


IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation)
of)
ASSOCIATION OF APARTMENT)
OWNERS OF KIHEI SHORES, INC.)
_____)

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Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii



ARTICLES OF INCORPORATION

AOAO KIHEI SHORES, INC.
c/o Destination Maui, Inc.
841 Alua Street, Suite 102
Wailuku, Hawaii 96793

06/13/200520039

IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Incorporation)
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ASSOCIATION OF APARTMENT)
OWNERS OF KIHEI SHORES, INC.)
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ARTICLES OF INCORPORATION

The undersigned, desiring to form a non-profit corporation under the provisions of Chapter 414D, Hawaii Revised Statutes, hereby execute the following Articles of Incorporation.

ARTICLE I

Corporate Name

The name of the corporation shall be ASSOCIATION OF APARTMENT OWNERS OF KIHEI SHORES, INC.

ARTICLE II

Place of Business and Agent

Section 2.1 Place of Business. The place of the principal office of the Corporation shall be in Kihei, Island of Maui, State of Hawaii. The street or mailing address of the initial office of the Corporation will be c/o Destination Maui, Inc., 841 Alua Street, Suite 102, Wailuku, Hawaii 96793.

Section 2.2 Agent. The initial registered agent for the Corporation is Destination Maui, Inc., a Hawaii corporation, whose address is 841 Alua Street, Suite 102, Wailuku, Hawaii 96793. **41022D1**

ARTICLE III

Period of Duration

The duration of the Corporation shall be perpetual.

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ARTICLE IV

Corporate Purposes

The specific purpose for which the corporation is organized is for the administration, fiscal management, and operation of the Kihei Shores condominium project and the maintenance repair and replacement, of and the making of any additions and improvements to, the common elements thereof in accordance with Chapter 514A, Hawaii Revised Statutes (the "Condominium Property Act" or the "Act"), the Second Restated Declaration of Condominium Property Regime of Kihei Shores, recorded in the Bureau of Conveyances of the State of Hawaii on February 12, 2002 as Document No. 2002-025029, as amended (the "Declaration"), and the By-Laws of the Corporation (the "By-Laws"), as each of the same have been and may hereafter be amended from time to time, and for no other purpose.

ARTICLE V

Corporate Powers

Section 5.1 Powers. Subject to and to the extent not inconsistent with the Act, the Declaration, and the By-Laws, the Corporation shall have all powers to effect any or all of the purposes for which the Corporation is organized or which may hereafter be provided for by law, and those which may be implied therefrom, including but not limited to, the powers set forth in 414D-52, Hawaii Revised Statutes, as the same may be amended from time to time.

Section 5.2 Scope. The foregoing powers shall be liberally construed and shall not be deemed to exclude by inference any powers which the Corporation is or may become empowered to exercise, whether expressly or impliedly through the reasonable construction of any applicable laws now or hereafter in effect.

ARTICLE VI

Members

The Corporation is non-profit in nature and shall not authorize or issue any shares of stock. Each person who is an apartment owner of Kihei Shores condominium project shall be a member of the Corporation. As used herein, the term "apartment owner" shall have the same meaning as that term is defined in the Act, the Declaration, and the By-Laws, as each of the same have been and may hereafter be amended from time to time. No dividends shall be paid and no part of the income or profit of the Corporation shall be distributed to its members, directors, or officers except as permitted by law for services actually rendered to the Corporation, and except upon liquidation of its property in case of corporate dissolution in connection with the removal of the Kihei Shores condominium project from the provisions of the Act as provided therein.

ARTICLE VII

Directors, Officers and Incorporator

Section 7.1 Board of Directors. The Board of Directors of the Corporation shall consist of nine (9) persons determined in accordance with the By-Laws. The directors shall be elected or appointed, may be removed from office, and all vacancies in the office of a director shall be filled, in the manner and for the terms of office provided for in the Act and the By-Laws.

Section 7.2 Officers. The officers of the Corporation shall be the President, Vice-President, Secretary, and Treasurer. The Corporation may appoint such other subordinate officers as in the discretion of the Board of Directors may be necessary. The officers shall have the powers, perform the duties and be appointed as shall be determined by the Board of Directors and the By-Laws. One individual may hold no more than two offices unless otherwise provided in the By-Laws.

Section 7.3 Initial Officers and Directors. The names and residence addresses of the initial officers and directors are:

<u>NAME</u>	<u>RESIDENCE ADDRESS</u>
Vicky Grimes President/Director	2539 Omiko Place Kihei, HI 96753
Robert Meyer Vice President/ Director	2747 S. Kihei Rd., J-111 Kihei, HI 96753
Greg Jay Secretary/Director	2747 S. Kihei Rd., E302 Kihei, HI 96753
Steve Rodick Treasurer/Director	7777 Alvarado Rd., #615 La Mesa, CA 91941-3649
Sonia Isotov King Director	2747 S. Kihei Rd., #C-003 Kihei, HI 96753
Peter Prehn Director	105 Iliwai Loop Kihei, HI 96753
Richard Cable Director	105 Iliwai Loop Kihei, HI 96753
Sandra Skillicorn Director	2531 S. Kihei Rd., Office Kihei, HI 96753

Richard Williams
Director

2531 S. Kihei Rd., E-103
Kihei, HI 96753

Section 7.4 Incorporator. The incorporator of the Corporation is Vicky Grimes whose address is 2539 Omiko Place, Kihei, Hawaii 96753.

ARTICLE VIII

Powers of the Board of Directors

Section 8.1 Authority. All the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors, except as otherwise provided by the Act, these Articles of Incorporation, or the By-Laws.

Section 8.2 Powers. The Board of Directors shall have the powers established therefore by the Act, the Declaration, and the By-Laws and no other powers whatsoever.

ARTICLE IX

By-Laws

The initial By-Laws of the Corporation shall be the Second Restated By-Laws of the Association of Apartment Owners of Kihei Shores, attached to the Declaration, as the same have been amended from time to time, (hereinafter referred to as the "By-Laws") which shall be adopted by the Board of Directors. The By-Laws may be amended only as provided in the Act, the Declaration, and the By-Laws.

ARTICLE X

Director or Officer Conflicts of Interest

Section 10.1 Disclosure; Voting and Participation at Meetings. No director shall vote on any issue as to which he or she has a conflict of interest or be present when such issue is debated or discussed. Each director shall disclose the nature of any conflict of interest prior to the vote on any such matter at a Board meeting, and the minutes of the meeting shall record the fact that such a disclosure was made. As to any issue concerning which a director has a conflict of interest, the vote of a majority of the disinterested directors shall be deemed to be the vote of the Board for all purposes. In the event that the number of directors who do not have a conflict of interest with respect to a given issue is less than a quorum, then a quorum shall consist of such disinterested directors for purposes of voting on that issue only. In the event that all directors have a conflict of interest on a given issue, the President shall appoint a committee of not less than three (3) nor more than five (5) disinterested owners who shall act as the Board for the purposes of that issue only, and the decision thereof shall be binding upon the apartment owners in the same manner as a decision of the Board.

Section 10.2 Effect. No contract or other transaction between the Corporation and any other person, firm, corporation, association, or other organization, and no act of the Corporation, shall in any way be affected or invalidated by the fact that any of the directors or officers of the Corporation are parties to such contract, transaction, or act, or are pecuniarily or otherwise interested in the same or are directors or officers or members of any such other firm, corporation, association, or other organization, provided that the interest of such director shall be disclosed and said transaction is authorized or approved by vote or consent sufficient for that purpose as provided hereinabove without counting the votes or consents or such interested officers or directors, and the contract or transaction is fair and reasonable to the Corporation.

Section 10.3 Liability. Neither any director nor officer of the Corporation, being so interested in any such contract, transaction, or act of the Corporation which shall be approved by the Board of Directors as aforesaid, nor any such other person, firm, corporation, association, or other organization in which such director or officer may be a director, officer, or member, shall be liable or accountable to the Corporation, or to any member thereof, solely by reason of being an interested person, for any loss incurred by the Corporation pursuant to or by reason of such contract, transaction, or act, or for any gain received by any such other party pursuant thereto or by reason thereof.

Section 10.4 Scope of Article. For the purposes of this Article 10, "conflict of interest" shall mean that a director has a direct personal or pecuniary interest not common to other members of the Corporation, provided that a director shall not be deemed to have a conflict of interest solely on account of the fact that the director's apartment is or may be affected by the matter to be voted upon. A director who is a plaintiff in any proceeding against the Corporation or is a defendant in any proceeding brought by the Corporation shall be conclusively deemed to have a conflict of interest with regard to such proceeding.

ARTICLE XI

No Member Liability

No member shall be liable for the debts of the Corporation beyond the amount which represents that member's pro rata share of such liability determined in the same manner as the member's share of the Corporation's common expenses as set forth in the Declaration.

ARTICLE XII

Indemnification of Directors and Officers

Section 12.1 Indemnification Generally. The Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director or officer of the Corporation or of any division of the Corporation, or is or was serving at the request of the Corporation as a director, or officer of another corporation, partnership, joint

venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, create a presumption that the person had reasonable cause to believe that his conduct was unlawful.

Section 12.2 Suits by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation or of any division of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

Section 12.3 Effect of Success in Defense. To the extent that a director or officer of the Corporation or of any division of the Corporation, or a person serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 12.1 and 12.2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 12.4 Authorization for Indemnification. Any indemnification under Section 12.1 and 12.2 of this Article (unless ordered by a court) shall be made by the Corporation only if authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 12.1 or 12.2. Such determination may be made:

- (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

- (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Corporation;
- (3) if a quorum of disinterested directors so directs, by a majority of the members; or
- (4) the court in which such proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Corporation.

Section 12.5 Expenses. Expenses incurred in defending any action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in a particular case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this article.

Section 12.6 Indemnification Not Exclusive. The indemnification proved by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such person.

Section 12.7 Insurance. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other agent of the Corporation or of any division of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this article. Any such insurance may be procured from any insurance company designated by the Board of Directors, including any insurance company in which the Corporation shall have any equity or other interest, through stock ownership or otherwise.

Section 12.8 Fiduciaries of Employee Benefit Plans. Indemnification, expense advancement, or the purchase of insurance for the benefit of any fiduciary of any employee benefit plan or trust for the benefit of employees of the Corporation or another corporation in which the Corporation owns shares shall be made upon the authorization of the Board of Directors.

Section 12.9 Limitation of Liability.

(a) The Corporation shall have the power to eliminate or limit the personal liability of its directors in any action brought by the members of the Corporation for monetary damages against any director of the Corporation for a breach of fiduciary duty as a director.

(b) Notwithstanding the foregoing, the Corporation shall not have the power to eliminate or limit the personal liability of a director:

1. For any breach of the director's duty of loyalty to the Corporation;
2. For any act or omission of the director not performed in good faith, or which involved intentional misconduct or knowing violation of law, or which constitutes a willful or reckless disregard of the director's fiduciary duty;
3. For the director's willful or grossly negligent violation of any Provision of Chapters 414D or 514A, Hawaii Revised Statutes; or
4. For any transaction from which the director received an improper benefit.

ARTICLE XIII

Subordination

These Articles shall in all respects be subordinate to and controlled by the Act and the Declaration. In the event of any conflict between the Act and Chapter 414D, Hawaii Revised Statutes, the Act shall be conclusively deemed to control except as to corporate matters.

ARTICLE XIV

Dissolution

Section 14.1 Voluntary Dissolution. The Corporation shall not be voluntarily dissolved except in connection with the removal of the Kihei Shores condominium project from the provisions of the Act as provided therein, or in the event of or on account of a decision rendered by the highest court of the State of Hawaii in which such decision can be had that the incorporation of the association of apartment owners of a condominium project organized and existing pursuant to the Act is repugnant to said Act.

Section 14.2 Effect of Dissolution. In the event of the dissolution of the Corporation for any reason whatsoever, including without limitation dissolution pursuant to Chapter 414D, Hawaii Revised Statutes, the members of the Corporation shall, without any other action, immediately be deemed and construed to constitute an unincorporated condominium

association organized and existing pursuant to the Act. The By-Laws of the Corporation shall, upon such dissolution, become the By-Laws of said association. Those persons who are serving as directors and officers of the Corporation at the time of any such dissolution shall, upon such dissolution, become directors and officers of such unincorporated association and shall continue to serve as such until their successors are duly elected in accordance with the By-Laws. Immediately upon any such dissolution, the last directors of the Corporation, acting as trustees for the creditors and members of the Corporation and/or the court appointed trustee, if any, shall promptly wind up and settle the affairs of the Corporation as provided by law and shall cause the assets and liabilities of the Corporation to be transferred to and assumed by said unincorporated association and shall have the power to do all acts and things necessary, appropriate, or convenient therefor.


ARTICLE XV

Corporate Seal

The Corporation shall have no seal.

IN WITNESS WHEREOF, the undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that she has read the above statements and that the same are true and correct.

DATED: Kihei, Maui, Hawaii 5-19-2005, 2005.



VICKY GRIMES
Incorporator

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