

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL  PICKUP

JOHN A. MORRIS, ESQ.\lmc  
ASHFORD & WRISTON  
ALII PLACE, SUITE 1400  
1099 ALAKEA STREET  
P. O. BOX 131  
HONOLULU, HAWAII 96810

Total Page(s):

FIRST RESTATEMENT OF DECLARATION OF CONDOMINIUM  
PROPERTY REGIME  
OF  
KAWAIHAE CRESCENT EAST

WHEREAS, the TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, herein called the "Trustees", owned in fee simple certain real property described as follows:

ALL of that certain parcel of land situated at Maunalua, Honolulu, City and County of Honolulu, State of Hawaii, being a portion of Royal Patent 4475, Land Commission Award 7713, Apana 30 to Victoria Kamamalu, shown and described on the map filed in the Bureau of Conveyances of the State of Hawaii as follows: Lot A, Kaalakai Valley Subdivision Unit 1-B, area 229,427 square feet or 5.267 acres, File Plan 1243.

SUBJECT to all easements shown on the map attached hereto, if any, or on said File Plan or as hereafter required by Trustees to serve the project, and excepting and reserving all rights-of-way now or hereafter granted or required by Trustees to construct, install, operate, maintain, repair and replace lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage, radio and television signal distribution and other services and utilities over, across and under said easements according to the respective designations thereof, the right to enter for such purposes, and trim any trees in the way of such lines and the right to grant to any public utility or governmental authority such easements, rights and rights-of-way.

AND WHEREAS, KAISER HAWAII KAI DEVELOPMENT CO., a Nevada corporation qualified to do business in Hawaii, acting as nominee partner of KAISER AETNA, a California general partnership qualified to do business in Hawaii, whose principal place of business therein is 7120 Kalaniana'ole Highway and whose Post Office address is Post Office Box 7534, Honolulu, Hawaii, herein called "Kaiser", improved said land under the terms of an unrecorded development agreement with the Trustees dated April 27, 1961, a short form of which, dated May 27, 1971, was recorded in the Bureau of Conveyances in Liber 7592 at Page 467, by constructing thereon residential buildings and other improvements in accordance with plans incorporated herein by reference filed in said Bureau of Conveyances concurrently with the recordation hereof as Condominium File Plan 246;

AND WHEREAS, in order to create a condominium project consisting of said land and improvements (herein called the "Project") and to be known as "Kawaihae Crescent East", the Trustees and Kaiser recorded the "Declaration of Horizontal Property Regime of Kawaihae Crescent East" dated October 4, 1972, in said Bureau in Liber 8685 at Page 149, to submit said property to a Horizontal Property Regime established by Chapter 514, Hawaii Revised Statutes (now known as a Condominium Property Regime and as the Condominium Property Act, Chapter 514A) and in furtherance thereof made the following declarations as to divisions, limitations, restrictions, covenants and conditions, and hereby declare and agree 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 herein and in the By-Laws attached hereto as Exhibit A and made a part hereof, as the same may from time to time be amended in accordance with laws 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; (See Endnote 1)

AND WHEREAS, the Declaration was amended by the "Amendment of Declaration of Horizontal Property Regime of Kawaihae Crescent East" dated March 11, 1975, recorded in said Bureau in Liber 10530 at Page 485;

AND WHEREAS, Section 514A-82.2, Hawaii Revised Statutes, authorizes the Board of Directors of the Association established by the By-Laws to restate the Declaration to include in it any amendments and to conform its provisions to the provisions of Chapter 514A, Hawaii Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors;

AND WHEREAS, at a meeting duly held on \_\_\_\_\_, 2003 the Board of Directors resolved to restate the Declaration, pursuant to Section 514A-82.2, Hawaii Revised Statutes, 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 separate freehold estates:

1. Apartments. Thirty-seven (37) freehold estates are hereby designated in the spaces within the perimeter walls, floors and ceiling of each of the 37 apartment units of the Project contained in five (5) four-story residential buildings (designated 464, 486, 500, 516 and 532 Kawaihae Street, respectively and referred to herein as “buildings”), the principal materials of which are as follows:

Floors

Ground Level – Reinforced concrete slab on grade.  
First Level – Suspended reinforced concrete.  
Second and Third Levels – Wood

Structural or Load Bearing Walls

Ground Level – Concrete Block  
First, Second and Third Levels – Wood Stud.

Non Load Bearing Walls

Wood or Metal Stud construction on all levels.

Roofs

Pitched: Wood Shakes  
Flat: 5 Ply Built Up

which spaces together with certain appurtenant “entry courts” are referred to herein as “apartments” and are designated on said plans and described as follows:

<u>Building Number</u>	<u>Apartment Number</u>	<u>Type of Apartment</u>	<u>Number of Rooms</u>
464 Kawaihae Street (Five-Plex)	464A	A	11
	464B	B	13
	464C	C	13
	464D	C	13
	464E	B	13
486 Kawaihae Street (Eight-Plex)	486A	A	11
	486B	A	11
	486C	B	13
	486D	C	13

<u>Building Number</u>	<u>Apartment Number</u>	<u>Type of Apartment</u>	<u>Number of Rooms</u>
	486E	D	13
	486F	D	13
	486G	C	13
	486H	B	13
500 Kawaihae Street (Eight-Plex)	500A	A	11
	500B	A	11
	500C	B	13
	500D	C	13
	500E	D	13
	500F	D	13
	500G	C	13
	500H	B	13
516 Kawaihae Street (Eight-Plex)	516A	A	11
	516B	A	11
	516C	B	13
	516D	C	13
	516E	D	13
	516F	D	13
	516G	C	13
	516H	B	13

<u>Building Number</u>	<u>Apartment Number</u>	<u>Type of Apartment</u>	<u>Number of Rooms</u>
532 Kawaihae Street (Eight-Plex)	532A	A	11
	532B	A	11
	532C	B	13
	532D	C	13
	532E	D	13
	532F	D	13
	532G	C	13
	532H	B	13

(a) TYPE OF BUILDINGS

There are two (2) types of buildings consisting of one (1) five-plex building and four (4) eight-plex buildings. The five-plex building consists of one (1) apartment on the ground level, four (4) covered parking stalls and four (4) three-level apartments above. Each of the four (4)

eight-plex buildings consists of two (2) apartments on the ground level, eight (8) covered parking stalls and six (6) three-level apartments above.

(b) TYPE OF APARTMENTS

There is a total of nine (9) eleven (11) room ground floor apartments designated Type "A". Each has a living room area of 1300 square feet and are all of identical construction and layout. Each apartment consists of:

- Hall
- Kitchen
- Living Room
- Dining Room
- Bathrooms – 2
- Vanity
- Bedrooms – 3
- Laundry Center

In addition, this type of apartment will have a front and rear court, which is not included in the stated living area.

There is a total of ten (10) thirteen (13) room townhouse apartments of identical construction and layout designated Type "B". Each has a living area of 1513 square feet and consists of:

- Hall
- Family Room
- Kitchen
- Living Room
- Dining Room
- Bathrooms - 2½
- Vanity
- Bedrooms – 3
- Mezzanine

There is a total of ten (10) thirteen (13) room townhouse apartments of identical construction and layout designated Type "C". Each has a living area of 1550 square feet and consists of:

- Hall
- Family Room
- Kitchen
- Living Room

Dining Room  
Bathrooms - 2½  
Vanity  
Bedrooms – 3  
Mezzanine

There is a total of eight (8) thirteen (13) room townhouse apartments designated Type “D”. Each has a living room area of 1500 square feet. Each apartment consists of:

Hall  
Family Room  
Kitchen  
Living Room  
Dining Room  
Bathrooms - 2½  
Vanity  
Bedrooms – 3  
Mezzanine

- (c) ACCESS – Each apartment has immediate access to the walkways and driveways of the project which in turn gives access to a public street.
- (d) LIMITS OF APARTMENTS – The respective apartments 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 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, including refrigerator, dishwasher, range, washer, dryer and trash compactor.

2. 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 buildings;

- (c) All yards, grounds, landscaping, planters, mail boxes, refuse facilities, and like facilities;
- (d) The driveways, sidewalks, exterior stairways;
- (e) All ducts, sewer lines, electrical equipment, pipes, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, water, gas, refuse, telephone and radio and television signal distribution; and
- (f) 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.

3. 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) Two (2) parking spaces so designated on said Condominium File Plan by the number corresponding to the number of each apartment shall be appurtenant to and for the exclusive use of such apartment, with which the same are conveyed upon the initial conveyance by lease or deed. Each apartment shall always have at least one parking space appurtenant to it but otherwise any automobile parking space easement may be transferred from apartment to apartment in the Project, but shall always be appurtenant to one of the apartments in the Project.
- (b) A storage locker is provided in each of the covered parking spaces and shall be appurtenant to and for the exclusive use of the apartment having the parking space so designated on said Condominium File Plan.
- (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.

B. COMMON INTEREST. Each apartment shall have appurtenant thereto an undivided percentage interest of 2.702% 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 and for all other purposes including voting.

- C. 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:
1. 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 or limited use of the limited common elements as provided herein; and in all other apartments of its building for support;
  2. 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 building shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements due to such construction shall be permitted and valid easements for such encroachments and the maintenance thereof shall exist;
  3. Each apartment owner shall have an easement in common with the owners of all other apartments to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other apartments in serving his apartment. Each apartment shall be subject to an easement in favor of the owners of all other apartments for access to any common elements located in such apartment.
- D. ALTERATION AND TRANSFER OF INTERESTS. The common interest and easements appurtenant to each apartment shall have a permanent character and shall not be altered without the consent of all owners of apartments 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.
- E. USE. The apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and for no other purpose. The apartments shall not be rented for transient or hotel purposes, which are defined as (a) rental for any period less than 30 days, or (b) any rental in which the occupants of the apartment are provided customary hotel services such as room service for food and beverage, maid service, laundry



and linen or bellboy service. Except for such transient or hotel purposes the owners of the respective apartments shall have the absolute right to lease such apartment subject to all provisions of the Declaration.

F. ADMINISTRATION OF PROJECT. Administration of the Project shall be vested in its Association of Apartment Owners, herein called the "Association", consisting of all apartments owners of the project in accordance with the by-laws of the Association. Operation of the Project and maintenance, repair, replacement and restoration of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of said Condominium Property Act, this Declaration and the By-Laws which were originally attached hereto as Exhibit A and made a part hereof but now recorded separately and specifically but without limitation, the Association shall: (See Endnote 2)

1. Make, build, maintain and repair all fences, sewer, 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 the use thereof.
2. 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.
3. 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 30 days after the giving of such notice.
4. Except as provided in Section M.1 of this Declaration, before commencing or permitting construction of any improvement on the Project, obtain and deposit with the Trustees a bond or certificate thereof naming as obligees the Trustees and collectively all other apartment owners as their interests may appear, in a penal sum not less than one-half of the cost of such construction and with a corporate surety authorized to do business in

Hawaii, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens. (See Endnote 3)

5. Observe any setback lines affecting the Project as may be shown on said Condominium File Plan, 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.
6. Have the right, to be exercised by its Board of Directors (herein called "The Board") 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.
7. Except as provided in Section M.1 of this Declaration, 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, including detailed plot plan, prepared by a licensed architect if so required by the Trustees, first approved in writing by the Trustees and also 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. (See Endnote 3)
8. Not make or suffer any strip or waste or unlawful, improper or offensive use of the Project.
9. Not erect, place or maintain any television or other antennas on the Project visible from any point outside of any building of said Project. (See Endnote 4)

G. MANAGING AGENT; SERVICE OF PROCESS. Operation of the project shall be conducted for the Association by a responsible corporate Managing Agent 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 shall be Paradise Management Corporation, a Hawaii corporation whose principal place of business and post office address is Suite 1006, 2222 Kalakaua Avenue, Honolulu, 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 limitation 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 thereon, and any premiums for hazard and liability insurance herein required with respect to the Project and the cost of all utility services, including water, electricity and gas, garbage disposal and any other similar services unless separately metered shall constitute common expenses of the Project for which all apartment owners shall be severally liable in proportion to their respective common interests. The Board shall from time to time 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 30 days' prior written notice of intention to foreclose shall be mailed, postage prepaid, to the Trustees and all other persons having any interest in such apartment as shown in the Association's record of ownership.
- I. COMPLIANCE WITH DECLARATION AND BY-LAWS. 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 By-Laws of 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 injunctive relief, or both, maintainable by the Board or Managing Agent on behalf of the Association or, in a proper case, by any aggrieved apartment owners.
- J. INSURANCE. The Board on behalf of the Association at its common expense shall at all times keep the building 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 deduction for depreciation, in the name of the Board as trustee for all apartment owners and mortgagees according to the loss or damage 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 the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the Trustees true copies of such insurance policies or current certificates thereof, 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 buildings 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:

1. 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, pro-ratio or contribution by reason of, any other insurance obtained by or for any apartment owner;
2. Contain no provision relieving the insurer from liability for loss occurring while the hazard to such building 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, or any apartment owner or any other persons under either of them;
3. Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least 60 days prior written notice thereof to the Board, Trustees, and every other person in interest who shall have requested such notice of the insurer;
4. Contain a waiver by the insurer of any right of subrogation to any right of the Board, Trustees, Lessee, or apartment owners against any of them or any other persons under either of them;
5. Contain a standard mortgagee clause which shall:
  - a. Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any apartment or apartment lease of the Project, in their respective order and preference, whether or not named therein;
  - b. Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, Trustees, or apartment owners or any persons under any of them;
  - c. Waive any provision 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

d. 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.

The Board on behalf of the Association at its common expense shall also effect and maintain at all times comprehensive general liability insurance covering all apartment owners with respect to the Project and naming the Trustees as additional assureds, in an insurance company authorized to do business in Hawaii with minimum limits of not less than \$300,000 for injury to one person and \$1,000,000 for injury to more than one person in any one accident or occurrence, and \$100,000 for property damage, and from time to time upon receipt thereof deposit promptly with the Trustees current certificates of such insurance, without prejudice to the right of any apartment owners to maintain additional liability insurance for their respective apartments.

- K. CONDEMNATION. In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any land shall be payable to and be the sole property of the Trustees, and all compensation and damages for or on account of any improvements of the Project shall be payable to such bank or trust company authorized to do business in Hawaii as the Board shall designate as trustee for all apartment owners and mortgagees according to the loss or damage to their respective apartments and appurtenant common interests and shall be used promptly by the Association to the extent necessary for restoring or replacing such improvements on the remaining land according to plans therefor first approved as herein provided unless such restoration or replacement is impractical in the circumstances. Unless such restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association at its common expense shall remove all remains of such improvements on the remaining land and restore the site thereof to good orderly condition and even grade.
- L. UNINSURED CASUALTY. In 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, such improvements shall be rebuilt, repaired or restored if twenty-five percent (25%) of the apartment owners affirmatively vote for such rebuilding, repairing or restoration. 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.

- M. ALTERATION OF PROJECT. Restoration or replacement of the Project or any building or other facility or construction of any additional building or other structure or structural alteration or addition to any structure, different in any material respect from said Condominium File Plan 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 all the apartment owners and accompanied by the written consent of the holders of all liens (if the lienholders require such consent and approval) affecting any of the apartments, and in accordance with complete plans and specifications therefor first approved in writing by the Trustees and 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. Provided, however, that notwithstanding any provision in this Declaration to the contrary any alterations or additions within an apartment or within a limited common element appurtenant to and for the exclusive use of such apartment shall require the written consent thereto and written approval of the apartment owner's plans therefor by only the holders of all liens affecting such apartment (if the lienholders require such consent and approval), the Board of Directors of the Association, all other apartment owners thereby directly affected (as determined by said Board) and the Trustees, and such alterations or additions may be undertaken without an amendment to this Declaration or filing of a complete set of floor plans of the project as so altered.
- M.1. ALTERATIONS BY DISABLED OCCUPANTS. Regardless of anything to the contrary in this Declaration, the By-Laws, or the House Rules, disabled occupants shall: (1) be permitted to make reasonable modifications to their apartments and/or the common elements, at their expense, if the modifications are necessary to enable them to use and enjoy their apartments and/or the common elements; provided that any disabled occupant wishing to make modifications or to obtain an exemption first submits a written request to the Board, and the Board consents in writing to the request. The request must state in detail the nature of the request and the reason that the disabled occupant needs to make modifications or to be granted an exemption. The Board shall not unreasonably withhold or delay its consent to the request, and any request shall be deemed to be granted if the Board does not respond in writing, within forty-five (45) days of the Board's receipt of the request. The Board may condition its consent upon the disabled occupant complying with the following conditions:
1. The disabled occupant must provide plans and specifications, including detailed plot plans, if requested, at the disabled occupant's expense;

2. The disabled occupant must agree to, if necessary, submit the plans and specifications to an engineer or other expert selected by the board for review and approval, at the disabled occupant's expense;
3. The disabled occupant must agree to, if necessary, an inspection of the proposed additions or alterations during the course of construction and/or following completion of construction, by an engineer or other expert selected by the Board at the disabled occupant's expense;
4. The disabled occupant must strictly comply with all applicable laws, ordinances, and regulations of any governmental entity; and
5. The disabled occupant must obtain any necessary building permits, at the disabled occupant's expense. (See Endnote 5)

- N. MAINTENANCE RESERVE FUND. In compliance with Chapter 514A, Hawaii Revised Statutes, 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 utilities, insurance, 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 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 but shall be deemed to be transferred with such apartment even though not expressly mentioned or described in the conveyance thereof. In case the Condominium Property Regime hereby created 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 apartment then reconstituted as a new Condominium Property Regime. (See Endnote 6)
- O. AMENDMENT OF DECLARATION. Except as otherwise provided herein or in said Condominium Property Act this Declaration may be amended by affirmative vote or written consent of seventy-five per cent (75%) of the apartment owners, evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association of Apartment Owners, which amendment shall become effective upon recording in the Bureau of Conveyances of the State of Hawaii. Notwithstanding the foregoing and notwithstanding the lease of any of the said apartments by Kaiser or Trustees, the Trustees and Kaiser may amend this Declaration to file the "as built" verified statement (with plans, if applicable) required by Section 514A-12, Hawaii Revised Statutes, (1) 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 build, or, (2) so long as any plans filed therewith involve only immaterial changes to the layout, location, apartment numbers, or dimensions of the apartments as built. (See Endnote 7)

P. DEFINITIONS. The terms “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 interests.

Q. INVALIDITY. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such provision had never been included herein.

IN WITNESS WHEREOF, the undersigned have executed this Restated Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 2003

ASSOCIATION OF APARTMENT OWNERS  
OF KAWAIHAE CRESCENT EAST

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its



STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared , to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii

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

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared , to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Hawaii

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

## ENDNOTES

The following endnotes correspond to provisions in the Declaration of Condominium Property Regime of Kawaihae Crescent East, as restated to conform to Chapter 514A, Hawaii Revised Statutes, and the Federal Fair Housing Amendments Act (42 U.S.C. Sections 3601 et seq.), and to integrate all amendments made to the project's declaration. This restatement was made solely for purposes of information and convenience. The restated declaration of condominium property regime correctly states without change the corresponding provisions of the original declaration, as amended, and supersedes the original declaration and all prior amendments to it. In the event of a conflict, the restated declaration shall be subordinate to the original declaration, amendments and cited statutes.

1. Act 98 (SLH, 1977) re-designated Chapter 514 as Chapter 514A, Hawaii Revised Statutes, and Act 65 (SLH, 1988) redesignated the Horizontal Property Act as the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes ("HRS"). Therefore, throughout this Restatement, references to the previous usage have been amended to reflect present terminology.

2. Section F has been amended to reflect that the By-laws are no longer attached to and recorded as part of the Declaration but are now recorded separately.

3. Sections F.4 and F.7 have been amended to include a reference to Paragraph M.1, which was added to conform to the requirements of the Fair Housing Amendments Act, as amended (42 U.S.C. Section 3601, et seq.) relating to alterations by disabled owners and residents. Section F.6. has been amended for the same reason.

4. Act 137 (SLH 2002) has greatly expanded the board's authority to install telecommunications equipment, including antennas, at the project.

5. Section M.1. has been added to provide a clear statement that disabled owners and residents will be permitted to make all alterations and additions to their apartment and the Project authorized by the Fair Housing Amendments Act and Chapter 515, Hawaii Revised Statutes.

6. Section N. has been amended to refer to the requirements of Section 514A-83.6.

7. Section O of the Declaration was amended to include the change made to Section 514A-11 permitting amendments to the declaration be made by written consent, without a meeting, as well as by a vote at a meeting. The verified statement by the project's architect was filed as an amendment to the Declaration dated March 11, 1975 and recorded in said Bureau in Liber 10530 at Page 485. The requirements for "as built" certification found in Section 514-13 are now in Section 514A-12.