represents that he or she is legally authorized to sign this Amendment on behalf of the Association. The undersigned officers of the Association hereby certify that the amendment to the Declaration was adopted by resolution of the Board of Directors.

The officers of the Association agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding the parties thereto, notwithstanding that all the parties are not signatories to the original or the same counterpart. For all purposes, including without limitation, recordation, filing and delivery of this Amendment, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

7th IN WITNESS HEREOF, the parties hereto have executed these presents this day of May, 2020.

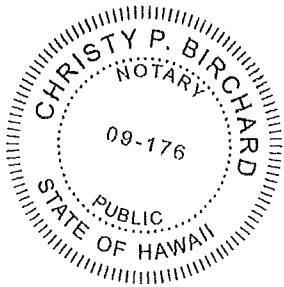
ASSOCIATION OF APARTMENT OWNERS OF
KIHEI SHORES, INC.

By: W. M. Hollander
William M. Hollander
Its President Kihei Shores AOA

By: David Stockman
David Stockman
Its Treasurer Kihei Shores AOA

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On May 7, 2020 before me personally appeared David Slackman, to me personally known, who, being by me duly sworn, did say that he is the Treasurer of Association of Apartment Owners of Kihei Shores, Inc. and the said instrument was signed on behalf of said association by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said association. Said association has no seal.



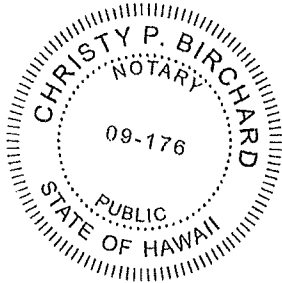
[Signature]
Signature:

Christy P Birchard
Print Name:
Notary Public, State of HAWAII
My commission expires: 5-17-2021

Doc. Date: <u>5/7/2020</u>	# Pages: <u>6</u>
Notary Name: <u>Christy P Birchard</u> <u>2nd</u> Circuit	
Doc. Description: AMENDMENT OF THE SECOND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KIHAI SHORES	
<u>[Signature]</u> Notary Signature	<u>5-7-2020</u> Date
NOTARY CERTIFICATION	
A circular notary seal for Christy P. Birchard, Notary Public, State of Hawaii. The seal contains the text "CHRISTY P. BIRCHARD", "NOTARY PUBLIC", "STATE OF HAWAII", and the commission number "09-176".	

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On May 7, 2020 before me personally appeared William M. Hollander, to me personally known, who, being by me duly sworn, did say that he is the President of Association of Apartment Owners of Kihei Shores, Inc. and the said instrument was signed on behalf of said association by authority of its board of directors, and said officer acknowledged said instrument to be the free act and deed of said association. Said association has no seal.



[Signature]
Signature:
Christy P Birchard
Print Name:
Notary Public, State of HAWAII
My commission expires: 5-17-2021

Doc. Date: <u>5/7/2020</u>	# Pages: <u>6</u>
Notary Name: <u>Christy P Birchard 2nd Circuit</u>	
Doc. Description: AMENDMENT OF THE SECOND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KIHAI SHORES	
<u>[Signature]</u> Notary Signature	<u>5-7-2020</u> Date
NOTARY CERTIFICATION	

