

FIRST AMENDMENT TO THE BYLAWS OF
THE MAUNA LANI RESORT ASSOCIATION

WHEREAS, the Bylaws of the Mauna Lani Resort Association (hereinafter referred to as the "Bylaws"), was filed with the Department of Commerce and Consumer Affairs of the State of Hawaii on DECEMBER 22, 1982 and approved on MARCH 24, ¹⁹⁸³ 1982;

m.u.
n.p.

WHEREAS, Mauna Lani Resort, Inc. a Hawaii corporation, the Declarant herein, has been required to make certain changes to the Bylaws in order to obtain a registration permit from the State of California;

WHEREAS, the Declarant herein desires to modify and amend said Bylaws to comply with and incorporate the changes required for registration under the laws of the State of California and to replace the said Bylaws, in its entirety, with this First Amendment.

NOW, THEREFORE, Declarant hereby amends said Bylaws, in its entirety, as follows:

1. The Bylaws, as amended, shall be set forth in Exhibit A attached hereto and incorporated herein by reference; and

2. In the event of any conflict between the terms and conditions contained in the Bylaws and this First Amendment, this First Amendment shall be controlling.

IN WITNESS WHEREOF, MAUNA LANI RESORT, INC. has executed these presents this 04 day of JANUARY, 1987.

MAUNA LANI RESORT, INC.

By

Max G. ...
Its PRESIDENT

By

H. ...
Its S.E. V.P.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

}
} SS:
}

On this 21st day of JANUARY, 1987, before me appeared MAY YUKI and THOMAS H. YAMAMOTO, to me personally known, who, being by me duly sworn, did say that are the PRESIDENT and SR. VICE PRESIDENT, respectively, of MAUNA LANI RESORT, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said MAY YUKI and THOMAS H. YAMAMOTO acknowledged that they executed said instrument as the free act and deed of said corporation.

Maui K. K. K.
Notary Public, State of Hawaii
My commission expires: 10-15-89

BYLAWS OF THE MAUNA LANI RESORT ASSOCIATION

EXHIBIT A

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BYLAWS
OF THE
MAUNA LANI RESORT ASSOCIATION

ARTICLE I

DEFINITIONS

- 1.1 "Association" shall mean MAUNA LANI RESORT ASSOCIATION, a Hawaii nonprofit corporation.
- 1.2 "Charter" shall mean the Charter of Incorporation of the Association.
- 1.3 "Declaration" shall mean that certain Declaration of Covenants and Restrictions executed by MAUNA LANI RESORT, INC. on June 3, 1982, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1120889, and also recorded in the Bureau of Conveyances of the State of Hawaii in Liber 16425, at Page 203, as amended.
- 1.4 All other terms shall have the meanings given them in the Declaration unless expressly otherwise provided herein.

ARTICLE II

MEMBERSHIP, VOTING RIGHTS AND MEETINGS

- 2.1 Membership. Qualifications for membership and the incidents thereof are set forth in Section 2 of Article II of the Declaration which is incorporated herein by reference thereto.
- 2.2 Voting Rights, Proxies and Meetings.
 - a. Owners shall be entitled to exercise their Voting Rights at an Association meeting as long as their ownership status to property subject to the Declaration is established within a reasonable period of time, not to exceed forty-five (45) days, prior to said meeting. Voting Rights

shall be calculated based upon property subject to the Declaration as of that date. The calculation of Voting Rights shall be based upon the following formula:

1 vote for every Condominium Unit, for every apartment in an apartment house, and for every single-family residence on a Single Family Residential Lot (excluding guest houses and servants' quarters).

1 vote for each hotel guest room.

1 vote for every 500 square feet of Floor Area in a building (other than floor area in a hotel, in a project included under the definition of Condominium Unit, or in improvements on a Single Family Residential Lot) used for recreational, commercial, restaurant, convention or similar uses, including any Commercial Apartments; and

The Floor Area in buildings devoted to public utility purposes for the furnishing of gas, water, electricity, sewerage, or other utility services shall be included in the computation of Voting Rights, including any votes attributable to any Owner with respect to a Lot devoted primarily for such public utility purposes.

There shall be no fractionalization of Voting Rights attributed to the Owners or Declarant.

The Voting rights of Owners of Condominium Units shall be exercised by the owners at their respective association meetings; provided, however, that the Board of Directors of the respective Secondary Association shall exercise their respective Owner's Voting Rights, in accordance with Section 2.2(b)

and 2.2(d) at any meeting of or vote held by the Mauna Lani Resort Association. If merchants or similar associations are established at the Mauna Lani Resort, the voting rights of the Owners of the Floor Area included in their respective associations shall be exercised through the Board of Directors of their respective associations.

For the purposes of this Section, the term "Floor Area" shall mean the actual number of gross square feet of floor space within the exterior face of the exterior walls of the building (except party and interior walls in which case the center thereof instead of the exterior face shall be used and except with respect to all entrances and exits as to which the exterior building line of the building shall be used). No deduction shall be made from "Floor Area" computed under the foregoing definition by reasons of columns, stairs, escalators, elevators or other interior construction or equipment. But the term "Floor Area" shall not include basements, parking areas (whether or not covered), separate parking buildings, temporary buildings, and maintenance sheds. In a multiple-use situation, Voting Rights shall be applied to each use separately (unless excluded above)--for example, in

the case of a Lot with both a single-family detached residence and a store having 2,750 square feet of Floor Area, the Owner of the residence would be entitled to one vote and the Owner of the store entitled to five votes.

When more than one person or entity is an Owner of a Lot, Condominium Unit, hotel guest room, or Floor Area having Voting Rights, the Voting Rights shall be exercised as the Owners thereof determine, but such Voting Rights shall be cast by only one person.

b. The meetings of the Association shall be limited in attendance to any two (2) officers of each Secondary Association, two (2) representatives from each Hotel, two (2) representatives from each Commercial Entity and three (3) representatives of the Declarant (hereinafter collectively referred to as "representatives"); provided, that, the number of representatives from each respective Secondary Association, Hotel, Commercial Entity and Declarant, may be changed by approval of a majority of the Voting Rights of the Association.

c. Any Owner may designate a proxy to vote his Voting Rights; provided, that, the proxy must be for all of the Voting Rights of said Owner and; provided, further, that said proxy shall be in writing and executed by the Owner and the person designated to represent the Owner, and filed with the Secretary of the Association prior to any meeting in which such proxy votes are to be cast.

d. The representatives of the respective Secondary Association, Hotel, Commercial Entities and of the Declarant present at a duly called meeting of the Mauna Lani Resort Association shall cast the number of Voting Rights in the following manner:

(i) Each Hotel and Commercial Entity shall be able to cast only that number of Voting Rights attributable to it as set forth in Section 2.2(a) herein; and

(ii) Each Secondary Association may cast only that number of Voting Rights equal to the total number of Voting Rights cast by its membership who voted at a meeting of the Secondary Association held prior to the Mauna Lani Resort Association's meeting; provided, that, the Voting Rights cast by the representatives of the Secondary Association at the Mauna Lani Resort Association meeting shall be identical and equal to that number of Voting Rights cast at its own meeting. For example, Secondary Association "A" has a total of 500 Voting Rights attributable to it by virtue of its entire membership, but only 300 (i.e., 175 votes = Yes and 125 votes = No) votes are cast at its meeting; the representatives of Secondary Association "A" may only cast, at a meeting of the Mauna Lani Resort Association, 300 votes in the same number and manner as that cast at its own meeting (i.e., 175 votes = Yes and 125 votes = No).

e. The right of membership is subject to the payment of assessments levied by the Association. The obligation of such assessments is imposed against each Owner and becomes a lien upon the Lot or Condominium Unit against which such assessments are made as provided in the Declaration.

f. The membership rights of any person may be suspended by action of the Board during the period when the Owner shall be in default in the payment of any assessments levied by the Association; but, upon payment of such assessments, his rights and privileges shall be automatically restored. Also, such rights of membership may be suspended, after notice and hearing, for violation of any Association Rule, such suspension to continue until such violation ceases.

g. No membership shall be terminated or forfeited and no Owner shall be expelled, except upon the sale of his fee simple interest or assignment of his master lease of a Lot or Condominium Unit, provided, however, that upon written notice and the delivery of a valid executed agreement of sale of any Lot or Condominium Unit within the ten (10) business days from the closing date of such sale or transfer, the Owner's membership, including voting rights adhering thereto, unless otherwise provided, shall be considered as having been temporarily transferred to the Purchaser, such transfer becoming permanent upon subsequent delivery of deed or assignment of lease in compliance with the terms of said agreement of sale. Membership shall be transferred to the Purchaser or transferee evidencing that title has been transferred to Purchaser upon delivery to the Owner's respective Secondary Association's secretary of a valid and executed Lease or assignment thereof or deed

evidencing that title has been transferred to Purchaser; provided, that Owner shall give written notice of such transfer within ten (10) business days from the closing of such sale or transfer.

2.3 Meetings; Notice; Quorum.

a. An annual meeting of the Owners shall be held each year on such date and at such time as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting. The meeting place shall ordinarily be within the Project itself unless in the judgment of the Board of Directors a larger meeting room is required than exists within the Project in which case the meeting room selected shall be as close as possible to the location of the Project. The first annual meeting shall be held within twelve months from the date of recordation of the first deed transferring title to a completed Condominium Unit to an Owner.

b. Special Meetings of the members of the Association may be held at such time and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board or by a written request filed with the secretary signed by the President, or by a majority of the directors, or by the holders of twenty percent (20%) of the voting interest of the entire membership of the Association. The meeting place for said special meetings shall be determined as set forth in Section 2.3a hereinabove.

c. Except where and to the extent otherwise required by law, the Charter or the Declaration, written notice of each meeting of the Owners shall be given to the Owners by any means which is appropriate given the physical

setup of the Project and shall specify the day and time and place of the meeting and the purposes for which the meeting is called, shall also specify whether it is an annual or special meeting, and shall be given by or under the direction of the secretary to each Secondary Association, Hotel and Commercial Entity at least ten (10) days and no more than ninety (90) days before the date of any meeting at which the Owners are required or permitted to take any action. In case of death, absence, incapacity or refusal of the secretary, such notice may be given by a person designated by the Board. If notice is given pursuant to the provisions of these Bylaws, nonreceipt of actual notice of any meeting by any Secondary Association, Hotel or Commercial Entity shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any Secondary Association, Hotel or Commercial Entity may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to it. The presence of any representative of a Secondary Association, Hotel or Commercial Entity at a meeting shall be a waiver by it of notice of the meeting.

d. The presence at an Association meeting of representatives of the Secondary Association, Hotel, and Commercial Entity (hereinafter "representatives") entitled to cast (i.e., certifying the number of votes to be cast), or as holders of proxies entitled to cast, pursuant to Section 2.2(d) herein, one-half (1/2) of the votes of the entire Association membership shall constitute a quorum for any action except as otherwise provided in the Charter, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the

representatives entitled to vote thereat shall have power to adjourn the meeting without notice, other than an announcement at the meeting, to a date no less than forty-eight (48) hours nor more than thirty (30) days thereafter. At such reconvened meeting, the presence of representatives entitled to cast at least twenty-five percent (25%) of the votes of the entire Association membership shall constitute a quorum. A meeting may only be reconvened once; thereafter, a new meeting must be called and the original quorum requirements shall be applicable. When a quorum is present at any meeting, the concurring vote of the representatives having a majority of the total votes cast at the meeting shall be valid and binding upon the Association except as otherwise provided by law, the Charter, the Declaration or these Bylaws.

ARTICLE III

BOARD OF DIRECTORS

3.1 Number and Term of Office. The Board of Directors shall consist of five (5) directors, who need not be Owners.

3.2 Election. Election of directors shall be by a cumulative voting by secret written ballot at each annual meeting and any special meeting called for that purpose. The Owners shall elect five (5) directors to the Board of Directors. The Owners through their respective representatives may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The candidate receiving the largest number of votes shall be elected. Each Owner shall have the right to give one candidate a number of votes equal to the number of directors

to be elected multiplied by the number of votes to which he is entitled, or distribute his votes on the same principle among as many candidates as he thinks fit.

Election of Directors shall be conducted as follows:

(i) From January 1, 1987 to December 31, 1996:

(a) One (1) Board position to be elected by Residential Owners of the Association.

(b) Three (3) Board positions to be selected by Declarant.

(c) One (1) Board position to be elected by Commercial Owners of the Association, as defined in Article I, Section 1(i).

(ii) From January 1, 1997 and thereafter:

(a) Two (2) Board positions to be elected by Residential Owners of the Association.

(b) Three (3) Board positions to be selected by Declarant; provided that one (1) of said Board positions may be substituted with a representative of the Commercial Owners without need for further approval or amendment to the Bylaws or Declaration; and provided, further, that Declarant may, at any time, change said Board position by replacing the Commercial Owner's representative with Declarant's own selected representative.

Directors shall hold office for a period of three (3) years and until their respective successors have been elected, subject to removal as herein provided.

3.3 Removal. 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 the Owners and a successor may then and there be elected to fill the vacancy thus created pursuant to Section 3.2 hereinabove. However, unless the entire Board of Directors is removed from office by the vote of the Owners of the Association, no individual member of the Board of Directors shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes are cast and the entire number of directors authorized at the time of the most recent election of the director were then being elected. The director who has been elected to office solely by the votes of the specific category of Owners of the Association other than the Declarant may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in that particular category of Owners (i.e. Residential Owners or Commercial Owners) other than the Declarant. Any director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the remaining unexpired term of his predecessor.

3.4 Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE IV

MEETINGS OF DIRECTORS

4.1 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 (1) such meeting shall be held during every other calendar quarter of every year. The meeting place shall ordinarily be within the Project itself unless in the judgment of the Board of Directors a larger meeting room is required than exists within the Project in which case the meeting room selected shall be as close as possible to the location of the Project. Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the common area of the Project and shall be communicated to each director, personally or by mail, telephone or telegraph, at least seven (7) days and not less than four (4) days prior to the date of such meeting unless the time and place of meeting is fixed by the Bylaws, provided, however, that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. An annual meeting of the Board shall be held immediately after the annual meeting of the Owners and at the place of such annual meeting.

4.2 Special Meetings. A special meeting of the Board of Directors may be called by written notice signed by the President of the Association or by any two (2) members of

the Board of Directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice will be posted in a manner prescribed for notice of regular meetings and shall be sent to all directors not less than seventy-two (72) hours prior to the scheduled time of the meeting provided, however, that notice of the meeting need not be given to any director who signed a waiver of notice or a written consent to holding of the meeting.

4.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the entire Board.

4.4 Conduct of Meetings. All meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order. Regular and special meetings of the Board of Directors shall be opened to all Owners of the Association provided, however, that the Owners who are not on the Board of Directors may not participate in any deliberation or discussion unless expressly so authorized by the vote of the majority of a quorum of the Board of Directors. The Board of Directors may, with the approval of a majority of a quorum of its members, 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 and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

ARTICLE V

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

5.1 Powers and Duties. Subject to the limitations set forth in Section 5.2 hereinbelow, the Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts in exercise thereof consistent with the purposes and goals as set forth in the Charter of Incorporation, Declaration and Bylaws; and subject to the limitations of the foregoing of the laws of the State of Hawaii. Without prejudice to the generality of the foregoing, the Board shall have power and duty to:

a. Exercise for the Association all powers, duties and authority vested in or delegated to this Association not reserved to the membership by other provisions of these Bylaws, the Charter or the Declaration;

b. Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

c. Employ and remove at pleasure and without cause a manager, all agents, employees, independent contractors, or such other persons as they deem necessary, prescribe their duties and fix their compensation, provided, however, that subject to Section 5.2 hereinbelow, any such contract for a period of more than one (1) year shall provide that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than sixty (60) days written notice;

d. Cause to be kept a complete record of all its acts and corporate affairs, to present a statement thereof

to the Owners at the annual meeting of the Owners, and to make such records available for inspection by the Owners at all reasonable times;

e. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

f. (1) to set the annual budget and allocate the assessment against each Lot and Condominium Unit at least forty five (45) days in advance of each assessment period;

(2) to send written notice of each assessment to every Owner subject thereto at least twenty-five (25) days in advance of each assessment period; and

g. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

5.2 Limitation on Powers The Board of Directors of the Association shall ordinarily be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in Residential Owners:

a. Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Property or the Association for a term longer than one year with the following exceptions:

1. A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

2. A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission of the State of Hawaii

provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

3. Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured;

4. Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

5. Agreements for cable television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

b. Incurring aggregate expenditures for capital improvements to the Common Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

c. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

d. Paying compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business

provided, however, that the Board of Directors may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

On and after January 1, 2007 the annexation powers of the Board are subject to Section 2(b) of Article III of the Declaration. A director shall not cast any proxy vote at any Board meeting, nor shall a director vote at any Board meeting on any issue in which the director has a conflict of interest.

5.3 Non-Profit Purpose. In order to preserve the non-profit, income tax-exempt status of the Association, neither the Board nor any member thereof shall do any act, or authorize or suffer the doing of any act by an officer or employee of the Association, on behalf of the Association which is inconsistent with the Articles or Bylaws or the nonprofit purpose of the Association. Any such act or acts shall be ultra vires and void.

ARTICLE VI

COMMITTEE

6.1 The Board may, by resolution or resolutions passed by a majority of the Board, create and appoint one or more committees which, to the extent provided in said resolution or resolutions or in other provisions of these Bylaws, shall have and may exercise the powers of the Board in the management of the business and affairs of the Association. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. So long as, or at any time the Declarant has ten percent (10%) or more of the total Voting Rights of the Association, subject to the Declaration, Declarant shall have the sole right to appoint, replace and

remove the members of the Committees as more particularly set forth in Exhibit A attached hereto and incorporated herein by reference.

ARTICLE VII

OFFICERS AND THEIR DUTIES

7.1 Enumeration of Offices. The officers of this Association shall be a President and Vice President who shall at all times be members of the Board, a secretary and a treasurer, and such other officers as the Board may from time to time by resolution create. Unless approved by a vote or written assent of a majority of the voting power of the Association residing in Owners other than the Declarant, no compensation shall be paid to said officers by the Association for services performed in the conduct of the Association's business, provided, however, that the Board may cause an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Owners.

7.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

7.4 Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.5 Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or, in the case of an officer chosen by the Board of Directors, upon whom such power of removal may be conferred, by such officer. Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice, or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

7.7 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.4 of this Article.

7.8 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 are designated by general or special resolution of the Board or, in the absence of any such resolution applicable to any such instrument, by the President

or Vice President and by the Treasurer or Secretary or by the Assistant Treasurer or Assistant Secretary. The officers may adopt and use facsimile signatures.

7.9 Duties. The duties of the officers are as follows:

a. President. The President shall be the chief executive officer of the corporation, and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. He shall preside at all meetings of the members. He shall be an ex officio member of all of the standing committees, and shall have the general powers and management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

b. Vice President. In the absence or disability of the President, the Vice President(s), in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the power of, and be subject to all the restrictions upon, the President; the Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the Bylaws.

c. Secretary. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those

present at Directors' meetings, the number of members present at members' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal office of the corporation, a register showing the names of the members, the Directors and their addresses and shall perform such other duties as required by the Board. The secretary shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors required by the Bylaws or by law to be given, and he shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

d. Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, including accounts in its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any Director. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the corporation as may be directed by resolution of the Board of Directors; and shall render to the President and Directors, whenever they request it, an account of all transactions as Treasurer and of the financial condition of the corporation and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of such to the

representatives and Declarant and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

ARTICLE VIII

BOOKS AND RECORDS

8.1 Inspection.

a. The membership register, books of account and minutes of meetings of the Owners, of the Board and of committees of the Board of the Association shall be made available for inspection and copying by any Owner of the Association - or by his duly-appointed representative - at any reasonable time and for a purpose reasonably related to his interest as an Owner, at the office of the Association or at such other place within the Project as the Board shall prescribe.

b. The Board shall establish reasonable rules with respect to:

1. Notice to be given to the custodian of the records by the Owner desiring to make the inspection;

2. Hours and days of the week when such an inspection may be made; and

3. Payment of the cost of reproducing copies of documents requested by an Owner.

c. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

8.2 Budgets and Financial Statements. The following financial and related information shall be regularly prepared and distributed by the Board of Directors to all Owners of the Association:

a. A budget for each fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year:

1. Estimated revenue and expenses on an accrual basis;

2. The amount of the total cash reserves of the Association currently available for replacement or major repair of Common Property and for contingencies;

3. An itemized estimate of the remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the Common Property for which the Association is responsible; and

4. A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Property for which the Association is responsible.

b. An operating statement for the fiscal year of the Association shall be distributed to all Owners. This operating statement shall include a schedule of

assessments received and receivable identified by the number of the Lot or Condominium Unit and the name of the entity assessed.

c. A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

1. A balance sheet as of the end of the fiscal year;
2. An operating (income) statement for the fiscal year;
3. A statement of changes in financial position for the fiscal year; and
4. For any fiscal year in which the gross income to the Association exceeds SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a certified accountant.

If the report referred to in (c) hereinabove is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review. In addition to financial statements, the Board of Directors shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Owners

for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against the Owners' ownership interests.

ARTICLE IX

AMENDMENTS

9.1 Necessary Vote. These Bylaws may be amended, at a regular or special meeting of the Owners, by an affirmative vote of two-thirds (2/3) of all of the total voting rights of the Association and an affirmative vote of a majority of the Board.

9.2 Reconciliation of Conflicts. In the case of any conflict between the Charter and these Bylaws, the Charter shall control; and in the case of any conflict between the Declaration and these Bylaws the Declaration shall control.

CERTIFICATE

The undersigned, being a duly qualified member of the Board of Directors of MAUNA LANI RESORT ASSOCIATION does hereby certify that the attached document is a correct and complete copy of the Bylaws of the MAUNA LANI RESORT ASSOCIATION.

Roger Harris
ROGER HARRIS

EXHIBIT A

Declarant shall have the sole right to appoint, replace and remove the members of the following committees, until such time as the Declarant in its sole and absolute discretion deems otherwise;

1. Community Design Committee - Subject to the provisions in Section 4 of Article V of the Declaration.

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TITLE OF DOCUMENT:

**SECOND AMENDMENT OF THE BYLAWS OF THE
MAUNA LANI RESORT ASSOCIATION**

PARTIES TO DOCUMENT:

ASSOCIATION: MAUNA LANI RESORT ASSOCIATION, a Hawaii nonprofit corporation, whose mailing address is 68-150 Ho'ohana Street, Kohala Coast, Hawaii 96743-9704

Waikoloa, District of South Kohala, County of Hawaii, State of Hawaii

MLRA/2nd amend bylaws/0731.08

**SECOND AMENDMENT OF THE BYLAWS
OF THE MAUNA LANI RESORT ASSOCIATION**

WHEREAS, by Declaration of Covenants and Restrictions of the Mauna Lani Resort Association ("Association") made on June 3, 1982 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("Land Court") as Document No. 1120889 and noted on Transfer Certificate of Title No. 154,928 and also recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") in Liber 16425, at Page 203 ("Declaration"), Mauna Lani Resort, Inc., a Hawaii corporation, as "Declarant", submitted certain real property described in said Declaration, and the developments and improvements to be created and constructed therein and thereon, to certain restrictions, covenants, conditions, provisions and easements as set forth in said Declaration; and

WHEREAS, on or about March 24, 1983, pursuant to the Declaration, the Association approved the "Bylaws of the Mauna Lani Resort Association," ("Bylaws"); an Affidavit of Ian Pullan re the Bylaws of the Mauna Lani Resort Association was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2008-166085; and

WHEREAS, pursuant to Section 9.1 of the Bylaws and Section 421J-12(a), Hawaii Revised Statutes, as amended, the Bylaws may be amended by the vote or written consent of two-thirds (2/3) of all of the total voting rights of the Association and an affirmative vote of a majority of the Board of Directors of the Association; and

WHEREAS, an affirmative vote of two-thirds (2/3) of all of the total voting rights of the Association and an affirmative vote of a majority of the Board of Directors of the Association have approved the amendment of the Bylaws as hereinafter set forth;

NOW, THEREFORE, the undersigned Officers of the Association hereby certify that the Bylaws of the Mauna Lani Resort Association have been amended pursuant to and in compliance with Section 9.1 of the Bylaws and Section 421J-12(a), Hawaii Revised Statutes, as amended, as follows:

1. Section 3.2 of the Bylaws of the Mauna Lani Resort Association shall be amended in its entirety to read as follows:

3.2 Election. Election of directors shall be by cumulative voting (applicable only if more than one (1) director is elected at an annual or special meeting by the same Class of Owners) by secret written ballot at each annual meeting and any special meeting called for that purpose. The Owners through their respective representatives may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these

Bylaws. The candidate receiving the largest number of votes shall be elected. If cumulative voting is applicable, each Owner of a Class of Owners shall have the right to give one candidate to be elected by that particular Class of Owners a number of votes equal to the number of directors to be elected by that Class of Owners multiplied by the number of votes to which he is entitled, or distribute his votes on the same principle among as many candidates to be elected by that Class of Owners as he thinks fit. As used herein, "Class of Owners" means that category of Owners that will be electing a director. All of the Owners shall constitute one Class of Owners. The Residential Owners shall constitute another Class of Owners. The Commercial Owners shall constitute yet another Class of Owners. Accordingly, for example and without limiting the generality of the foregoing, if one (1) director ("Director A") is to be elected by all of the Owners and two (2) directors ("Directors B and C") are to be elected by the Commercial Owners, the Commercial Owners shall elect Directors B and C by cumulative voting but may not cumulate votes to elect Director A.

Election of Directors shall be conducted as follows:

1. From January 1, 1987 to December 31, 1996:
 - a. One (1) Board position to be elected by Residential Owners of the Association.
 - b. Three (3) Board positions to be selected by Declarant.
 - c. One (1) Board position to be elected by Commercial Owners of the Association, as defined in Article I, Section 1(i).
2. From January 1, 1997 to one day prior to the date of approval of this Second Amendment to Bylaws [i.e., July 23, 2008]:
 - a. Two (2) Board positions to be elected by Residential Owners of the Association.
 - b. Three (3) Board positions to be selected by Declarant; provided that one (1) of said Board positions may be substituted with a representative of the Commercial Owners without need for further approval or amendment to the Bylaws or Declaration; and provided, further, that Declarant may, at any time, change said Board position by replacing the Commercial Owner's representative with Declarant's own selected representative.

3. From and after the date of approval of this Second Amendment to Bylaws [i.e., July 23, 2008]: One (1) Board position to be elected by all of the Owners, two (2) Board positions to be elected by the Commercial Owners of the Association, and two (2) Board positions to be elected by the Residential Owners of the Association, as follows:
- a. Immediately following the date of approval of this Second Amendment to Bylaws [i.e., July 23, 2008] and as part of the approval of the Second Amendment to Bylaws of the Mauna Lani Resort Association, the three (3) directors selected by Declarant pursuant to Section 3.2.2.b shall be replaced, at a special meeting of the Owners, by election of the following: One (1) Board position to be elected by all of the Owners of the Association and two (2) Board positions to be elected by the Commercial Owners of the Association, with the candidate elected by all of the Owners of the Association being elected for a term to expire at the first annual meeting after December 31, 2010, the candidate elected by the Commercial Owners of the Association and receiving the larger number of votes of the two candidates elected by the Commercial Owners being elected for a term to expire at the first annual meeting after December 31, 2009, and the other candidate elected by the Commercial Owners being elected for a term to expire at the first annual meeting after December 31, 2008. Until election of the three (3) directors as provided in this Section 3.2.3.a, the three (3) directors selected by Declarant shall continue to serve on the Board of Directors. The two (2) directors previously elected pursuant to Section 3.2.2.a above shall remain in office and complete the remainder of their current respective terms. i.e., one director shall have a term to expire at the first annual meeting after December 31, 2008, and the second director shall have a term to expire at the first annual meeting after December 31, 2009.
 - b. At the first annual meeting after December 31, 2008, two (2) Board positions, one (1) Board position to be elected by the Residential Owners of the Association and one (1) Board position to be elected by the Commercial Owners of the Association.
 - c. At the first annual meeting after December 31, 2009, two (2) Board positions, one (1) Board position to be elected by the Residential Owners of the Association and one (1) Board

position to be elected by the Commercial Owners of the Association.

- d. At the first annual meeting after December 31, 2010, one (1) Board position to be elected by all of the Owners of the Association.
- e. At each annual meeting after December 31, 2011, directors shall be elected by the Owners of the Association upon the expiration of their term of office; provided, however, that at all times, two (2) of the Board positions shall have been elected by the Residential Owners and two (2) of the Board positions shall have been elected by the Commercial Owners.

Subject to removal as herein provided, and except as provided in Section 3.2.3.a above, directors shall hold office for a term of three (3) years and until their respective successors have been elected, and provided that upon the expiration of the term of any director, the successor to such director shall be elected by the Class of Owners who elected the director whose term has expired.

2. **Section 3.3** of the Bylaws of the Mauna Lani Resort Association shall be amended in its entirety to read as follows:

3.3 **Removal, Death or Resignation of Director.** 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 the Owners and a successor may then and there be elected to fill the vacancy thus created for the remaining unexpired term of the removed director thereof pursuant to Section 3.2 hereinabove. The director who has been elected to office solely by the votes of a Class of Owners of the Association may be removed from office prior to the expiration of his term of office only by the vote of a majority of that particular Class of Owners. Any director whose removal has been proposed by the Owners shall be given an opportunity to be heard at such meeting. In the event of death or resignation of a director, his successor shall be selected by the remaining member of the Board elected by the same Class of Owners and shall serve until the next annual meeting, at which time a successor director shall be elected by that particular Class of Owners for the remaining unexpired term of the director which caused the vacancy to occur; provided, that if there is no remaining member of the Board elected by that particular Class of Owners, the successor director shall be elected by that particular Class of Owners at a special meeting of the Association for the remaining unexpired term of the director which caused the vacancy to occur. In addition to the methods for calling a special meeting as set forth in Section 2.3.b., the holders of twenty percent

(20%) of the voting interest of a Class of Owners may call a special meeting for the purpose of filling a vacancy in the Board of Directors.

3. Section 9.1 of the Bylaws of the Mauna Lani Resort Association shall be amended in its entirety to read as follows:

9.1 Necessary Vote. These Bylaws may be amended by (a) approval of Declarant, and (b) either (i) an affirmative vote of two-thirds (2/3) of all of the total voting rights of the Association, at a regular or special meeting of the Owners, or (ii) action by written consent of the Owners pursuant to Chapter 414D of the Hawaii Revised Statutes, as amended, and (c) an affirmative vote of a majority of the Board; provided, however, that Declarant's approval shall not be required for (i) any amendment that does not affect Declarant's rights under these Bylaws, or (ii) any amendment whatsoever after December 31, 2008, or the transfer of all of the Common Property from Declarant to the Association, whichever shall first occur. Declarant may at any time relinquish its right to approve amendments to these Bylaws by providing written notice to the Board of Declarant's intent to relinquish said right.

In all other respects and for every purpose, the terms and conditions of the By-Laws, as heretofore and hereinabove amended, shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned officers have signed this instrument on this 2nd day of OCTOBER, 2008.

MAUNA LANI RESORT ASSOCIATION
a Hawaii nonprofit corporation

By

Its

President

By

Ian Pullan

Its: Secretary

STATE OF HAWAII

)

) ss.

COUNTY OF HAWAII

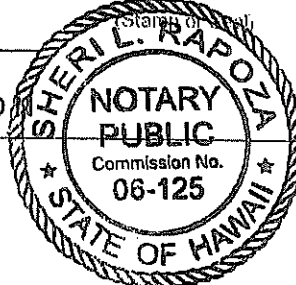
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On this 2nd day of October, 2008, before me personally appeared Ira Leitel, to me personally known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, who, being by me duly 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.

Sheri L. Rapoza
Print Name: Sheri L. Rapoza
Notary Public, State of Hawaii

My commission expires: March 5, 2010

Doc. Date: <u>July 23, 2008</u>	#Pages: <u>8</u>
Name: <u>Sheri L. Rapoza</u>	<u>Third</u> Circuit
Doc. Description: <u>2nd Amendment of the Bylaws of the Mauna Lani Resort Association</u>	
<u>Sheri L. Rapoza</u> Notary Signature	
NOTARY CERTIFICATION	



STATE OF HAWAII

)

) ss.

COUNTY OF HAWAII

)

On this 2nd day of October, 2008, before me personally appeared Ian Pullan, to me personally known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, 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.

Sheri L. Rapoza
Print Name: Sheri L. Rapoza
Notary Public, State of Hawaii

My commission expires: March 5, 2010

Doc. Date: <u>July 23, 2008</u>	#Pages: <u>8</u>
Name: <u>Sheri L. Rapoza</u>	<u>Third</u> Circuit
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<u>Sheri L. Rapoza</u> Notary Signature	
NOTARY CERTIFICATION	
