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STATE OF HAWAII  
(BUREAU OF CONVEYANCES)

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

Total pages: 23

Tax Map Key: (2) 5-6-004-055

Condominium File Plan No. 214

SECOND RESTATED DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF WAVECREST I

WHEREAS, MANAWAI CORPORATION, hereinafter called the "Developer," owns in fee simple the real property described as follows:

All of that certain parcel of land situate at Manawai, Island of Molokai, County of Maui, State of Hawaii, described as follows:

Lot A-I, area 5.61 acres, as shown on Map 4, filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1262.

Being a portion of the Land described in Transfer Certificates of Title set forth in Exhibit "1" hereto.

AND WHEREAS, Developer improved said land by constructing thereon residential buildings and other improvements in accordance with the plans incorporated herein by reference and filed in the filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Condominium Map No. 214; and

(By Ekimoto & Morris, 9/3/10)

WHEREAS, in order to create a condominium project consisting of said land and improvements (herein called the "Project") to be known as "WAVECREST I" the Developer, by that Declaration of Horizontal Property Regime filed as aforesaid June 4, 1974 as Document No. 684024 and noted on Transfer Certificate of Title No. 149,819, submitted said property to a Horizontal Property Regime established by Chapter 514, Hawaii Revised Statutes, (now known as Chapter 514B<sup>1</sup>, Hawaii Revised Statutes, as amended, the Condominium Property Act) and in furtherance thereof made the following declarations as to divisions, limitations, restrictions, covenants and conditions and thereby declared and agreed that said property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, restrictions and conditions set forth therein and in the By-Laws attached thereto as Exhibit A and made a part thereof as the same may from time to time be amended in accordance with law and the within Declaration and By-Laws which declarations, restrictions and conditions shall constitute covenants running with the land and shall be binding on and for the benefit of the parties hereto their successors and assigns and all subsequent owners and lessees of all or any part of the Project and their respective successors, heirs, executors, administrators and assigns; and

WHEREAS, said Declaration, as amended, was restated by that certain Restated Declaration of Condominium Property Regime of WAVECREST I, filed on November 10, 1994 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2194509 ("Restated Declaration") and said restatement was further amended by instruments dated August 7, 1995 and May 2, 2007, filed as Land Court Document Nos. 2253355 and 3595992, respectively; and

WHEREAS, the Restated Declaration was corrected by Correction Amendment to Restated Declaration of Condominium Property Regime of Wavecrest I, filed on September 5, 1996 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 2334193; and

WHEREAS, WAVECREST I has incorporated under Chapter 415B (now Chapter 414D), Hawaii Revised Statutes, as the Association of Condominium Owners of Wavecrest Resort, Inc.; and

WHEREAS, Section 514B-109 Hawaii Revised Statutes, as amended, empowers boards of directors of condominium associations to restate their declaration to set forth amendments thereto, and to conform the provisions thereof to the provisions of Chapter 514B, Hawaii Revised Statutes, as amended and any other statute, ordinance, rule, or regulation enacted by any governmental authority by a resolution adopted by such boards; and

WHEREAS, at a duly held meeting, on November 29, 2007, the Board of Directors of the Association of Apartment Owners of the Wavecrest I (hereinafter called the "Board of Directors") resolved to restate the Declaration (hereinafter referred to as the "Declaration") pursuant to Section 514B-109, Hawaii Revised Statutes, as amended, in the manner set forth herein;

NOW, THEREFORE, the Declaration is hereby restated to read as follows:

A. Division of Property. The Project is hereby divided into the following 128 freehold estates:

1. Commercial Units.

One freehold estate known as a Food Facility Condominium Unit D situate adjoining the pool cabana as shown upon said Condominium Map being an area of 1176 square feet (28' X 42').

At all times the use of said Unit D and the single-story building and improvements to be constructed thereon shall be limited to the installation and operation of a restaurant food facility to serve the Project's Apartment Owners and the invitees thereto.

One freehold estate known as a Store Facility Unit E designated in the spaces between the perimeter walls, floors and ceilings of an area of 645 square feet in the existing Reception Building and an adjoining land area of 490 square feet for a future building addition thereto being a total area of 1135 square feet as shown upon said Condominium Map.

At all times the use of said Unit E and the existing or future improvements thereon shall be limited to the installation and operation of a general store including beverages and liquor, and storage areas, to serve the Project's Apartment Owners and the invitees thereto.

Except for the addition of said two commercial condominium Units D and E, the other freehold estates being One Hundred Twenty-Six (126) apartment units of the Project remain unchanged as designated in the Declaration and Condominium Map.

## 2. Residential Units<sup>2</sup>.

One hundred and twenty-six (126) freehold estates are hereby designated in the spaces between the perimeter walls, floors and ceilings of each of the one hundred and twenty-six (126) residential units of the Project located in three (3) buildings of three stories each. Each building is constructed on a concrete slab and consists principally of wood frame, panel exterior siding, gypsum board, and carpet flooring.

(a) Type of Residential Units. The project's 126 residential units contain three different floor plans, being:

FIRST, a total of one hundred and eleven (111) one-bedroom apartments, located upon three floors, containing a bath, bedroom, kitchen and a living-dining area, plus exterior lanai; each apartment containing a total of 720 square feet;

SECOND, a total of six (6) two bedroom one bath apartments, located upon three floors, containing a bath, 2 bedrooms, kitchen and a living-dining area, plus exterior lanai, each apartment containing a total of 919 square feet;

THIRD, a total of nine (9) two bedroom one and a half bath apartments, located upon three floors, containing 2 bedrooms, one and a half baths, kitchen and a living-dining area, plus 2 exterior lanais; each apartment containing a total of 999 square feet.

Each apartment has appurtenant to it one (1) parking space designated on the Condominium map by the number assigned to each residential unit prefaced by building letter "A", "B", or "C".<sup>3</sup>

Each apartment is located on the floor having the same number as the first digit of its apartment number and each building is named as follows:

"Maile" Building "A"

"Lehua" Building "B"

"Pikake" Building "C"

The floor area of each apartment in each of the three buildings together with the area of its appurtenant lanai or lanais and the number of its appurtenant parking stall, and also its appurtenant individual percentage interest in the common elements, are as stated on the following pages.

WAVECREST I  
 "Maile" Building "A" – 48 apartments

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest</u>
<u>First Floor</u>						
101	A-101	803	116		919	1/128
102	A-102	604	116		720	1/128
103	A-103	604	116		720	1/128
104	A-104	604	116		720	1/128
105	A-105	604	116		720	1/128
106	A-106	604	116		720	1/128
107	A-107	604	116		720	1/128
108	A-108	604	116		720	1/128
109	A-109	604	116		720	1/128
110	A-110	604	116		720	1/128
111	A-111	604	116		720	1/128
112	A-112	604	116		720	1/128
113	A-113	604	116		720	1/128
114	A-114	604	116		720	1/128
115	A-115	604	116		720	1/128
116	A-116	803	116		919	1/128
<u>Second Floor</u>						
201	A-201	803	116		919	1/128
202	A-202	604	116		720	1/128
203	A-203	604	116		720	1/128
204	A-204	604	116		720	1/128
205	A-205	604	116		720	1/128
206	A-206	604	116		720	1/128
207	A-207	604	116		720	1/128
208	A-208	604	116		720	1/128
209	A-209	604	116		720	1/128
210	A-210	604	116		720	1/128
211	A-211	604	116		720	1/128
212	A-212	604	116		720	1/128
213	A-213	604	116		720	1/128
214	A-214	604	116		720	1/128
215	A-215	604	116		720	1/128
216	A-216	803	116		919	1/128
<u>Third Floor</u>						
301	A-301	803	116		919	1/128
302	A-302	604	116		720	1/128
303	A-303	604	116		720	1/128

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest</u>
304	A-304	604	116		720	1/128
305	A-305	604	116		720	1/128
306	A-306	604	116		720	1/128
307	A-307	604	116		720	1/128
308	A-308	604	116		720	1/128
309	A-309	604	116		720	1/128
310	A-310	604	116		720	1/128
311	A-311	604	116		720	1/128
312	A-312	604	116		720	1/128
313	A-313	604	116		720	1/128
314	A-314	604	116		720	1/128
315	A-315	604	116		720	1/128
316	A-216	803	116		919	1/128

"Lehua" Building "B" – 30 apartments

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest*</u>
<u>First Floor</u>						
101	B-101	604	116		720	1/128
102	B-102	604	116		720	1/128
103	B-103	604	116		720	1/128
104	B-104	604	116		720	1/128
105	B-105	604	116		720	1/128
106	B-106	604	116		720	1/128
107	B-107	604	116		720	1/128
108	B-108	604	116		720	1/128
109	B-109	604	116		720	1/128
110	B-110	835	116	48	999	1/128

<u>Second Floor</u>						
201	B-201	604	116		720	1/128
202	B-202	604	116		720	1/128
203	B-203	604	116		720	1/128
204	B-204	604	116		720	1/128
205	B-205	604	116		720	1/128
206	B-206	604	116		720	1/128
207	B-207	604	116		720	1/128
208	B-208	604	116		720	1/128
209	B-209	604	116		720	1/128
210	B-210	835	116	48	999	1/128

**Third Floor**

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest*</u>
301	B-301	604	116		720	1/128
302	B-302	604	116		720	1/128
303	B-303	604	116		720	1/128
304	B-304	604	116		720	1/128
305	B-305	604	116		720	1/128
306	B-306	604	116		720	1/128
307	B-307	604	116		720	1/128
308	B-308	604	116		720	1/128
309	B-309	604	116		720	1/128
310	B-310	835	116	48	999	1/128

**"Pikake" Building "C" – 48 apartments**

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest*</u>
<b>First Floor</b>						
101	C-101	835	116	48	999	1/128
102	C-102	604	116		720	1/128
103	C-103	604	116		720	1/128
104	C-104	604	116		720	1/128
105	C-105	604	116		720	1/128
106	C-106	604	116		720	1/128
107	C-107	604	116		720	1/128
108	C-108	604	116		720	1/128
109	C-109	604	116		720	1/128
110	C-110	604	116		720	1/128
111	C-111	604	116		720	1/128
112	C-112	604	116		720	1/128
113	C-113	604	116		720	1/128
114	C-114	604	116		720	1/128
115	C-115	604	116		720	1/128
116	C-116	835	116	48	999	1/128

**Second Floor**

201	C-201	835	116	48	999	1/128
202	C-202	604	116		720	1/128
203	C-203	604	116		720	1/128
204	C-204	604	116		720	1/128
205	C-205	604	116		720	1/128
206	C-206	604	116		720	1/128
207	C-207	604	116		720	1/128
208	C-208	604	116		720	1/128
209	C-209	604	116		720	1/128

<u>Apt. No.</u>	<u>Parking Stall No.</u>	<u>Living Area</u>	<u>Lanai</u>	<u>Lanai #2</u>	<u>Total</u>	<u>Percentage Common Interest*</u>
210	C-210	604	116		720	1/128
211	C-211	604	116		720	1/128
212	C-212	604	116		720	1/128
213	C-213	604	116		720	1/128
214	C-214	604	116		720	1/128
215	C-215	604	116		720	1/128
216	C-216	835	116	48	999	1/128

Third Floor

301	C-301	835	116	48	999	1/128
302	C-302	604	116		720	1/128
303	C-303	604	116		720	1/128
304	C-304	604	116		720	1/128
305	C-305	604	116		720	1/128
306	C-306	604	116		720	1/128
307	C-307	604	116		720	1/128
308	C-308	604	116		720	1/128
309	C-309	604	116		720	1/128
310	C-310	604	116		720	1/128
311	C-311	604	116		720	1/128
312	C-312	604	116		720	1/128
313	C-313	604	116		720	1/128
314	C-314	604	116		720	1/128
315	C-315	604	116		720	1/128
316	C-216	835	116	48	999	1/128

(b) Access. Each apartment has immediate access to its entries, and to the walkways, corridors and stairways, if any, appurtenant to such apartment, and connecting its building to the roads and parking areas of the project.

(c) Area of Apartments. The apartment number, the enclosed living area in square feet of each apartment within the Project is described in paragraph (a) above. All computations for square foot living areas have been rounded off to the nearest foot; and do not include the front lanai, which is 116 square feet in every unit including an additional 56 square feet of second bedroom lanai as to those two bedroom one and a half bath units.

(d) Limit of Apartments. The respective apartment shall not be deemed to include the undecorated or unfinished surfaces of the perimeter walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits, or other utility lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter walls, the inner decorated or finished surfaces of all walls, floors and ceilings and the fixtures originally installed therein.

3. Common Elements. One freehold estate is hereby designated in all of the remaining portions and appurtenances of the Project, herein called the "common elements", including specifically but not limited to:

(a) Said land in fee simple;

(b) All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter and load-bearing walls, roofs, and walkways around and between said building;

(c) All yards, grounds, landscaping, garden areas, mailboxes, refuse facilities, restrooms for common use, if any, gazebo and pool, pool equipment, recreational equipment, if any, and like facilities or equipment;

(d) All driveways and parking areas;

(e) All ducts, sewer lines, electrical equipment, pipes, wiring and other central and appurtenant transmission facilities, installations for services including power, light, water, gas, air conditioning, refuse, telephone and televisions signal distribution;

(f) One resident manager's parking space number 1, and 6 project guest parking spaces numbered 2 through 7 inclusive and 6 public parking spaces numbered 1 through 6 inclusive for use with the 6 foot wide public pedestrian easement area, all as shown on said Condominium Map;

(g) All apartment owners will have a 1/128th<sup>4</sup> ownership interest in Lot A-1 improved with a one story building (containing the manager's one bedroom apartment, restroom and office facilities), one manager's parking stall and six guest parking stalls, two tennis courts, the project's sanitation plant and six public parking spaces to serve a six foot wide public pedestrian way to the ocean, and open area for landscaping, maintenance and recreation.

(h) Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance or safety, or normally in common use.

4.<sup>5</sup> Limited Common Elements. Certain parts of the common elements, herein called and designated "limited common elements", are hereby set aside and reserved for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) One automobile parking space so designated on said Condominium Map by the number corresponding to the number of each apartment shall be appurtenant to and for the exclusive use of such apartment.

(b) Each stairway corridor and landing, if any, which provides access to an apartment or apartments, shall be appurtenant to and for the exclusive use of the apartment or apartments to which it provides access.

(c) All other common elements of the Project which are rationally related to less than all of said apartments or buildings shall be limited to the use of such apartments or buildings, including but not limited to fixtures which are outside the boundaries of the unit, but serve only that unit (for example, pipes, conduits, wires or plumbing).<sup>6</sup>

B. Incremental Development. Developer completed the separate buildings of the "Project Wavecrest I", the limited common elements and the common elements in increments. Seller anticipated that each building would be ready for occupancy upon its completion. The respective owners accepted their apartments upon completion notwithstanding the fact that other buildings of the Project or some limited common or common elements of the Project were incomplete. The Developer proceeded to the completion of all other facilities of the Project as expeditiously as possible, subject to causes beyond Developer's control.

C. Common Interest. Each apartment shall have appurtenant thereto an undivided 1/128th percentage interest in all common elements of the Project (herein called the "common interest") and the same proportionate share in all common profits and expenses of the Project, except as otherwise provided in this Declaration and for all other purposes including voting.

D. Easements. In addition to any easements hereby established in the limited common elements, the apartments and common elements shall also have and be subject to the following easements.

(a) Each apartment shall have appurtenant thereto non-exclusive easements in the common elements designed for such purposes for ingress to and egress from utility services for and support of such apartment; in the other common elements for use according to their respective purposes, subject always to the exclusive use of the limited common elements as provided herein; and in all other apartments of its building for support;

(b) If any part of the common elements now or hereafter encroaches upon any apartment or limited common element, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event any apartment building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to construction shall be permitted, and valid easements for such

encroachments and the maintenance thereof shall exist.

E. Interest to be Conveyed and Transfer or Alteration. The common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amendment to this Declaration duly recorded or except as otherwise set forth in this Declaration. The common interest and easements shall not be separated from the apartment to which they appertain and shall be deemed to be conveyed, leased or encumbered with such apartment even though; such interest or easements are not expressly mentioned or described in the conveyance or other instrument. The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof except as provided by said Condominium Property Act.

F. Administration of Project. Administration of the Project shall be vested in an association of apartment owners called the "Association", with the authority pursuant to the provisions of the Condominium Property Act, this Declaration and the By-laws to generally maintain, repair, replace and restore the common elements. Specifically, but without limitation, the Association shall:

(a) Make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the Project or any part thereof.

(b) Keep all common elements of the Project in a strictly clean and sanitary condition, and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Project or the use thereof.

(c) Well and substantially repair, maintain, amend and keep all common elements of the Project, including without limitation the buildings thereof, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided herein, and maintain and keep said land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the common elements of the Project herein required to be repaired by the Association, of which notice shall be given by any owner or his agent, within thirty (30) days after the giving of such notice.

(d) Observe any setback lines affecting the Project as may be shown on said Condominium Map, and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary.

(e) Have the right, to be exercised by its Board of Directors or its designee, to enter any apartments and limited common elements from time to time during reasonable hours as may be necessary for the operation of the Project or for making emergency repairs therein required to prevent damage to any apartments or common elements or for the installation, repair or replacement of any common elements.

(f) Not erect or place on the Project any building or structure, including fences and walls, nor make additions or structural alterations to, or exterior changes of, any

common elements of the Project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications approved by a majority of apartment owners (or such larger percentage as required by law or this Declaration) including all owners of apartments thereby directly affected, as determined by the Board, and complete any such improvements diligently after the commencement thereof; provided that: 1) minor additions to or alterations of the common elements that do not substantially affect other owners may be permitted under Sections 514B-38, 514B-140(c) and 514B-140(d), Hawaii Revised Statutes, as amended; and 2) the Board may install solar energy and wind energy devices consistent with Section 514B-140(d).<sup>7</sup>

(g) Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.

(h) Not erect, place or maintain any laundry, television or other antennas (except as required by federal law)<sup>8</sup>, or any other property, on said Project visible from any point outside of any building of said Project.

G. Managing Agent: Service of Process. Operation of the Project may<sup>9</sup> be conducted for the Association by a responsible corporate Managing Agent, duly qualified under the provisions of Section 514B-132, Hawaii Revised Statutes,<sup>10</sup> who shall be appointed by the Association in accordance with the By-Laws. The Managing Agent is hereby authorized to receive service of legal process in all cases provided in said Condominium Property Act. The initial Managing Agent was ROBIN BAKER, whose principal place of business and whose post office address was Diamond J. Ranch, Keuwanui, Star Route, Kaunakakai, Molokai, Hawaii.

H. Common Expenses. All charges, costs and expenses whatsoever incurred by the Association, for or in connection with the administration of the Project, including without limitations, the operation thereof, any maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the common elements or any accident, fire or nuisance herein required with respect to the Project, shall constitute common expenses of the Project for which all apartment owners shall be severally liable in proportion to their respective common interests.

The common expenses shall also include a proportionate share in accordance with the percentage interest of the owners of this Project as heretofor of all reasonable expenses of maintenance, operation, repair, replacement, insurance, rent, real property taxes, and assessments, in connection with lot A-1 shown on said Condominium Map and the improvements thereon.

The Board shall from time to time (so as to keep all items currently payable without delinquency) assess the common expenses against all the apartments in their respective, proportionate shares, and the unpaid amount of such assessments against any apartment shall constitute a lien against such apartment which may be foreclosed by the Board or Managing agent as provided by said Condominium Property Act, provided that thirty (30) days prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such apartments as shown in the Association's record of ownership.

I. Compliance with Declaration, By-Laws and House Rules. All apartment owners, their tenants, families, servants and guests, and any other persons who may in any manner use the Project; shall be bound by and comply strictly with the provisions of this

Declaration, the Bylaws and House Rules for the Association, and all agreements, decisions and determinations of the Association as lawfully made or amended from time to time, and failure to comply with any of the same shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or both, maintainable by the Managing Agent or the Board on behalf of the Association, or in a proper case by an aggrieved apartment owner.

J. Insurance. The Board on behalf of the Association at its common expense shall at all times keep all buildings of the Project insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in Hawaii in an amount as near as practicable to the full replacement cost thereof without deductions for depreciation, <sup>11</sup> in the name of the Board as trustee for all apartment owners and mortgagees according to the loss or damages to their respective apartments and appurtenant common interest, and payable in case of loss to such bank or trust company authorized to do business in Hawaii as the Board shall designate for all proceeds of such insurance, and shall cause true copies of said insurance policies or certificates thereof to be deposited with the Lender, without prejudice to the right of each apartment owner to insure his apartment for his own benefit. In every case of such loss or damage all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing or otherwise reinstating the building in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved as herein provided, and the Association at its common expense shall make up any deficiency in such insurance proceeds. Every such policy of insurance shall:

(a) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any apartment owner;

(b) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such buildings is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board of any apartment owner or any other persons under either of them;

(c) Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least sixty (60) days' prior written notice thereof to the Board, and every other person in interest who shall have requested such notice of the insurer;

(d) Contain a waiver by the insurer of any right of subrogation to any right of the Board, or apartment owners against any of them or any other persons under either of them;

(e) Shall require the insurer, at the inception of the policy and on each anniversary date thereof, to provide the Board of Directors with a written summary, in layman's terms, of the policy, which summary shall include the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates, which information the Board of Directors shall provide to each apartment owner.

(f) Contain a standard mortgagee clause which shall:

(1) Provide that any reference to a mortgagee in such policy mean and include all holders of mortgages of any apartment deed of the Project, in their respective order and preference, whether or not named herein.

(2) Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, or apartment owners or any persons under any of them.

(3) Waive any provisions invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(4) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

(g) The board, in the case of a claim for damage to a unit or the common elements, may:

(1) Pay the deductible amount as a common expense;

(2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or

(3) Require the unit owners of the units affected to pay the deductible amount.<sup>12</sup>

The Board on behalf of the Association at its common expense shall also affect and maintain at all times comprehensive general liability insurance, covering all apartment owners with respect to the Project in an insurance company authorized to do business in Hawai'i with minimum limits of not less than \$250,000.00 for injury to one person and \$500,000.00 for injury to more than one person in anyone accident or occurrence and \$200,000.00 for property damage without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartment. Upon receipt of said insurance the Board shall deposit with the Developer current certificates of said insurance.<sup>13</sup>

The Board shall obtain directors and officers liability coverage at a level deemed reasonable by the Board.<sup>14</sup>

K. Uninsured Casualty. In any case at any time or times any improvements of the Project shall be substantially damaged or destroyed by any casualty not herein required to be insured against, the decision to rebuild, repair or restore such improvements shall be determined by affirmative vote of seventy-five percent (75%) of the apartment owners except that in the event said uninsured casualty pertains to the improvements owned in common upon lot A-1, as with the owners of other projects the Association shall be obligated to join with the Associations of the adjacent projects to rebuild, repair or restore such improvements unless all Associations shall separately determine by a vote of seventy-five percent (75 %) of the apartment owners of each Association not to rebuild, repair or restore such improvements. Any such approved restoration of the common elements shall be completed diligently by the Association at its common expense, and the apartment owners shall be solely responsible for any restoration of their respective apartments so damaged or destroyed according to the original plan and elevation thereof or such other plan first approved as provided herein. Unless such restoration is undertaken within a reasonable time after such casualty the Association at its

common expense shall remove all remains of improvements so damaged or destroyed and restore the site thereof to good orderly condition and even grade.

L. Alteration of Project. Restoration or replacement of the Project or of any building, swimming pool, or other facility, or construction of any additional building or structural alteration or addition to any structure, different in any material respect from said Condominium Map of the Project, shall be undertaken by the Association or any apartment owners only pursuant to an amendment of this Declaration, duly executed by or pursuant to the affirmative vote of at least sixty-seven percent (67%) of the apartment owners and accompanied by the written consent of the holders of all liens affecting any of the apartments, and in accordance with complete plans and specifications therefore first approved in writing by the Board, and promptly upon completion of such restoration, replacement or construction, the Association shall duly record or file of record such amendment together with a complete set of floor plans of the Project as so altered, certified as built by a registered architect or professional engineer.<sup>15</sup>

M. Maintenance Reserve Fund. In accordance with Chapter 514B, Hawaii Revised Statutes, and Article IV, Section 1 of the By-Laws,<sup>16</sup> the Board shall establish and maintain a Maintenance Reserve Fund by the assessment of and payment by all apartment owners in equal monthly installments of their respective proportionate shares of such reasonable annual amount as the Board may estimate as adequate to cover each apartment owner's obligations to provide for common utilities, insurance real property taxes, maintenance and repair of the common elements and other expenses of administration of the Project, which shall be deemed conclusively to be a common expense of the Project. The Board may include reserves for contingencies in such assessment, and except as otherwise provided in the By-Laws such assessment may from time to time be increased or reduced in the discretion of the Board. The Proportionate interest of each apartment owner in said Fund cannot be withdrawn or separately assigned by shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case this Condominium Property Regime shall be terminated or waived said Fund remaining after full payment of all common expenses of the Association shall be distributed to all apartment owners in their respective proportionate shares except for the owners of any apartments then reconstituted as a new Condominium Property Regime.

N. Amendment. Except as otherwise provided herein or in said Condominium Property Act, this Declaration may be amended by affirmative vote or written consent of sixty-seven percent (67%) of all apartment owners and shall be effective only upon the recording of any instrument setting forth such amendment and vote duly executed by such owners or by the proper officers of the Association.<sup>17</sup>

Notwithstanding the foregoing, the Developers reserved the right to amend this Declaration to, (1) file the "as built" verified statement (with plans, if applicable) required by Section 514-13, Hawaii Revised Statutes, (2) so long as such statement is merely a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, or (3) so long as any plans filed therewith involve only immaterial changes to the layout, location, apartment numbers, or dimensions of the apartments as built.

O. Restrictions as to Use. Except as set forth herein, the apartment units at all times shall be used only as residential apartments, but such apartments may be leased or rented from time to time for transient occupancy.

P. Definitions. The term "majority" or "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests, and any specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interest.

Q. Exemptions For Handicapped Persons. Notwithstanding anything to the contrary contained in this Declaration, the By-Laws or the House Rules, and subject to reasonable administrative requirements as set forth in the House Rules, handicapped residents shall: (1) be permitted to make reasonable modifications to their apartments and/or the common elements at their expense (including without limitation the cost of obtaining any bonds required by this Declaration or the By-Laws), if such modifications are necessary to enable them to use and enjoy their apartments and/or the common elements as the case may be; and (2) be allowed reasonable exemptions from this Declaration, the By-Laws, and the House Rules when necessary to enable them to use and enjoy their apartments and/or the common elements.

R. 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:

(1) This Project shall be governed by the provisions of Hawaii Revised Statutes, Chapter 514B, as amended;

(2) 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;

(3) 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;

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

(5) Punitive damages may not be awarded except as provided in Hawaii Revised Statutes, Section 514B-10; and


(6) Approval requirements for leases or uses of the common elements shall be governed by Hawaii Revised Statutes, Section 514B-38.<sup>18</sup>

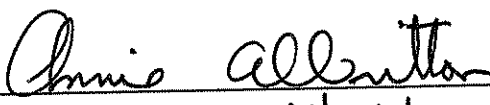
*(The remainder of this page is intentionally left blank. Signature page follows.)*

IN WITNESS WHEREOF, the undersigned have executed this instrument this

16 day of September, 2010.

ASSOCIATION OF APARTMENT OWNERS OF  
WAVECREST I, also known as Association of  
Condominium Owners of Wavecrest Resort, Inc.

By   
Print Name Doug Howard  
Its President

By   
Print Name Annie Albritton  
Its Secretary

STATE OF HAWAII

COUNTY OF MAUI

)  
) ss.  
)

On this 16th day of September, 2010, in the Second Circuit of the State of Hawai'i, before me personally appeared Doug Howard & Annie Albritton, 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 & SECRETARY of the Board of Directors of the Association of Apartment Owners of Wavecrest I, also known as Association of Condominium Owners of Wavecrest Resort, Inc., a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Second Restated Declaration of Condominium Property Regime of Wavecrest I", 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 September 16, 2010 and contained 23 pages at the time of this acknowledgment/certification.



Nadine Akiona

Print Name: NADINE AKIONA  
Notary Public, State of Hawai'i

My Commission Expires: 4-14-2014

STATE OF HAWAI'I

COUNTY OF MAUI

)  
) ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, in the Second Circuit of the State of Hawai'i, before me personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ of the Board of Directors of the Association of Apartment Owners of Wavecrest I, also known as Association of Condominium Owners of Wavecrest Resort, Inc., a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "Second Restated Declaration of Condominium Property Regime of Wavecrest I", 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 \_\_\_\_\_ and contained 23 pages at the time of this acknowledgment/certification.

Print Name: \_\_\_\_\_  
Notary Public, State of Hawai'i

My Commission Expires: \_\_\_\_\_

## ENDNOTES

The following endnotes correspond to provisions in the Declaration which have been restated to conform to Chapter 514B, Hawai'i Revised Statutes, the Federal Fair Housing Act, as amended (Title 42, Chapter 45 of the United States Code) and its State counterpart, Chapter 515 of the Hawai'i Revised Statutes, and to integrate all amendments made to the Declaration. This Second Restatement of Declaration correctly sets forth without change the corresponding provisions of the original Declaration, as amended, and supersedes the original Declaration and all prior amendments thereto and restatement thereof. This Second Restatement was made solely for the purpose of information and convenience. In the event of a conflict, the Second Restatement shall be subordinate to the cited statute.

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<sup>1</sup> Throughout this restatement, references to "Chapter 514A" of the Hawai'i Revised Statutes ("HRS") were replaced with "Chapter 514B", which is the recodification of Chapter 514A.

<sup>2</sup> The heading was added having previously been omitted. Additionally, throughout this statement references to "apartment" have been changed by substituting the term "unit" for "apartment", to conform to Chapter 514B, HRS. The term "residential" has been added to differentiate between the commercial units and the residential units.

<sup>3</sup> This language was added by the "Amendment No. 1 to Declaration of Horizontal Property Regime of Wavecrest I" dated June 13, 1975, and recorded as Land Court Document No. 723529. The language of the amendment was not reflected in the restated Declaration.

<sup>4</sup> The percentage of common interest was corrected from 1/126<sup>th</sup> share to 1/128<sup>th</sup> share in "Correction Amendment to Restated Declaration of Condominium Property regime of Wavecrest I" dated September 5, 1996 and filed as Land Court Document No. 2334193.

<sup>5</sup> The numbering was changed from "3" to "4" to correct duplication in section numbers.

<sup>6</sup> Section A.4 was amended to conform to Section 514B-35, HRS, which designates certain parts of the project as limited common elements.

<sup>7</sup> Section F was amended to conform to Section 514B-38, HRS, which now authorizes minor additions or alterations of the common elements that do not impact other owners and comply with Section 514B-140(c), HRS, as well as, the installation or removal of telecommunications equipment as provided in Section 514B-140(d). Section F was also amended to recognize the changes made by Act 53 (SLH 2010) that allow the Board to install solar and wind energy devices without owner consent.

<sup>8</sup> Section 207 of the Telecommunications Act of 1996 and rules adopted by the Federal Communications Commission allow the installation of certain antennas and satellite dishes.

<sup>9</sup> Section G was amended in the "Amendment to Declaration and By-Laws of the Association of Apartment Owners of Wavecrest I" dated August 7, 1995, filed as Land Court Document No. 2253355, which changed the term "shall" to "may."

<sup>10</sup> Section G was further amended to reference Section 514B-132 which provides new rules and criteria for managing agents.

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<sup>11</sup> Section J must be read in light of current insurance terminology, since it references insurance policies that are no longer available in the insurance industry. Section J must also be read in light of the requirements of Chapter 514B, HRS, Section 514B-143, that the Board must purchase and maintain insurance, and that the insurance policy must cover the limited common elements.

<sup>12</sup> Section J was further amended to conform to Section 514B-143(d), HRS, which permits the Association to assess the deductible amount of the Association's policy after notice and an opportunity for a hearing if the Board determines owners who caused the damage or from whose units the damage or loss originated

<sup>13</sup> Section J should be read in light of the requirements of Section 514B-143(a)(2), which change the liability coverage to a commercial policy and increased the policy limit amounts.

<sup>14</sup> Section J was amended to conform to Section 514B-143(a)(4), which requires the board to purchase directors and officers liability coverage.

<sup>15</sup> Section L was amended to conform to Section 514B-140(b), HRS, which lowered the approval requirement to 67%. Section L should also be read in light of the requirements of that section relating to the consent of all owners who are directly affected, preventing the Board from unreasonably withholding its approval, and allowing the Board to disapprove an alteration that is unsafe, impairs an easement, or affects a nonconsenting owner.

<sup>16</sup> Chapter 514B-148 and Article IV, Section 1 of the By-Laws impose additional requirements relating to reserves.

<sup>17</sup> Section N was amended to conform to Section 514B-32(a)(11), HRS, which lowered the owner approval requirement from 75% to 67%.

<sup>18</sup> Section R was added by the "Amendment to the Corrected Restated Declaration of Condominium Property Regime of Wavecrest I" dated May 2, 2007 filed as Land Court Document No. 3595992.

**AOAO WAVECREST I**

<u>Apt #</u>	<u>TCT#</u>
101	480795
101	767535
101 BLDG A	324424
101-C	858042
102	474123
102	580920
102	843913
102	970753
103	607008
104	754488
104	843168
104 BLDG B	200001
105	659066
105	707003
105	970361
105 A	580085
106	343941
106	765524
106	877904
106C	967897
107	590427
107	720666
107	839394
107	980078
107 BLDG B	296531
108	451214
108	669408
108	842857
108B	962303
109	650154
109	824700
109 BLDG B	364442
109 BLDG A	191228
110	694568
110	811635
111	647399
111	811641
112	857200
113	782112
113	805576
114	713769

**AOAO WAVECREST I**

<u>Apt #</u>	<u>TCT#</u>
114 BLDG A	196520
115	678418
115X	783885
116	767790
116	806955
116	908159
201	607188
201	632773
201	762491
202	694881
202	739454
202	853652
202	963343
202C	935016
203	578257
203	802528
203	856872
203B	987397
204	929810
205	603720
205	782561
205 BLDG A	281246
205 C	901228
206	425436
206	485054
206	772068
206 BLDG A	353585
206 BLDG A	434350
206C	935015
206C	977362
207	727576
207 BLD A	698272
207 BLDG C	443970
208	736169
208	774576
208 BLDG B	376429
209	643500
209	840016
209A	974247
210	448160
210	606738

**AOAO WAVECREST I**

<b>Apt #</b>	<b>TCT#</b>
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210	866912
211	717574
211	978816
211 BLDG A	377200
211 BLDG A	377201
212	539831
212	961655
212C	868366
213	605215
213	702016
214	796696
214 BLDG C	334210
215 BLDG A	352498
215 BLDG C	491673
216	804798
216A	872277
301	697048
301	840847
301 A	556827
302	492950
302	692067
302	879329
303	570900
303	800838
303	849881
303 BLDG C	329328
304	767715
304	852831
304-B	921286
305	616272
305	661501
305	766872
305 BLDG A	396283
306	671382
306	789295
306	870033
306C	976757
307	761906
307	847010
307 BLDG B	655879
308	768792

**AOAO WAVECREST I**

<b>Apt #</b>	<b>TCT#</b>
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309	751662
309	854155
309 BLDG A	324198
310	621053
310	667188
310 BDG A	565688
311	694882
311	740831
312	690534
312	838477
313	647605
313	801079
313A	969218
314	767881
314	799717
315 BLDG A	534850
315 BLDG C	312696
316 BLD C	560108
316 BLDG A	552931
A-204	431270
A-204	435618
A-204	528109
A301	961329
A303	986436
B103	546906
B103	982846
B110	729789
B204	610360
B204	899121
B308	668017
C-308	474969
C103	860878
C112	672288
C204	707560
C209	619668
C214	660434
C304	690967
C304	973500
C307	935704
D & E	291863