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STATE OF HAWAII  
(BUREAU OF CONVEYANCES)

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Condominium File Plan No. 214

SECOND RESTATED BY-LAWS OF THE ASSOCIATION  
OF APARTMENT OWNERS 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-1, 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 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. 684,024 and noted on said Transfer Certificates of Title submitted said property to a Horizontal Property Regime established by Chapter 514, Hawaii Revised Statutes, (now known as Chapter 514B, Hawaii Revised Statutes ("HRS"), 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<sup>1</sup>; 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; 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, By-Laws for the project ("By-Laws") were attached to and recorded contemporaneously with the Declaration, but are now being recorded separately, to bind all present and future owners, tenants and occupants of any units of the project, and all conditions in the By-Laws; and

WHEREAS, said By-Laws, as amended, was restated by that certain Restated By-Laws 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. 2194510 ("Restated By-Laws") and said restatement was further amended by instruments dated December 16, 1994 and August 7, 1995, filed as Land Court Document Nos. 2204260 and 2253355; and

WHEREAS, WAVECREST I has incorporated under Chapter 415B, Hawaii Revised Statutes (now recodified as 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 By-Laws to set forth amendments thereto, and to conform the provisions thereof to the provisions of Chapter 514B, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by such boards<sup>2</sup>; 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 dba the Association of Condominium Owners of Wavecrest Resort, Inc. (hereinafter called the "Board of Directors") resolved to restate the By-Laws (hereinafter referred to as the "By-Laws"), pursuant to Section 514B-109, Hawaii Revised Statutes, as amended, in the manner set forth herein;

NOW, THEREFORE, the By-Laws are hereby restated to read as follows:

The following By-Laws shall apply to the above-referenced condominium project (herein called the "project"), situate at Manawai, Island of Molokai, State of Hawaii, as described in and created by said Declaration and to all present and future owners, tenants and occupants of any units of the project and all other persons who shall at any time use the project:

## ARTICLE I MEMBERSHIP

Section 1. Qualification. All owners of units<sup>3</sup> of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any unit upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such unit ceases for any reason; PROVIDED, HOWEVER, that to such extent and for such purposes, including voting, as shall be provided by lease of any such unit filed with the Board of Directors of the Association, the lessee of such unit shall be deemed to be the owner thereof.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the project or such other suitable place convenient to the unit owners as may be designated by the Board; provided that in the event of a natural disaster, such as a hurricane, an Association meeting may be held outside the State.<sup>4</sup>

Section 3. Annual Meetings. The first annual meeting of the Association was held as soon as practicable after recording of the Declaration and these By-Laws upon the call of at least ten percent (10%) of the unit owners. Thereafter, the annual meetings of the Association shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President, a majority of the Board or a petition signed by at least twenty-five percent (25 %) of the unit owners and presented to the Secretary or Managing Agent. If the Secretary or Managing Agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the Association's expense in accordance with the requirements of the By-Laws; provided that a special meeting based upon a petition to the Secretary or Managing Agent shall be set no later than sixty days from receipt of the petition.<sup>5</sup>

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every unit owner according to the Association's record of ownership at least fourteen days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the items on the agenda and containing a standard proxy form authorized by the Association, if any, in any of the following ways: (a) by delivering it to him personally, or (b) by

leaving it at his unit in the project or usual residence or place of business, (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership, or (d) at the option of the unit owner, expressed in writing, by electronic mail to the electronic mail address designated in writing by the unit owner.<sup>6</sup> If notice is given pursuant to the provisions of this section, the failure of any unit owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any unit owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 5A. Conduct of Association Meetings. All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.<sup>7</sup>

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of unit owners shall constitute a quorum, and the acts of a majority of the unit owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of unit owners" herein means the owners of units to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, and any other specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each unit is entitled shall be the percentage of the common interests assigned to such unit in the Declaration. Votes may be cast in person or by proxy by the respective unit owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any unit owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such unit in such capacity. The vote for any unit owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such unit. No votes allocated to a unit owned by the association may be cast for the election or reelection of directors.<sup>8</sup>

Section 8. Proxies and Pledges. The authority given by any unit owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary or the Managing Agent no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains and must contain at least: the printed name and the signature of the person or persons giving the proxy, the unit or units for which the proxy is given, the printed name of the person or entity to whom the proxy is given, the date that the proxy is given, and the date of the meeting and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such owner, PROVIDED, that a proxy shall be valid for the meeting to which it pertains and its adjournments only. Voting rights transferred or pledged by mortgage, deed of trust or agreement of sale of any unit or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy. The owner's proxy may be sent by mail or electronic transmission through a duly executed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the Association or the Managing agent. A proxy is void if it purports to be revocable without notice.<sup>9</sup>

All official proxy forms authorized by the Board for use at any annual meeting or its adjournments shall contain box wherein the unit owner may indicate that the unit owner wishes to obtain either a summary of the annual audit report or an unabridged copy of the annual audit report as required by Article III, Section 8 of these By-Laws.

Proxies may designate any person as proxy and may limit the use of such proxy as the unit owner may specify thereon; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit and provided, further, that nothing in this section shall effect the holder of any proxy under a first mortgage of record encumbering an unit or under an agreement of sale affecting an unit.

Proxies may be given to the Board; provided that they shall contain boxes wherein the unit owner may indicate that the proxy is given:

- (a) for quorum purposes only;
- (b) to the individual whose name is printed on a line next to this box;
- (c) to the Board as a whole and that the vote is to be made on the basis of the basis of the preference of the majority of the directors present at the meeting; or
- (d) to those Board members present at the meeting to be shared with each Director receiving an equal percentage.<sup>10</sup>

With respect to the use of Association funds to distribute proxies:

(1) If the Board intends to use Association funds to distribute proxies, including the standard proxy form referred to above, the Board shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the Board receives within seven days of the posted notice a request by any owner for use of Association funds to solicit proxies accompanied by a statement, the Board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of Association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of Association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8-1/2" x 11" page, indicating the owner's qualifications to serve on the Board or reasons for wanting to receive proxies.

(2) The Board or member of the Board may use Association funds to solicit proxies as part of the distribution of proxies. If a member of the Board, as an individual, seeks to solicit proxies using Association funds, the Board member shall proceed as a unit owner under paragraph (1), above.<sup>11</sup>

The Board shall not adopt any rule prohibiting the solicitation of proxies or distribution of material relating to Association matters on the common elements by unit owners; provided that the Board may adopt rules regulating reasonable time, place and manner of the solicitations or distributions, or both.<sup>12</sup>

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the unit owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

Section 11. Minutes of Meetings.

(a) Minutes of meetings of the Association shall be approved at the next succeeding regular meeting or by the Board, within sixty days after the meeting, if authorized by the owners at an annual meeting. If approved by the Board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the Association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an Association meeting.<sup>13</sup>

## ARTICLE II BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of not less than six (6) or more than nine (9) persons, each of whom shall be the sole owner or co-owner of record of an unit, vendees under an agreement of sale, a trustee of a trust which owns a unit, or an officer, partner, member or other person authorized to act on behalf of any other legal entity which owns a unit. There shall not be more than one representative on the Board from any one unit.<sup>14</sup> The Directors shall serve without compensation. No resident manager or employee of a condominium shall serve on its Board.<sup>15</sup>

Section 2. Powers and Duties. The Board of Directors shall have all powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, by the Declaration or by these By-Laws directed to be exercised or done by the unit owners. Each director shall owe the Association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under Chapter 414D in the performance of such Director's responsibilities.<sup>16</sup>

Section 3. Election and Term. Election of directors shall be by a cumulative voting by secret ballot at each annual meeting and at any special meeting called for the purpose. Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six months, or his ceasing to be the sole owner or co-owner of a unit shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or without cause by vote of a majority of unit owners and a successor shall then and there be elected by a majority of the owners to fill the vacancy thus created. Any director whose removal has been proposed by the unit owners shall be given an opportunity to be heard at such meeting.

If such removal and replacement is to occur at a special Association meeting, the call for such meeting shall be by the President, a majority of the Board or by a petition to the Secretary or Managing Agent signed by not less than twenty-five (25%) of the unit owners as shown in the Association's record of ownership; and provided further that if the Secretary or Managing Agent shall fail to send out the notices for the special meeting within fourteen (14) days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of these By-Laws, and Chapter 514B, Hawaii Revised Statutes, as amended. In addition, a special meeting based upon a petition to the Secretary or Managing Agent must be

set no later than sixty days from receipt of the petition. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with these By-Laws and Chapter 514B, Hawaii Revised Statutes, as amended.<sup>17</sup>

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association, and no notice shall be necessary to any directors in order validly to constitute such meeting provided that a majority of the whole Board shall be present. At its annual meeting the Board shall elect the officers of the Association for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting. A Director shall not vote by proxy at Board meetings.<sup>18</sup>

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight hours' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 8A. Telephone Meetings.

Except as may be otherwise restricted by Chapter 514B, members of the Board of Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participating by such means shall constitute presence in person at a meeting. If permitted by the Board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the Board may require that the unit owner pay for the costs associated with the participation.<sup>19</sup>

Section 9. Attendance at Board Meetings by Members. All meetings of the Board of Directors, other than executive sessions, shall be open to all members of the Association, and Association members who are not on the Board of Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board of Directors votes otherwise.

Section 10. Executive Session. The Board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters; litigation in which the Association is or may become involved; necessary to protect the attorney-client privilege of the Association; or necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions.<sup>20</sup> The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board



shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 12. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Fidelity Bonds. The Board of Directors shall secure annually a fidelity bond as required by Section 514B-132 and 514B-143(a)(3), HRS, as amended to cover all directors, officers, employees and agents of the Association handling or responsible for its funds.<sup>21</sup> The premiums on such bonds shall be paid by the Association.

Section 14. Reimbursement. No Director shall expend Association funds for his travel or per diem, unless the unit owners are informed and a majority approve of these expenses; provided that, with the approval of the Board, Directors may be reimbursed for actual expenditures incurred on behalf of the Association. The minutes shall reflect in detail the items and amounts of the reimbursements.<sup>22</sup>

Section 15. Conflict of Interest. A Director shall not vote at any Board meeting on any issue in which the Director has a conflict of interest.<sup>23</sup> A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

Section 16. Posting of Notice. Notice of all Board meetings shall be posted by the Resident Manager or a member of the Board in prominent locations within the project seventy-two (72) hours prior to the meeting or simultaneously with the notice to the Board of Directors.<sup>24</sup>

Section 17. Documents to be Given to Directors. The Association at its own expense shall provide all Board members, with a current copy of the Declaration, these By-Laws, the House Rules, and annually, a copy of Chapter 514B, Hawaii Revised Statutes, with amendments.

Section 18. Minutes. (a) Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.<sup>25</sup>

### ARTICLE III OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors, and his successor elected, at any regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all units, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and shall be responsible for the proper deposit and custody in the name of the Association of all its funds and securities.

Section 8. Auditor. The Association shall elect annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any unit, to audit the books and financial records of the Association as required by law or directed additionally by the Board of Directors and to conduct no less than one yearly unannounced verification of the Association's cash balance.

The Board shall make available a copy of the annual audit to each unit owner at least thirty (30) days prior to the annual meeting which follows the end of the fiscal year; provided, however, that the Board shall not be required to submit a copy of the annual audit report to a unit owner if the unit owner did not mark the box on an annual meeting proxy sent by the Association to the unit owner indicating that the unit owner wishes to obtain such a report.<sup>26</sup> If the annual audit has not been completed by that date, the Board shall make available.

- (1) An unaudited year-end financial statement for the fiscal year to each unit owner at least thirty (30) days prior to the annual meeting; and
- (2) The annual audit to all unit owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the Association's fiscal year ends less than two (2) months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the Association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

Section 9. Officers Shall Not Be Employees of the Managing Agent. No unit owner who is an employee of any Managing Agent retained by the Association shall serve as an officer. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.<sup>27</sup>

#### ARTICLE IV ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

- (a) Supervision of its immediate management and operation;
- (b) Maintenance, repair, replacement and restoration of the common elements and any additions or alterations thereto;
- (c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;
- (d) Provision at each unit of all water, sewer, electricity and such other utility services as the Board shall deem necessary either at the expense of such unit or as a common expense as determined by the Board;
- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the project;
- (f) Preparation at least 60 days before each fiscal year of a proposed budget and schedule of assessments for such year and distributing or making it available to the unit owners.<sup>28</sup> At a minimum, the budget shall include the following:
  - (1) The estimated revenues and operating expenses of the Association;
  - (2) Information as to whether the budget has been prepared on a cash or accrual basis;
  - (3) The total replacement reserves of the Association as of the date of the budget;

- (4) The estimated replacement reserves the Association will require to maintain the property based upon a reserve study performed by the Association;
  - (5) A general explanation of how the estimated replacement reserves are computed;
  - (6) The amount the Association must collect for the fiscal year to fund the estimated replacement reserves; and
  - (7) Information as to whether the amount the Association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).<sup>29</sup>
- (g) The Association shall assess the unit owners to fund the estimated replacement reserves. For each fiscal year the Association shall collect the full amount required by law to fund the estimated reserves for that fiscal year except as otherwise provided by rules adopted by the Hawaii Real Estate Commission.
- (h) The estimated replacement reserves shall be computed by a formula which is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include:
  - (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
  - (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.
- (i) The Board may not exceed its total adopted annual operating budget by more than twenty percent during the fiscal year to which the budget relates except in emergency situations or with the approval of the majority of the unit owners. Prior to the imposition or collection of an assessment under this paragraph that has not been approved by a majority of the unit owners, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the unit owners with the notice of assessment.<sup>30</sup>
- (j) The requirements of this section shall override any requirements in the Declaration, these By-Laws, or any other Association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, with the exception of:

- (1) any requirements in the Declaration, these By-Laws, or any other Association documents which require the Association to collect more than fifty percent of reserve requirements; or
  - (2) any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.<sup>31</sup>
- (k) Subject to the procedures of Section 514B-157, Hawaii Revised Statutes, as amended, and any rules adopted by the Hawaii Real Estate Commission, any unit owner may enforce compliance with any provision hereof by the Board. In any proceeding to enforce compliance, the Board shall have the burden of proving it has complied with this Section if it has not prepared an annual operating budget and reserve study.<sup>32</sup>
- (l) As used herein:

"Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Emergency situation" means an extraordinary expense:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the Association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the Association that could not have been reasonably foreseen by the Board in preparing and distributing the annual operating budget; or
- (5) Necessary for the Association to obtain adequate insurance for the property which the Association must insure.<sup>33</sup>

"Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year;

"Replacement reserves" means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the Association is obligated to maintain;

- (m) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

- (n) Purchase and maintenance in effect at all times of all policies of hazard and liability insurance for the project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;
- (o) Custody and control of all funds of the Association (subject the requirements of 514B-149, HRS, as amended),<sup>34</sup> maintenance of full and accurate books of account and records of said funds and preparation of such financial reports thereof;
- (p) Notification of all persons having any interest in any unit according to the Association's record of ownership of delinquency exceeding sixty (60) days in the payment of any assessment against such unit.

Section 2. Managing Agent. The Board of Directors may<sup>35</sup> annually employ a responsible Hawaii corporation as Managing Agent who meets all the requirements of 514B-132, HRS, as amended, to manage and control the project subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers duties and at such compensation as the Board may establish, subject to prior approval of every such employment contract by a majority of unit owners.<sup>36</sup>

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more unit owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one unit, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings, without prejudice to the rights of any unit owners individually to appear, sue or be sued. Service of process on two or more unit owners in any such actions, suit or proceeding may be made on the President or Managing Agent. Every Managing Agent shall also be the agent of the respective lessees under any unit leases filed with the Board for the collection, custody and payment of all rent, taxes, assessments and other charges thereunder payable to their lessors.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

## ARTICLE V OBLIGATIONS OF UNIT OWNERS

### Section 1. Assessments.

- (a) All unit owners are obligated to pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective units for common expenses of the project in accordance with the Declaration, and also, with respect to any lease of any unit filed with the Board of Directors, a monthly sum determined by the Managing Agent to be sufficient to accumulate and pay when due all rent, taxes, assessments and other charges thereunder payable by the Lessee of such unit. In the event all said monthly charges are not received by the Managing Agent on or before the 15th day after

said charges are due, the Managing Agent shall assess a late payment charge in the amount of Ten Dollars (\$10.00) to the appropriate unit owner; and if said charges, including said late payment charge, are not received within thirty (30) days after said monthly charges are due, an additional late charge shall be assessed in the amount of Ten Dollars (\$10.00).

- (b) No unit owner shall withhold any assessment levied by the Association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:
- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
  - (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
  - (3) The amount of attorneys' fees and costs, if any, included in the assessment;
  - (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;
  - (5) That an unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and
  - (6) That payment in full of the assessment does not prevent the unit owner from contesting the assessment or receiving a refund of amounts not owed.
  - (7) A unit owner who pays the full amount claimed by the Association may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. If a unit owner and the Association are unable to resolve the dispute through mediation, either party may file for arbitration under 514B-162, HRS, as amended<sup>37</sup>; provided that a unit owner may only file for arbitration if all amounts claimed by the Association are paid in full on or before the date of filing. If the unit owner fails to keep Association assessments current during the arbitration, the Association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all Association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the unit owner fails to pay Association assessments by the end of the thirty day period, the Association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the Association which are not owed.
- (c) The Managing Agent or Board of Directors shall notify the unit owners in writing of maintenance fee increases at least thirty (30) days in advance.

- (d) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to a unit shall constitute a lien on the unit. The lien of the Association may be foreclosed by action or by nonjudicial or judicial power of sale foreclosure procedure as set forth in Chapter 667, HRS, as amended, by the managing agent or Board, acting on behalf of the Association, in like manner as a mortgage of real property.<sup>38</sup>

Section 2. Maintenance of Units. Every unit owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his unit, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such unit and the interior decorated or finished surfaces of all walls, floors and ceilings of such unit with all necessary reparations and amendments whatsoever in good order and condition, except as otherwise provided by law or the Declaration<sup>39</sup>, and shall be liable for all loss and damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing such work authorized by the Board of Directors or the Managing Agent. Every unit owner and occupant shall reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the resident manager or Managing Agent of any such damage or loss or other defect when discovered.

Section 3. Use of Project.

- (a) Except as otherwise set forth in the Declaration, the units of the project shall be used only for residential purposes, but such units may be leased or rented from time to time for transient occupancy.
- (b) All common elements of the project shall be used only for their respective purposes as designed.
- (c) No unit owner or occupant shall place, store or maintain in the halls, lobbies, stairways, elevators, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.
- (d) Every unit owner and occupant shall at all times keep his unit 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 or the Association for the time being applicable to the use of the project.
- (e) No unit owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his unit or the project nor alter or remove any furniture, furnishings or equipment of the common elements.
- (f) No unit owner or occupant shall erect or place in the project any building or structure including fences and walls, nor make any 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 514B-140, HRS, as amended<sup>40</sup>, and pursuant to plans and specifications including detailed plot plan, prepared by a licensed architect if so required by the Board of Directors and approved by the Board and a majority of unit owners (or such larger percentage required by law or the Declaration) including all owners of units thereby directly affected.

- (g) No unit owner shall decorate or landscape any entrance, hallways, planting area or lanai appurtenant to his unit except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board. Unit owners may construct lanai storage cabinets, provided such cabinets are constructed according to specifications adopted by the Board of Directors before construction shall commence.<sup>41</sup>
- (h) All occupants shall avoid making noises and using musical instruments, radios, televisions and amplifiers in such manner as may disturb other occupants.
- (i) No garments, rugs or other objects shall be hung from the windows or facades of the project or otherwise displayed in public view.
- (j) No rugs or other objects shall be dusted or shaken from the windows of or doors of any unit or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the project.
- (k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the project outside of the disposal facilities provided for such purpose.
- (l) No dogs, cats, livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project, except that dogs, cats and other household pets in reasonable number which have been present in the project and are registered with the manager within twenty days of the effective date of this amendment [August 7, 1995] shall be allowed to remain at the project and upon their death may be replaced by their owner with one other similar pet for so long as such owner continues to reside at the project. Those owners and/or occupants who currently own more than one pet may keep all of the current animals but may only replace one of them upon the death of the original animals. Such pets shall be kept by the unit owners and occupants in their respective units but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements except in transit when carried or on leash, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently removed therefrom promptly upon notice given by the resident manager, Managing Agent or Board of Directors.

Notwithstanding the foregoing, certified guide dogs, signal dogs, or other animals upon which handicapped occupants depend for assistance shall be permitted to be kept at the project and shall be allowed to walk throughout the common elements while on a leash, provided that such animals shall at all times be accompanied by the occupants to whom they belong while present upon the common elements. Further, this exception shall also apply to certified guide dogs, signal dogs, or other animals depended upon by handicapped guests of

occupants. If such a certified guide dog, signal dog or other animal causes a nuisance or unreasonable disturbance, the unit owner thereof will be given an opportunity to rectify the problem by measures which fall short of ejectment of the animal from the project. Ejectment will be required only if the Board of Directors reasonably determines that less drastic alternatives have been unsuccessful. If such an animal is ejected, it will nonetheless be allowed to remain at the project for a reasonable period of time while the unit owner thereof attempts to find a suitable replacement animal, provided that the problem is controlled to a sufficient degree that the continued presence of the animal during that interim period of time does not constitute an unreasonable imposition upon other occupants.<sup>42</sup>

- (m) No unit owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of the project or protruding through the walls, windows or roof thereof.
- (n) No unit owner or occupant shall erect, place or maintain any television or other antennas on the project visible from any point outside of his unit.
- (o) Nothing shall be allowed, done or kept in any units or common elements of the project which would overload or impair the floors, walls or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

Section 4. House Rules. The Board of Directors, upon giving notice to all unit owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use of the common elements not inconsistent with any provisions of law, the Declaration or these By-Laws.

Section 5. Expenses of Enforcement.

- (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:
  - (1) Collecting any delinquent assessments against any unit owner's unit;
  - (2) Foreclosing any lien thereon;
  - (3) Enforcing any provision of the Declaration, these By-Laws, the House Rules, and the Condominium Property Act; or the rules and regulations of the Real Estate Commission;

against an unit owner, occupant, tenant, employee of an unit owner, or any other person who may in any manner use the property shall be promptly paid on demand to the Association by such person or persons; provided that if the claims upon which the Association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the Association, shall be promptly paid on demand to such person or persons by the Association.

- (b) If any claim by an unit owner is substantiated in any action against the Association, any of its officers or Directors, or its Board of Directors to enforce any provision of the Declaration, these By-Laws, the House Rules, or the Condominium Property Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an unit owner shall be awarded to such unit owner; provided that no such award shall be made in any derivative action unless:
- (1) The unit owner first shall have demanded and allowed reasonable time for the Board of Directors to pursue such enforcement; or,
  - (2) The unit owner demonstrates to the satisfaction of the court that a demand for enforcement made to the Board of Directors would have been fruitless.

If any claim by an unit owner is not substantiated in any court action against the Association, any of its officers or Directors, or the Board of Directors to enforce any provision of the Declaration, these By-Laws, the House Rules, or the Condominium Property Act, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the Association shall be awarded to the Association, unless the action was filed in small claims court or prior to filing the action in a higher court the unit owner has first submitted the claim to mediation, or to arbitration under part D of Chapter 514B, HRS, as amended<sup>43</sup>, and made a good faith effort to resolve the dispute under any of those procedures.

Section 6. Record of Ownership. Every unit owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment or other conveyance to him of such unit or other evidence of his title thereto and shall file such lease with and present such other evidence of his title to the Board of Directors through the Managing Agent, and the Secretary shall maintain all such information in the record of ownership of the Association. The list shall be maintained at a place designated by the Board, and a copy shall be available, at cost, to any member of the association as provided in the Declaration or Bylaws or House Rules or, in any case, to any member who furnishes to the managing agent or resident manager or the Board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies, or for providing information to other owners with respect to Association matters; and
- (2) Shall not be used by the owner or furnished to anyone else for any other purpose.<sup>44</sup>

Section 7. Mortgages. Any unit owner who mortgages his unit or any interest therein shall notify the Board of Directors through the Managing Agent of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the record of ownership of the Association. The Board of Directors or Managing Agent at the request of any mortgagee or prospective purchaser of any unit or interest therein shall report to such person the amount of any assessments against such unit then due and unpaid.

Section 8. Examination of Books by Unit Owners.

- (a) Financial statements, general ledgers, accounts receivable and payable ledgers, check ledgers, insurance policies, contracts and invoices of the Association for the current and prior year, and a list of delinquencies of ninety (90) days or more, shall be available for examination by unit owners at convenient hours at a place designated by the Board; provided that (i) the Board may require such unit owners to furnish a duly executed and acknowledged affidavit stating that the information is requested in good faith and for the protection of the interests of the Association or its members or both; and (ii) that such unit owners pay for administrative costs in excess of eight hours per year incurred by the Association with respect to such examination. Copies of these items shall be provided to any unit owner upon such unit owner's request, subject to such unit owner's payment of a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request; provided, however, that the Association's most current financial statement shall be available to any unit owner at no cost or on twenty-four hour loan at a convenient location designated by the Board. The meeting minutes of the Board, once approved, for the current and prior year shall either:
- (1) be available to any unit owner at no cost or on twenty-four hour loan at a convenient location designated by the Board; or
  - (2) be transmitted to any unit owner making a request for the minutes, by the Board, the managing agent or the Association's representative, within fifteen days of receipt of the request; provided that the minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the owner, if the owner indicated a preference at the time of the request; and provided further that the owner shall pay a reasonable fee for administrative costs associated with handling the request.<sup>45</sup>
- (b) Unit owners shall also be permitted to view proxies, tally sheets, ballots, unit owners' check-in lists, and the certificate of election for a period of thirty days following any Association meeting; provided that (i) owners make the request within thirty days after the Association meeting; (ii) the Board may require unit owners to furnish to the Association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the Association or its members or both; and (iii) that unit owners may pay for administrative costs in excess of eight hours per year.
- (c) If there are no requests to examine proxies and ballots, the documents may be destroyed following the thirty day period; provided that if there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty days, after which they may be destroyed. Copies of tally sheets, unit owners' check-in lists and the certificates of election from the most recent Association meeting shall be provided to any unit owner upon the unit owner's request, provided that the unit owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.<sup>46</sup>
- (d) Unit owners may file a written request with the Board to examine other documents. The Board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

Section 9. Costs. No unit owner who requests legal or other information from the Association, the Board, the Managing Agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the Association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The Association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the Association's governing documents. After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.<sup>47</sup>

## ARTICLE VI MISCELLANEOUS

Section 1. Amendment. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration by the affirmative vote or written consent of sixty-seven percent (67%) of all unit owners, effective only upon the recording of an amendment to the By-Laws setting forth such amendment.<sup>48</sup>

Any proposed By-Laws with the detailed rationale for the proposal may be submitted by the Board or by a volunteer unit owners' group: If submitted by that group, it shall be accompanied by a petition signed by not less than twenty-five percent (25 %) of the unit owners as shown in the Association's record of ownership. The proposed By-Laws, rationale, and ballots for voting on any proposed By-Law shall be mailed by the Board to the unit owners at the expense of the Association for vote or written consent without change within thirty days of the receipt of the petition by the Board. The vote or written consent required to adopt the proposed By-Law shall be sixty-seven percent (67%) of all unit owners; provided that the vote or written consent must be obtained within three hundred sixty-five (365) days after mailing. In the event that the By-Law is duly adopted, then the Board shall cause the By-Law amendment to be filed in the Land Court. The volunteer unit owners' group shall be precluded from submitting a petition for a proposed By-Law which is substantially similar to that which has been previously mailed to the unit owners within one year after the original petition was submitted to the Board; provided, however, that this paragraph shall not preclude any unit owner or voluntary unit owners' group from proposing any By-Law amendment at any annual Association meeting.<sup>49</sup>

Section 2. Indemnification. The Association shall indemnify every director and officer and his executors and administrators against all expenses reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action suit or proceeding to be liable for negligence or misconduct, and in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed to no such breach of duty. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

Section 3. Exemptions For Handicapped Occupants. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or House Rules, handicapped occupants shall:

- (a) be permitted to make reasonable modifications to their units and/or the common elements, at their expense, if such modifications are necessary to enable them to use and enjoy their units and/or the common elements, as the case may be; and
- (b) be allowed reasonable exemptions from the Declaration, these By-Laws, and the House Rules, when necessary, to enable them to use and enjoy their units and/or the common elements, provided that any handicapped occupant desiring to make such modifications or desiring such an exemption shall so request, in writing. That request shall set forth, with specificity, and in detail, the nature of the request and the reason that the requesting party needs to make such modification or to be granted such an exemption. The Board of Directors shall not unreasonably withhold or delay its consent to such request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days of the Board's receipt thereof.

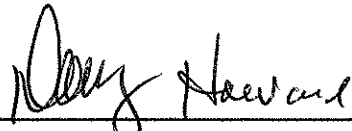
Section 4. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto, and the Condominium Property Act (Chapter 514B, Hawaii Revised Statutes, as amended) which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Condominium Act.


Section 5. Interpretation. In case any provision of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the owners.

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

IN WITNESS WHEREOF, the undersigned have executed this instrument this  
16th 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

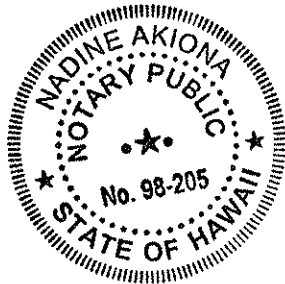
By   
Print Name ANNITA ALBRITTON  
Its SECRETARY

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 By-Laws of the Association of Apartment Owners 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 31 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 HAWAII

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 By-Laws of the Association of Apartment Owners 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 31 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 By-Laws which have been restated to conform to Chapter 514B, Hawaii Revised Statutes, and the Federal Fair Housing Act (42 U.S.C. Sections 3601 *et seq.*), and to integrate all amendments made to the By-Laws. These Restated By-Laws correctly set forth without change the corresponding provisions of the original By-Laws, as amended, and supersede the original By-Laws and all prior amendments thereto. This Restatement was made solely for purposes of information and convenience. In the event of a conflict, the Restated By-Laws shall be subordinate to the cited statute.

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<sup>1</sup> Act 65 (SLH 1988) redesignated the Horizontal Property Act as the Condominium Property Act, which has been recodified as Chapter 514B, Hawaii Revised Statutes. Therefore, throughout this restatement, references to the previous usage have been amended to reflect present terminology.

<sup>2</sup> Chapter 514A has now been recodified as Chapter 514B, HRS. 514B-109 allows the association to restate its declaration and bylaws.

<sup>3</sup> HRS Chapter 514B replaced the term "apartment" with the term "unit." The replacement has been made throughout the bylaws.

<sup>4</sup> Article I, Section 2 was amended to conform to Section 514B-121(e), HRS, which authorizes Association meetings to be held out of the State of Hawai'i in the event of a natural disaster.

<sup>5</sup> Article I, Section was amended to conform to Section 514B-121(b), HRS, which authorizes a special meeting to be called by a majority of the Board and sets a timetable for calling the meeting.

<sup>6</sup> Article I, Section 5 was amended to conform to Section 514B-121(c), HRS, which authorizes notice to be given by electronic mail.

<sup>7</sup> Article I, Section 5A was added to conform to Section 121(d), HRS, which requires Association meetings to be conducted according to the most recent version of Robert's Rules of Order.

<sup>8</sup> Article I, Section 7 was amended to conform to Section 514B-123(c), HRS, which prohibits the use of votes held by the Association for the election or reelection of the Board.

<sup>9</sup> Article I, Section 7 was amended to conform to Sections 514B-123(b) and (f) which provide new rules for units owned by more than one person and for faxed and e-mailed proxies.

<sup>10</sup> Article I, Section 8 was amended to conform to Section 415B-123(d) which provides new voting specifications for proxy ballots.

<sup>11</sup> The section was also amended to conform to Section 514B-123(h), HRS which changed the time for posting from "thirty" days from "solicitation" to "twenty-one" days from "distribution."

<sup>12</sup> Article I, Section 8 was amended to conform to Section 514B-123(j), HRS, which provides new rules regarding solicitation of proxies.

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<sup>13</sup> Article I, Section 11 was amended to conform to new rules on Association minutes found in Section 514B-122.

<sup>14</sup> Article II, Section 1 was amended to conform to Section 514B-107(a), HRS, which expanded the list of persons who can be board members and prohibited the board from having two owners of the same unit.

<sup>15</sup> Article II, Section 1 was amended to conform to Section 514B-107(b), HRS, which prohibits resident managers and employees of the Association from serving on the Board.

<sup>16</sup> Article II, Section 2 was amended to conform to Section 514B-106(a), HRS, which defines Board members duties.

<sup>17</sup> Article II, section 5 was amended to conform to Section 514B-121(b), HRS, which authorizes a special meeting to be called by a majority of the Board and sets a 60-day timetable for calling the special meeting.

<sup>18</sup> Article II, Section 7 was amended to conform to Section 514B-125(e), HRS, which prohibits Directors from voting by proxy at Board meetings.

<sup>19</sup> Article II, Section 8A was amended to conform to Section 514B-125(c), HRS, which allows the board to conduct telephone meetings and allows the participation of apartment owners.

<sup>20</sup> Article II, Section 10 was amended to conform to 514B-125(b) which provides additional authorized executive session purposes.

<sup>21</sup> Article II, Section 13 was amended to reflect the correct reference in Chapter 514B, changing "Section 514A-95" to "Section 514B-132 and Section 143(a)(3)."

<sup>22</sup> Article II, section 14 was amended to conform to section 514B-107(d) which permits Directors to be reimbursed for actual expenses with Board approval.

<sup>23</sup> Article II, Section 15 was amended to conform to Section 514B-125(f) which prohibits Directors to vote on issues where they have a conflict of interest.

<sup>24</sup> Article II, Section 16 was amended to conform to Section 514B-125(d) which removed the words "whenever practicable."

<sup>25</sup> Article II, Section 18 was added to conform to Section 514B-126 relating to Board meeting minutes.

<sup>26</sup> Article III, Section 8 was amended to conform to Section 514B-150(b) which changed the term "summary" to "copy."

<sup>27</sup> Article III, Section 9 was amended to conform to Section 514B-107(c) relating to restrictions on Board members who also work for the Managing Agent.

<sup>28</sup> Article IV, Section 1(f) was amended to conform to Section 514B-144(a) which added the phrase "or made available."

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<sup>29</sup> Article IV, Section 1(f) was amended to conform to Section 514B-148(a) which requires the Association to provide information detailing whether reserves collected are based on a per cent or cash flow basis.

<sup>30</sup> Article IV, Section 1(i) was amended to conform to Section 514B-148(e) which permits an Association to exceed its budget by more than 20 percent with approval of a majority of the owners.

<sup>31</sup> Article IV, Section 1(j) was amended to conform to Section 514B-148(f) which deleted the language "any provisions relating to the repair and maintenance of property."

<sup>32</sup> Article IV, Section 1(k) was amended to reflect the correct reference from "514A-94" to "514B-157."

<sup>33</sup> Article IV, Section 1(l) was amended to conform to Section 514B-148(h) which added meeting insurance requirements to the definition of extraordinary expenses.

<sup>34</sup> Article IV, Section 1(o) was amended to reflect the reference to Section 514B-149.

<sup>35</sup> Article IV, Section 2 was amended by "Amendment to Declaration and Bylaws of The Apartment Owners of Wavecrest I" dated August 7, 1995 and filed as Land Court Document No. 2253355, to replace "shall" with "may."

<sup>36</sup> Article IV, Section 2 was amended to conform to 514B-132 which provides the requirements for managing agents.

<sup>37</sup> Article V, Section 1(b)(7) was amended to reflect the recodification of 514A to 514B which changed the arbitration provision from "part VII" to "Section 514B-162."

<sup>38</sup> Article V, Section 1(d) was added to conform to Section 514B-146(d) which provides that unpaid assessments are liens on the unit and details foreclosure rights of the Association.

<sup>39</sup> Article V, Section 2 was amended to conform to Section 514B-35 which defines limited common elements to include other parts of a unit.

<sup>40</sup> Article V, Section 3(f) was amended to reflect the recodification of 514A to 514B which changed the section number from "514A-89" to "514B-140"

<sup>41</sup> Article V, Section 3(g) was amended by the "Amendment to By-Laws of the Association of Apartment Owners of Wavecrest I" dated December 16, 1994 and filed as Land Court Document No. 2204260.

<sup>42</sup> Article V, Section 3(l) was amended by "Amendment to Declaration and Bylaws of The Apartment Owners of Wavecrest I" recorded August 7, 1995 and filed as Land Court Document No. 2253355.

<sup>43</sup> Article V, Section 5 was amended to reflect the recodification of Chapter 514A to Chapter 514B. The reference was changed from "part VII of the Condominium Property Act" to "part D of Chapter 514B, HRS, as amended.

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<sup>44</sup> Article V, Section 6 was amended to conform to Section 514B-153(e), HRS, which provides rules for maintenance and disclosure of the list of ownership. Note that Sections 514B-153(f) and (g) limit use of the membership list by the Managing Agent.

<sup>45</sup> Article V, Section 8(a) was amended to conform to Section 514B-154(a) which provides additional requirement for document maintenance and release.

<sup>46</sup> Article V, Section 8(c) was amended to conform to Section 514B-154(c) which added the language "If there are no requests to examine proxies or ballots."

<sup>47</sup> Article V, Section 9 was added to conform to the requirements of Section 514B-105(d) on charging owners for information provided by the Association.

<sup>48</sup> Article VI, Section 1 was amended to conform to Section 514B-108 which permits amendment to the By-Laws with 67% owner approval.

<sup>49</sup> Article VI, Section 1 was amended to conform to Section 514B-108(e) which added the term "detailed," changed the term "committee" to "group," and changed the period of time to obtain written consent from "one hundred twenty (120) days" to "three hundred sixty-five days."

**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 BLG 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**

<u>Apt #</u>	<u>TCT#</u>
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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**

<u>Apt #</u>	<u>TCT#</u>
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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