



R-850 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 20, 2011 02:00 PM  
Doc No(s) 2011-097150



/s/ NICKI ANN THOMPSON  
REGISTRAR

20 1/1 29

LAND COURT SYSTEM  
AFTER RECORDATION, RETURN TO: BY: MAIL ☐ PICKUP ☒ REGULAR SYSTEM

EKIMOTO & MORRIS, LLC  
JOHN A. MORRIS, ESQ./alt  
AMERICAN SAVINGS BANK TOWER  
1001 BISHOP STREET, SUITE 780  
HONOLULU, HAWAII 96813-3410

Total pages: 5

G:\CLIENTS\KAI MAKANI\1-DOCS\Opt in Amendment.doc

Tax Map Key: (2) 3-9-41-2

Condominium Map Number: 3849

**FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF  
KAI MAKANI**

This FOURTH AMENDMENT TO DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KAI MAKANI ("Amendment") is made by the ASSOCIATION OF APARTMENT OWNERS OF KAI MAKANI, whose address is % Hawaiiana Management Company, Ltd., 140 Hooehana Street, Suite 210, Kahului, Maui, Hawaii'i 96732,

**WITNESSETH THAT:**

WHEREAS, by Declaration of Condominium Property Regime of Kai Makani dated September 28, 2004 (the "Declaration"), recorded in the Bureau of Conveyances of the State of Hawaii'i as Document No. 2004-204231, the property described in the Declaration was submitted to a Condominium Property Regime established by Chapter 514A, Hawaii'i Revised Statutes (now Chapter 514B, Hawaii'i Revised Statutes), as amended; and

WHEREAS, the Bylaws of the Association of Apartment Owners of Kai Makani dated September 22, 2004 (the "Bylaws") were recorded in the Bureau of Conveyances of the State of Hawaii'i as Document No. 2004-204232; and

WHEREAS, simultaneously with the recording of the Declaration and Bylaws, Declarant also recorded as Condominium Map No. 3849 plans describing the improvements to the project; and

WHEREAS, the Declaration, as amended, provided for the organization and operation of the Association of the Apartment Owners of Kai Makani (the "Association") to operate and manage the Project in accordance with the Bylaws; and

WHEREAS, the Declaration was amended by instrument dated August 26, 2005, recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 2005-206335; by instrument dated November 8, 2005, recorded in said Bureau as Document No. 2005-248751; and by instrument dated January 31, 2006, recorded in said Bureau as Document No. 2006-028212; and

WHEREAS, Section 514B-23, Hawai'i Revised Statutes ("HRS"), empowers the Association to amend the Declaration, with the vote or written consent of a majority of the owners, to achieve any results permitted by HRS Chapter 514B; and

WHEREAS, at the Association's annual meeting on January 29, 2011, a majority of owners affirmatively voted in favor of "opting in" to the provisions of HRS Chapter 514B by amending the Declaration; and

NOW THEREFORE, the Declaration, as amended, is hereby amended as stated below. To the extent that there is any conflict between the provisions of the Declaration and HRS Chapter 514B, the provisions of the Declaration shall be subordinate to HRS Chapter 514B, including all approval requirements in HRS Chapter 514B.

#### **AMENDMENT**

A new Section 27. is added to the Declaration, to generally amend the Project documents to achieve any results permitted by HRS Chapter 514B, and to read as follows:

27. **GOVERNING LAW.** Notwithstanding anything to the contrary in the Project governing documents, including but not limited to the Declaration, Bylaws, House Rules, and Condominium Map:

(a) This Project shall be governed by the provisions of Hawai'i Revised Statutes, Chapter 514B, as amended;

(b) Any apartment deed, and the Project's Declaration, Bylaws, House Rules, and Condominium Map shall be liberally construed to facilitate the operation of the Project under the law;

(c) Amendments to the Declaration and Bylaws, including but not limited to amendments relating to the alteration of the Project, shall require approval of 67% of the owners;

(d) Approval requirements of 75% for alterations to the common elements shall be reduced to 67%;

(e) Punitive damages may not be awarded except as provided in Hawai'i Revised Statutes, Section 514B-10; and

(f) Approval requirements for leases or uses of the common elements shall be governed by Hawai'i Revised Statutes, Section 514B-38.

In all other respects, the Declaration, as amended, 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. The undersigned officers of the Association of Apartment Owners of Kai Makani hereby certify that the above amendment was made by the affirmative vote of more than a majority of owners.

Each of the undersigned officers of the Association warrants and represents that he or she is legally authorized to sign this Amendment on behalf of the Association. The officers of the Association agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and those counterparts shall together constitute one and the same instrument, binding all the Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this 22 day of MAY, 2011.

ASSOCIATION OF APARTMENT OWNERS OF  
KAI MAKANI

By: Donald C. Chaikin  
(Print name: DONALD C. CHAIKIN)  
Its: President / Treasurer

By: Joel Tessier  
(Print name: JOEL TESSIER)  
Its: VICE PRESIDENT

STATE OF HAWAII

COUNTY OF MAUI

)  
) ss.  
)

On this 22 day of May, 2011, in the Second Circuit of the State of Hawai'i, before me personally appeared DONALD C. CHAIKIN, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the President/Treasurer of the Association of Apartment Owners of Kai Makani, a Hawai'i condominium association, that said person executed the foregoing instrument identified or described as "Fourth Amendment to Declaration of Condominium Property Regime of Kai Makani" as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated MAY 22 2011 and contained 5 pages at the time of this acknowledgment/certification.



Mina Chaikin  
Print Name: Mina Chaikin  
Notary Public, State of Hawai'i

My Commission Expires: 11/14/2014

STATE OF HAWAII

COUNTY OF MAUI

)  
) ss.  
)

On this 22 day of May, 2011, in the Second Circuit of the State of Hawaii, before me personally appeared JOEL TESSIER, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the VICE PRESIDENT of the Association of Apartment Owners of Kai Makani, a Hawaii condominium association, that said person executed the foregoing instrument identified or described as "Fourth Amendment to Declaration of Condominium Property Regime of Kai Makani" as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated MAY 22 2011 and contained 5 pages at the time of this acknowledgment/certification.



Mina Chaikin  
Print Name: Mina Chaikin  
Notary Public, State of Hawaii

My Commission Expires: 11/14/2014