



2495 South Kihei Road · Kihei, HI 96753

March 23, 2017

ASSOCIATION OF APARTMENT OWNERS OF KIHAI KAI NANI, PHASE ONE

Dear Owners:

As you know, the Board of Directors for the Association has recommended the purchase of Lot 1-A to settle pending litigation concerning the development of a hotel complex on Lot 1-A. **In order to complete the purchase, we need you to return the attached ballot with your approval, as soon as possible. At least 121 apartment owners must approve the purchase.**

Purchasing Lot 1-A will assure that the ambience and peaceful environment of our Kihei Kai Nani condominium will prevail and that our parking lot and driveway never becomes a through-way for a disruptive new hotel development. Additionally, our purchase of Lot 1-A will give us the ability to control the future of Lot 1-A for opportunities that benefit our members and add value to our condominium. This was discussed in an earlier information letter to you that is now posted on [our website \(http://www.kknaoao.com/\)](http://www.kknaoao.com/). We have also uploaded an additional map to the site that shows the numerous condominium improvements that are actually located on Lot 1-A. Most of those improvements will be lost if the development proceeds.

Fortunately, we have already received a very positive response from most of the owners who have participated in our information meetings. If the purchase of Lot 1-A is formally approved, we will soon thereafter ask you to select how you want to make your portion of the payment for the purchase costs:

- You have the option of making a one-time payment of \$8,500. (A majority of the owners who attended our information sessions have indicated they will pay in full.)
- Or, you have the option of paying the \$8,500 over time, plus interest and related expenses. If you pay over time, it will be through a financing arrangement with the Association. We anticipate the interest rate will be approximately 4.4%, with a loan term of approximately seven years. The final terms will depend on the lender, the total amount we will need to borrow, and interest rates at the time we obtain the loan.

The Board estimates that the ongoing cost to hold and maintain Lot 1-A will be less than \$15,000 per year, or less than \$7.00 per month per apartment.

PLEASE RETURN YOUR BALLOT BY APRIL 12, 2017, by one of the following methods:

Hand delivery:

John Sullivan, Destination Maui, Inc., Aloha Plaza, 380 Huku Li'i Place, Suite 206, Kihei, HI 96753

Fax: (808) 243-9883

Email: jsullivan@destinationmaui.net

Mail: Use the enclosed self-addressed stamped envelope

Your vote is important. Please carefully review the attached ballot and its exhibits. If you have any questions or concerns, please feel free to contact me.

Mahalo,

Ethel Belway, President

ASSOCIATION OF APARTMENT OWNERS OF THE KIHEI KAI-NANI, PHASE ONE

OWNER BALLOT
REGARDING DECISION TO PURCHASE LOT 1-A

The undersigned own Apartment No(s). _____ of Kihei Kai-Nani, Phase One condominium (the "Project") and hereby cast their vote on the following Proposed Action:

PROPOSED ACTION: I HEREBY [APPROVE OR DISAPPROVE] THE ASSOCIATION'S PURCHASE OF LOT 1-A FOR A PRICE OF \$1,500,000.00 PLUS ASSOCIATED COSTS AND INCLUDING THE AMENDMENTS AND CONSENT SET FORTH IN ATTACHED EXHIBIT "1", WHICH RELATE TO THE PURCHASE AND HOLDING OF LOT 1-A AS A COMMON ELEMENT OF THE PROJECT.

I understand that if the Proposed Action passes that I will, within approximately thirty (30) days thereafter, be required to select one of the following options: (1) make a one-time payment of \$8,500 per unit; or, (2) pay the \$8,500 per unit over time, plus interest and costs, through a financing arrangement that will be provided by the Association.

(Please mark one of the boxes to cast your vote.)

APPROVE

DISAPPROVE

I confirm having cast the above vote for the above-referenced apartment(s). Prior to casting my ballot, I reviewed the above Proposed Action and the attached Exhibits "1" and "2".

Printed Name

Printed Name

Signature

Signature

Date

Date

Please sign your name(s) as they appear on the lease or deed which conveyed your residence to you. Executors, Administrators, Trustees, Guardians, Conservators, Attorneys, and Corporate Officers must add their title and submit a copy of their appointment or authority, unless they have already done so.

Any changes you make to the wording of the Proposed Action, or Exhibit "1" to this Ballot, will be ineffective and will invalidate your vote. Therefore, you must decide to approve or disapprove the Proposed Action. If you make an error while marking your decision, please mark your intended vote clearly by including your initials next to the box you intended to select.

PLEASE REVIEW EXHIBITS "1" AND "2", ATTACHED HERETO.

You do not need to return the exhibits with your ballot.

**APPROVAL OF THE PROPOSED ACTION INCORPORATES THIS EXHIBIT “1”
REGARDING THE FOLLOWING AMENDMENTS AND AUTHORIZATION**

Prior to closing on the purchase of Lot 1A:

1. Section 4(h) of the *Kihei Kai-Nani, Phase One, Restated Declaration of Condominium Property Regime* (“Restated Declaration”) shall be amended to read in its entirety as follows:

Designation of additional areas to be common elements or subject to common expenses shall require the approval of sixty-seven percent of the apartment owners.
2. The Board of Directors shall be authorized: (a) to cause the Association to borrow money in an amount deemed necessary by the Board to assist those unit owners desiring to finance their portion of the cost of purchasing Lot 1-A, subject to said borrowing being based on standard competitive financing terms and conditions for condominium associations; (b) to establish an agreement setting forth the terms to be offered to those owners desiring to pay their portion over time; (c) to take such steps as are necessary to carry out the purchase of Lot 1-A; and, upon acquisition, to extinguish the easement and other rights that currently run in favor of Lot 1-A.

After closing on the purchase of Lot 1A, the Restated Declaration shall be amended as follows:

3. Include the following definition in Section 22:

“Lot 1-A” means Lot 1-A of the subdivision of Lot 26-B of the “Kamaole Homesteads”, as more specifically described in Section 1 of the Restated Declaration.
4. Include in Section 1 a legal survey description of Lot 1A, as approved by the Association’s attorneys, and, existing land survey description of the condominium project, delete the reservation in favor of Lot 1A and related survey description, which begins and ends as follows (stricken words to be deleted, as well as text in between beginning and end, as indicated by the ellipses):

~~SUBJECT, HOWEVER, to the reservation of a perpetual easement for roadway, sanitary sewer, utility and other purposes, appurtenant to and in favor of Lot 1 A, being a portion of Land Patent 10070 to Kaina Hamili and being also a portion of Lot 26 B of Kamaole Homesteads, over, across, under and along the following described area: . . .~~
~~. . . to the point of beginning and containing an area of 1.178 Acres.~~
5. Delete the following text from Section 4(a):

~~The above-described lands in fee simple, subject to the above mentioned perpetual easement appurtenant to and in favor of Lot 1 A.~~
6. Add a new Section 4(i) to read in its entirety as follows (underlined designates added text):
 4. All remaining portions and appurtenances of the project shall constitute a single freehold estate, herein called the “Common Elements”, including but not limited to the following: . . .
 - (i) Lot 1-A, along with any and all rights, entitlements or encumbrances thereto, which by this reference, and through the legal description in Section 1, shall be considered an amendment to and part of Condominium Map No. 142.
7. Delete Section 5 in its entirety (entitled “Reservation of Rights, Powers and Privileges for the Use and Benefit of Lot 1-A”).

THIS EXHIBIT “2” PROVIDES FURTHER EXPLANATION OF THE PROPOSED ACTION

VOTING BY BALLOT; REQUIREMENTS FOR QUORUM AND APPROVAL:

Both the condominium statute, HRS Chapter 514B, and the nonprofit corporation statute, HRS Chapter 414D, permit the Proposed Action to be made through a written ballot. *See* HRS §414D-104.5(c); HRS §514B-32(a)(11).

For the Proposed Action to pass, including the amendments and authorizations set forth in Exhibit “1”, at least sixty-seven percent (67%) of the apartment owners must affirmatively approve the Proposed Action. ***This means that at least one hundred twenty-one (121) apartment owners must affirmatively approve the Proposed Action.***

Not more than one vote per apartment will be counted.

Article I, Section 7 of the Association’s Bylaws provides that voting “shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration.” The Restated Declaration provides for 180 apartments in the Project of equal common interest, thereby giving each apartment a 0.556% common interest and 0.556% of the vote on the Proposed Action. However, the Association owns one apartment, and this apartment is not entitled to a vote.

Article I, Section 6 of the Association’s Bylaws provides that “the presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum.” Therefore, excluding the apartment owned by the Association, at least ninety (90) apartment owners must respond to meet a quorum.

LOT 1-A PURCHASE PRICE AND ASSOCIATED COSTS:

During a mediation with Victory Development, the owners of Lot 1-A, the Association’s Board of Directors negotiated a purchase of Lot 1-A for \$1,500,000. Based on comparable land prices, as well as the benefits associated owning Lot 1-A, the Board believes this is a fair purchase price for the Association.

The Board has also evaluated the cost of completing the purchase of Lot 1-A, as well as the annual cost of holding and maintaining the property in its current condition. Closing costs are anticipated to be approximately \$15,000. Annual holding and maintenance costs are anticipated to be approximately the same.

The Proposed Action will generate \$1,521,500.00 (179 units x \$8,500), which will be used for the above-described costs.

For more background, please see the Feb. 24, 2017 Information Letter sent to all owners, a copy of which is [on the website: http://www.kknaoao.com/](http://www.kknaoao.com/).

ITEMS IN EXHIBIT “1”:

1. **Section 4(h) of the *Kihei Kai-Nani, Phase One, Restated Declaration of Condominium Property Regime* (“Restated Declaration”) shall be amended to read in its entirety as follows:**

Designation of additional areas to be common elements or subject to common expenses shall require the approval of sixty-seven percent of the apartment owners.

BACKGROUND AND PURPOSE OF AMENDMENT:

The Restated Declaration was adopted by the Association in 2002. When it was adopted, it conformed to the then existing condominium statute, identified as Hawai`i Revised Statutes (“HRS”) Chapter 514A. At that time, designation of new common elements required approval by 90% of the owners (HRS §514A-92.1).

In 2004, the State Legislature enacted a new condominium statute, HRS Chapter 514B (“Chapter 514B”). Under the new condominium law, designation of new common elements requires only approval of 67% of the owners (HRS §514B-104(a)(8)(A)).

EXHIBIT "2"

In 2008, the Association elected to “opt-in” to this new condominium statute through an amendment to the Restated Declaration, including approval requirements:

NOW THEREFORE, the [Restated] Declaration is hereby amended to "opt-in" to HRS Chapter 514B, as set forth below. To the extent that there is any conflict between the provisions of the [Restated] Declaration and HRS Chapter 514B, the provisions of the [Restated] Declaration shall be subordinate to HRS Chapter 514B, ***including all approval requirements in HRS Chapter 514B.*** (Emphasis added)

The above amendment to Section 4(h) confirms consistency with 67% approval requirement set forth in Chapter 514B.

- 2. The Board of Directors shall be authorized to cause the Association to borrow money, in an amount deemed necessary by the Board to assist those unit owners desiring to finance their portion of the cost of purchasing Lot 1-A, subject to said borrowing being based on standard competitive financing terms and conditions for condominium associations.**

BACKGROUND AND PURPOSE OF AUTHORIZATION:

Upon obtaining written consent from at least 50% of the owners regarding the purpose, HRS § 514B-105(e) and Article IV, Section 1(k) of the Restated By-Laws of the Association permit the Board to borrow money on behalf of the Association for matters relating to the common elements, or additions to the common elements.

The above authorization is for the purpose of giving the Board the authority to borrow money for the purpose of financing a portion of the cost of purchase of Lot 1-A relating to those owners who desire to finance their portion of the cost rather than make a one-time payment.

- 3. Include the following definition in Section 22:**

“Lot 1-A” means Lot 1-A of the subdivision of Lot 26-B of the “Kamaole Homesteads”, as more specifically described in Section 1 of the Restated Declaration.

BACKGROUND AND PURPOSE OF AMENDMENT:

Section 22 of the Restated Declaration provides a place to define terms used in the Restated Declaration. The amendment above will define Lot 1-A.

- 4. Include in Section 1 a legal survey description of Lot 1A, as approved by the Association’s attorneys, and, existing land survey description of the condominium project, delete the reservation in favor of Lot 1A and related survey description, which begins and ends as follows (stricken words to be deleted, as well as text in between beginning and end, as indicated by the ellipses):**

~~**SUBJECT, HOWEVER, to the reservation of a perpetual easement for roadway, sanitary sewer, utility and other purposes, appurtenant to and in favor of Lot 1-A, being a portion of Land Patent 10070 to Kaina Hamili and being also a portion of Lot 26-B of Kamaole Homesteads, over, across, under and along the following described area: . . .**~~

~~**. . . . to the point of beginning and containing an area of 1.178 Acres.**~~

BACKGROUND AND PURPOSE OF AMENDMENT:

Section 1 of the Restated Declaration provides a description of the lands that constitute the condominium project. The above amendment provides for describing Lot 1-A as part of the condominium project. In addition, currently, a portion of the road and parking area through the condominium project is subject to an easement for access and utilities that runs in favor of Lot 1-A. This easement will not be necessary once the

Association purchases Lot 1-A and makes it part of the common elements. The above-described deletion will conform with the termination of the easement running in favor of Lot 1-A.

5. Delete the following text from Section 4(a):

~~The above-described lands in fee simple, subject to the above-mentioned perpetual easement appurtenant to and in favor of Lot 1-A.~~

BACKGROUND AND PURPOSE OF AMENDMENT:

The above-described deletion will conform with the termination of the easement running in favor of Lot 1-A.

6. Add a new Section 4(i) to read in its entirety as follows (underlined designates added text):

4. All remaining portions and appurtenances of the project shall constitute a single freehold estate, herein called the “Common Elements”, including but not limited to the following: . . .

(i) Lot 1-A, along with any and all rights, entitlements or encumbrances thereto, which by this reference, and through the legal description in Section 1, shall be considered an amendment to and part of Condominium Map No. 142.

BACKGROUND AND PURPOSE OF AMENDMENT:

This amendment recognizes Lot 1-A as part of the common elements of the condominium project, which will also mean that its maintenance and improvements to it will be a common expense.

7. Delete Section 5 in its entirety (entitled “Reservation of Rights, Powers and Privileges for the Use and Benefit of Lot 1-A”), and any references to Section 5 in the Restated Declaration.

BACKGROUND AND PURPOSE OF AMENDMENT:

Section 5 of the Restated Declaration provided a number of benefits to the owners of Lot 1-A, including the right to construct hotels on Lot 1-A and to permit construction traffic and ongoing user traffic through the condominium project’s driveway and parking lot. The Association’s purchase would eliminate the need to provide these rights to Lot 1-A. Therefore, this amendment would terminate all such rights. The Association through the Board of Directors will have the ability to provide in necessary connections or access to Lot 1-A by the fact that it will become a common element.

END OF EXHIBIT “2”