

/s/ LESLIE T. KOBATA, Registrar
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TITLE OF DOCUMENT:

AMENDED AND RESTATED BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF KANALOA AT KONA

PARTIES TO DOCUMENT:

ASSOCIATION: **ASSOCIATION OF APARTMENT OWNERS OF KANALOA AT KONA**, an unincorporated association, whose mailing address is c/o Castle Resorts, 78-261 Manukai Street, Kailua-Kona, HI 96740

TAX MAP KEY(S): (3) 7-8-020-028

RECITALS

AMENDED AND RESTATED BYLAWS OF THE
ASSOCIATION OF APARTMENT OWNERS OF
KANALOA AT KONA

The following bylaws shall apply to the above named condominium project, herein called the "project", as described in and created by Declaration of Horizontal Property Regime, herein called the "Declaration", dated November 15, 1979, recorded at Bureau of Conveyances of the State of Hawaii, in Liber 14262 at Page 242, as amended, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project.

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All apartment owners of the project shall constitute the Association of Apartment Owners, herein called the "Association". The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease or sublease of any apartment registered in the Office of the Assistant Registrar of the Land Court of the State of Hawaii or filed in the Bureau of Conveyances of the State of Hawaii, the lessee or sublessee of such apartment shall be deemed to be the owner thereof.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place in the city of Kailua-Kona, County of Hawaii, State of Hawaii, convenient to the apartment owners as may be designated by the Board of Directors of the Association, herein called the "Board".

Section 3. Annual Meetings. Annual meetings of the Association shall be held within one hundred fifty (150) days after the end of the fiscal year. The fiscal year used by the Association and the dates for Annual Meetings shall be determined by the Board of Directors.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President, the Board or by a petition signed by the owners of at least twenty-five per cent (25%) of the common interests. Upon the receipt of such call or such petition, the Secretary shall send out to all apartment owners written notice of the meeting, which shall be held, within thirty (30) days of the receipt of such call or petition by the Secretary, at any reasonable time at the project, unless another suitable place has been designated by the Board pursuant to Section 2.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the

Association's record of ownership, at least fourteen (14) days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting, the purpose therefor and the agenda of such meeting and a standard proxy form authorized by the Association, if any, in any of the following ways: (a) by delivering it to such owner personally, or (b) if such owner resides in the project, by leaving it at his apartment in the project, or (c) by mailing it, postage prepaid, addressed to such owner at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Voting. Each owner of an apartment shall be entitled to vote that percentage of the total votes which is equal to the percentage of the common interests appurtenant to such apartment as set forth in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, personal representative, guardian or trustee may vote in person or by proxy at any meeting of the Association the vote of any apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each cotenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

Section 7. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. As used in these bylaws, the terms "majority" or "majority of apartment owners" means the owners of apartments to which are appurtenant more than fifty per cent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such specified percentage of the common interests as established by the Declaration.

Section 8. Proxies and Pledges. The Association shall adopt a standard proxy form to be sent with each notice of a meeting, whether annual or special. Such proxy shall be valid only for the meeting to which the notice pertains and also to any reconvened adjournment of such meeting, may delegate any person as proxy and may be limited as the apartment owner desires and indicates. If the authority given by any apartment owner to another person to represent him at meetings of the Association is not on said standard proxy form, the authority shall, nevertheless, be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue

until revoked by writing filed with the Secretary or by the death or incapacity of such owner. Voting rights transferred or pledged by mortgage of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner. The purchaser of an apartment pursuant to an agreement of sale recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii shall have all of the of the rights of apartment owner, including the right to vote, provided that the seller under such agreement of sale may vote in matters substantially affecting his security interest in the apartment if retained in such agreement of sale.

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

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

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

The order of business at all special meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) New Business.

Section 11. Committees. The Board of Directors may create committees and appoint the members of such committees as the affairs of the Association may require and the Board shall define the authority and duties of such committees.

Section 12. Rules of Order. Unless other rules for the conduct of meetings of the Association are designated or adopted by majority vote of the apartment owners, all

meetings of the Association shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of seven (7) persons, each of whom shall be the sole owner or co-owner of record of an apartment, vendees under an agreement of sale, or, in the case of corporate owner, an officer of such corporate owner, or, in the case of a fiduciary owner, such fiduciary or an officer of such fiduciary. The partners in general partnership and the general partners of a limited partnership shall be deemed to be the owners of an apartment for this purpose. No resident manager of the project may serve on the Board.

Section 2. Powers and Duties. The Board of Directors shall have all powers and duties necessary for the administration of the affairs of the Association and may do all acts and things therefor unless prohibited by law, the Declaration or these bylaws or unless directed to be exercised or done only by the apartment owners. A director shall not vote or cast proxy at any meeting of the Board on any issue in which he has a conflict of interest.

Section 3. Election and Terms. Election of directors shall be by secret ballot at each annual meeting and any special meeting called for the purpose. Directors shall hold office for a period of three years, except to fill vacancies as described in Section 4, and until their respective successors have been elected, subject to removal as herein provided. Election of directors shall be staggered so that not more than three directors are elected in any one year.

Section 4. Vacancies. Vacancies in the Board caused by any reason other than removal of a director by the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until a successor is elected at the next annual meeting of the Association. Such successor shall serve only for the remainder of the term of the Board member he is replacing, and may be re-elected by the Association upon completion of that term. At an annual election of Board members where one or more of the vacant seats is for an un-expired term of office, the number of votes each candidate receives shall determine the length of the term the elected candidate shall serve, with the candidate receiving the higher number of votes serving the longer term. In case of a tie, the matter shall be settled by a coin toss. Death, incapacity or resignation of any director or his continuous absence from the State of Hawaii for more than six (6) months, or his ceasing to qualify for office as set forth above, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed with or

without cause by vote of a majority of apartment owners. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting. A successor may then and there be elected to fill the vacancy created, and such successor shall serve only for the remainder of the term of the director he is replacing, and may be re-elected by the Association upon completion of that term.

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

Section 7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter. Notice of any meeting of the Board shall be given in a reasonable manner at least fourteen (14) days, if practicable, prior to the date of such meeting. Such notice shall be given to each director personally, by mail, telephone, or email.

Section 8. Special Meetings. Special meetings of the Board may be called by the President, and notice of such meeting shall state the time, place and purpose of such meeting. Such time and place shall be convenient as to allow for maximum Board participation. Notice of special meetings shall be posted simultaneously with notice to the Board. On the written request of at least two directors, a special meeting of the Board shall be called by either the President or Secretary in like manner. In an emergency a special meeting may be by teleconference.

Section 9. Waiver of Notice. Before or at any meeting of the Board, any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board a majority of the total number of directors established by these bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At the reconvening of such an adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board shall require that all directors, officers, employees and agents of the Association handling or responsible for its funds shall

furnish adequate fidelity bonds consistent with Section 514B-143 of the Hawaii Revised Statutes, as amended. The premiums on such bonds shall be paid by the Association.

Section 12. Compensation. No member of the Board shall receive any compensation from the Association for acting as such, except that a majority of the apartment owners may at any meeting authorize a reasonable director's fee for attendance at meetings of the Board.

Section 13. Rules of Order. Unless other rules for the conduct of meetings of the Board are designated or adopted by the Board, all meetings of the Board shall be conducted in accordance with the most recent edition of Roberts Rules of Order Newly Revised.

ARTICLE III

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

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

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

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. He shall also have such other powers and duties as may be assigned to him from time by the Board. If neither the President nor the Vice President is able to act, the Board shall appoint another member of the Board to do so on an interim basis.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board, give all notices thereof as provided by these bylaws, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of

Secretary. The minutes of all such meetings shall be available for examination by the apartment owners at convenient hours at a place designated by the Board.

Section 7. Treasurer. The Treasurer shall keep the financial records and books of account of the Association.

Section 8. Auditor. The Board of Directors shall appoint as the Association's auditor a public accountant or certified public accountant or an accounting firm, none of whom shall be an officer of the Association or own any interest in any apartment, to conduct a yearly audit of the financial records and accounts of the Association.

Section 9. Indemnification. The Association shall indemnify every director and officer and his heirs, personal representatives and devisees against all expenses incurred by or imposed on him in connection with any claim, action, suit or proceeding to which he may be made a party by reason of being or having been a director or officer of the Association, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct; and, in the absence of such final adjudication, indemnification shall be provided only in connection with such matters as to which the Association is advised by its legal counsel that the person to be indemnified committed no such breach of duty. The foregoing right to indemnification shall not be exclusive of any other rights to which such person may be entitled. The Board may procure such policy or policies of insurance as it shall deem appropriate to provide for the indemnification set forth above and the cost of such insurance shall be deemed a common expense.

ARTICLE IV

ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the common elements of the project and have such powers and duties as may be necessary or proper therefor. Such powers and duties shall include, but shall not be limited to the following:

- (a) Supervision of their immediate management and operation;
- (b) Maintenance, repair and replacement and restoration of the common elements and any additions and alterations thereto;
- (c) Purchase, maintenance and replacement of any furnishings and equipment and provision of all water and utility services required for the common elements;
- (d) Provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;

- (e) Employment, supervision and dismissal of such personnel as may be necessary for the maintenance and operation of the project;
- (f) Preparation at least 60 days before each fiscal year of a proposed budget and schedule of assessments for such year;
- (g) Collection of all installments of assessments, including common expense assessments, collection of interest on unpaid assessments, collection of any fines, collection of any rents or fees due the Association, and payment of all common expenses authorized by the Board;
- (h) Purchase and maintenance in effect of all policies of hazard and liability insurance for the project required by the Declaration or these bylaws and such other insurance and bonds as may be required or authorized by the Declaration, these bylaws or the Board;
- (i) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;
- (j) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding 60 days in the payment of any assessment against such apartment;
- (k) Engaging legal or accounting services as may be necessary for the maintenance and operation of the project; and
- (l) Borrowing money or otherwise incurring indebtedness on behalf of the Association for maintenance, repair, replacement and restoration of the common elements, subject to the following:
 - (i) The Board has been expressly granted the authority by vote of a majority of the owners at a duly called meeting of the Association; and
 - (ii) The Board shall have no power to impair the use and enjoyment of an apartment and its appurtenant limited common elements in a manner inconsistent with the Declaration and these bylaws.

Section 2. Managing Agent. The Board may employ, on such terms and at such compensation as the Board shall establish, a responsible Hawaii corporation as Managing Agent (herein called the "Managing Agent") to manage and control those portions of the project within the management jurisdiction of the Board, subject at all times to direction by the Board. The Managing Agent shall have all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties as the Board may establish, including certain duties of the Secretary and Treasurer.

Unless otherwise directed by the Board, the Managing Agent shall keep at its principal place of business an accurate and current record of ownership consisting of a list of apartment owners, lessees, vendees under agreements of sale and mortgagees, together with their respective current addresses.

Section 3. Representation. The President or Managing Agent, subject to the direction of the Board, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions suits and proceedings, without prejudice to the rights of any apartment owner individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

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

ARTICLE V

OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments for Common Expenses. All apartment owners shall pay to the Managing Agent on or before the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the project in accordance with the Declaration and these bylaws.

Section 2. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be a separate, distinct and personal debt and obligation of the owner against whom the same is assessed.

(a) If the owner shall fail to pay his assessment when due, then he shall pay an additional assessment for each such failure commencing upon the fifteenth day after the date that the assessment becomes due. The amount of additional assessment shall be fifty dollars (\$50) but may be changed by the Board. Any such change must be approved by a majority of the owners at the next annual meeting.

(b) A reasonable interest on the unpaid assessment or assessments will be assessed the owner by the Association.

(c) Any attorney's fees billed to the Association for efforts to collect unpaid assessments will be charged to the owner in default as an additional assessment.

(d) A Collection Policy shall be published by the Board. Such Collection Policy will detail the process of collecting assessments which are in default, however shall in no way be inconsistent with any provisions of applicable law, the Declaration or these bylaws.

Section 3. Liens Securing Assessments.

(a) All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; subject to the limitations described in Section 514B-146, Hawaii Revised Statutes, as amended.

(b) The lien of the Association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, Hawaii Revised Statutes, as amended, by the Managing Agent or Board, acting on behalf of the Association and in the name of the Association; provided that any lien against any unit that arises solely from fines, penalties, legal fees, or late fees shall be filed in court pursuant to part IA of Chapter 667, Hawaii State Statutes, as amended. The Board may authorize the Association's legal counsel of record to act on its behalf in foreclosure proceedings. Such authorization shall be in writing.

(c) In any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the unit and the Managing Agent will be the receiver to collect the rent owed by the apartment owner or any tenant of the unit.

(d) Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(e) No unit owner shall withhold any assessment claimed by the Association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

(i) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(ii) The amount of any penalty, late fee, lien filing fee, interest and any other charge included in the assessment;

(iii) The amount of attorneys' fees and costs, if any, included in the assessment;

(iv) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

(v) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of the Association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and

(vi) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

(f) In conjunction with any foreclosure proceeding, where a unit is owner-occupied, the Association may authorize the Managing Agent to, after sixty days' written notice to the apartment owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the Association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

Section 4. Collection of Unpaid Assessments from Tenants or Rental Agents

(a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the common expenses, the Board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the Association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the Board, through the Managing Agent, shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall:

(i) Be sent both by first-class and certified mail;

(ii) Set forth the exact amount the Association claims is due and owing by the unit owner; and

(iii) Indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

Section 5. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by an apartment owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, expressed or implied by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in a resolution of the Board.

Section 6. Compliance with Regulations. Apartment owners shall comply with terms and conditions of the Declaration, these Bylaws, and the House Rules and shall cooperate with the Board in the enforcement of regulations contained therein. The Board, with the authority granted in Section 514B-104 of the Hawaii State Statutes, as amended, shall have the power to impose charges and penalties, including late fees and interest for violations of these Bylaws, the Declaration, or the House Rules.

(a) The Board shall publish a Fine Policy after approval of such policy by a majority of apartment owners.

(b) If any common expense is caused by the misconduct of any apartment owner, the association may assess that expense exclusively against such owner's unit, in addition to any fine imposed under the Fine Policy.

(c) The violation of any House Rule, or the breach of any bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board and Managing Agent, under the Board's direction, the right, in addition to any other rights set forth in these bylaws to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees shall be borne by the defaulting apartment owner.

ARTICLE VI

MAINTENANCE OF APARTMENTS AND USE OF PROJECT

Section 1. Maintenance of Apartments. Every owner of an apartment shall at such owner's expense at all times well and substantially repair, maintain, amend and keep such apartment, including without limitation all the internal installations therein providing water, electricity, air conditioning, telephone and television services, all fixtures belonging to such apartment, the interior decorated or finished surfaces of all

walls, floors and ceilings and lanais and decks of such apartment and all plate glass (including glass louvers, glass windows and door) with all necessary repairs and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by failure to perform any such work diligently, and, in case of such failure after reasonable notice to perform, such owner shall reimburse the Association promptly on demand for all expenses incurred by the Association in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall reimburse the Association promptly on demand for all expenses incurred by the Association in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or any person under either of them.

Section 2. Use of Project.

(a) The apartments of the project shall be used only for the purposes stated in the Declaration.

(b) The common elements and the limited common elements of the project shall be used only for the purposes for which they were designed.

(c) An apartment owner or occupant shall not place, store or maintain in the walkways, driveways and other common elements of the project of a similar nature, any objects of any kind. Such common elements shall not be obstructed at any time and shall be used for no other purpose than for normal transit through them or for which they were designed.

(d) No common areas shall be used for recreational purposes unless designated as a recreational area.

(e) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all terms and conditions of the Association and these bylaws, all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association applicable thereto.

(f) No apartment owner or occupant shall make or suffer any strip or waste of his apartment or alter or remove any furniture, furnishings or equipment of the common elements and no owner or occupant shall make or suffer any unlawful or improper use of an apartment or the project.

(g) No apartment owner or occupant shall erect or place in the project any building or structure, including fences and walls, nor make any additions or alterations to any building, nor place or maintain thereon any advertisements, signs, posters, signals or lettering whatsoever, except in accordance with plans and specifications approved by the Board and a majority in interest of apartment

owners directly affected (as determined by the Board) or such larger percentage required by law or the Declaration.

(h) No apartment owner shall decorate or landscape any portion of the common area except in accordance with standards therefor established by the Board and in accordance with specific plans approved in writing by the Board.

(i) Each apartment owner or occupant shall exercise extreme care about making noise and in the use of musical instruments, radios, television sets, amplifiers and other devices that may disturb other apartment owners or occupants.

(j) No garments, rugs or other objects shall be hung from the windows of the buildings.

(k) No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on the exterior part of any building.

(l) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements or limited common elements of the project outside of the disposal facilities provided for such purpose.

(m) No livestock, poultry, or other animals whatsoever, including cats and dogs (except service animals that have been trained to perform work or tasks or to assist a disabled occupant), shall be allowed or kept in any part of the project except that common household pets which are confined, such as tropical fish or small birds, may be kept by the apartment owners and occupants in their respective apartment but shall not be kept, bred or used therein for any commercial purposes nor allowed on any common elements at any time; provided, however, that any pet or animal causing a nuisance or unreasonable disturbance, as determined by the Board or Managing Agent, to any other apartment owner or occupant of the project shall be promptly and permanently removed from the project upon written notice given by the Board.

(n) No apartment owner or occupant shall without the written approval of the Board install any wiring for electrical installations, television antenna, air-conditioning unit or other equipment or appurtenances whatsoever on the exterior of any building or protruding through the walls, windows or roof thereof.

(o) Nothing shall be allowed, done or kept in any apartment or common element of the project which would overload or impair the walls or roof thereof, or cause any increase in the premium rates ordinarily prevailing for the use allowed or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

(p) In order for the project to present a uniform exterior appearance, all drapes, curtains, shades, shutters or other material placed against any window or glass door at the exterior perimeter of an apartment and visible from the exterior shall be white or off-white in color or shall be lined with material of such color.

Section 3. House Rules. The initial House Rules for the project were adopted on the same date as the original bylaws recorded by the Developer. The Board, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any provision of the House Rules, or may restate the House Rules. No provision of the House Rules shall be inconsistent with any provisions of applicable law, the Declaration or these bylaws. All apartment owners and occupants, as well as their tenants, invitees and employees, shall be subject to said House Rules.

Section 4. Association Access to Apartments

(a) The Association shall have the right, to be reasonably exercised by the Board or the Managing Agent, to enter an owner's apartment:

(i) To repair or maintain common elements or limited common elements as reasonably necessary during reasonable hours, or at any hour when the repair is an emergency.

(ii) To repair a plumbing, electrical, or other component of an owner's apartment when said component may be creating a hazard to other apartments or nearby residents. Such repairs will be an assessment to the owner of the apartment and shall be done only when said repair cannot be done in a timely fashion by the owner.

(iii) At any hour when the apartment is unoccupied to mitigate or abate a condition within that apartment that creates a hazard to people, nearby apartments or common elements or to mitigate or abate a condition that is disturbing nearby apartment owners or occupants.

(iv) To respond to emergency requests from tenants, renters or guests of the apartment owner who are requesting assistance from the Managing Agent and are unable to open the apartment door.

(v) To examine, repair or replace high-risk components such as washing machine hoses and water heaters after having given an apartment owner due notice of entry. If after such examination the Association determines such repair or replacement is necessary,

the work shall be done by the Association and charged to the Apartment owner as an assessment, unless such work can be accomplished by the apartment owner in a timely fashion.

(vi) To investigate a reasonably suspected violation of the Declaration, Bylaws, or House Rules after having given the apartment owner due notice and after having given said owner reasonable opportunity to cooperate with the Association in the investigation of the suspected violation and to abate summarily and remove, at the expense of the defaulting apartment owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof.

(b) If a forced entry is required to accomplish any of the necessities described in sub-paragraph (a) above, the Association will not be liable for damage done to the Apartment during such forced entry, nor for repairs of any such damage. However, if such repairs are necessary to secure the apartment and cannot be done by the apartment owner in a timely fashion, the Association will accomplish such repairs and all costs for such repairs will be assessed to the apartment owner.

(c) The Managing Agent will establish reasonable procedures to safely secure keys, entry codes, lock combinations, and any other such apartment-entry methods for those apartment owners wishing to provide the Managing Agent with such keys or other such devices to be used for entry into that owner's apartment in the event of situations as described in subsection (a) above.

(d) The Board or the Managing Agent acting under subsection (a) above shall not thereby be deemed guilty in any manner of trespass, or liable in any manner for trespass.

ARTICLE VII

INSURANCE AND RESTORATION

Section 1. Insurance.

(a) Property Insurance. The Association shall procure and maintain from a company or companies qualified to do business in Hawaii and having a financial rating by Best's Insurance Reports of Class VI or better a policy or policies (herein called the "policy") for property insurance, with special form coverage including coverage for hurricane damage covering the common elements of the project and, whether or not part of the common elements, all exterior and interior walls, floors and ceilings, the apartment and fixtures therein (including carpets and appliances which were included in the original specifications of each apartment, and all buildings and their fixtures and building

service equipment (excluding those parts of the buildings normally excluded from such policies) for as nearly as practicable to the full replacement cost thereof, without deduction for depreciation. Such policy shall also cover exterior glass if the Association so directs. All premiums on the policy shall be a common expense. The policy shall name the Association as insured as trustee for all owners of apartments.

The policy (unless unobtainable):

(i) shall contain no provision limiting or prohibiting other insurance by the owner of any apartment, such right being provided by statute, but if obtainable, shall provide that the liability of the insurer shall not be affected by, nor shall the insurer claim any right of setoff, counterclaim, apportionment, proration or contribution by reason of any such other insurance;

(ii) shall containing no provision relieving the insurer from liability because of loss occurring while the hazard is increased in the buildings, whether or not within the control or knowledge of the Board or the owner of any apartment or anyone claiming by, through or under any of them; and if obtainable, shall contain no provision relieving the insurer from liability by reason of any breach of warranty or condition caused by or by reason of any act or neglect of the Board, the owner of any apartment or anyone claiming by, through or under any of them;

(iii) shall provide that the policy may not be cancelled or substantially modified (whether or not requested by the Board) except by giving to the Board thirty (30) days written notice or (10) days notice for non-payment of premium;

(iv) shall contain a provision waiving any right of subrogation by the insurer to any right of the Board or apartment owner against any of them or any other person holding under them;

(v) shall contain a provision waiving any right of the insurer to repair, rebuild or replace, if the Association decides not to repair, reinstate, rebuild or restore the damage or destruction;

(vi) shall provide that any loss shall be adjusted with the Board and the mortgagee of any apartment directly affected by the loss;

(vii) shall contain a provision requiring the insurance carrier, at the inception of the policy and on each anniversary date thereof, to provide the Board with a written summary of the policy in layman's terms, including the type of policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Board shall provide this summary to each apartment owner.

The Board shall have the authority, on behalf of the owner of such affected apartment, to adjust, settle and compromise any claims under such policy.

(b) Comprehensive Liability Insurance. The Association shall procure and maintain from a company or companies qualified to do business in Hawaii and having a financial rating by Best's Insurance Reports of Class VI or better a policy or policies (herein called the "policy") of comprehensive general liability insurance which insures the Board, each apartment owner, the Association of Apartment Owners and its employees, against claims for personal injury, death and property damage (including, without limitation, owned, hired and non-owned automobile coverage, contractual liability and independent contractors liability) arising out of the condition of the common elements or activities thereon or construction work. Said insurance shall be for a single limit of not less than \$1,000,000.00 per occurrence for bodily injury and property damage.

Each policy (unless unobtainable):

(i) shall contain no provision relieving the insurer from liability because of loss occurring while the hazard is increased in any building, whether or not within the control or knowledge of the Board or the owner of any apartment or anyone claiming by, through or under any of them, or because of any breach of warranty or condition caused by or by reason of any act or neglect of the Board or the owner of any apartment or anyone claiming by, through or under any of them;

(ii) shall provide that the policy may not be cancelled or substantially modified (whether or not requested by the Board) except by giving to the Board thirty (30) days written notice or ten (10) days written notice for non-payment of premium;

(iii) shall contain a waiver by the insurer of any right of subrogation to any right of the Board or apartment owner against any of them or any other person holding under them; and

(iv) shall contain a cross-liability or severability of interest clause which will insure an apartment owner against claims for personal injury, death and property damage arising out of the negligence or wrongful act in the project of another apartment owner.

(c) Flood Insurance. If the project is located in a Special Flood Hazard Area, as designated by the Federal Emergency Management Agency, the Association shall maintain flood insurance equal to the maximum amount available from FEMA's National Flood Insurance Program.

(d) Insurance Against Additional Risks. The Board may also procure as it deems advisable for the protection of the apartment owners such insurance against additional risks as may be available with respect to properties of comparable character and use in the County of Hawaii.

(e) Claims. Claims should be settled in accordance with the conditions of the policy or policies. The policies should use the standard ISO forms if available.

(f) Miscellaneous Insurance Provisions. The Board shall review not less frequently than annually the insurance programs for the project and, in connection therewith, shall cause the project to be reappraised on a periodic basis in order to determine the adequacy of the policies of casualty insurance covering the project. If a prudent businessman owning the project would carry insurance with higher limits, the Board shall increase the insurance coverage to such higher limits. Copies of each policy of insurance procured by the Board shall be available for inspection by any apartment owner (or purchaser holding a contract to purchase an interest in an apartment) at the office of the Managing Agent. Any coverage procured under this Section 1 shall be without prejudice to the right of owners of apartments to insure such apartments and the contents thereof for their own benefit at their own expense.

Section 2. Damage and Destruction. To the extent that any loss, damage or destruction to the buildings or other property is covered by insurance procured by the Board, the Board shall have no claim or cause of action for such loss, damage or destruction against any apartment owner or lessee. To the extent that any loss, damage or destruction to the property of any apartment owner or lessee is covered by insurance procured by such owner or lessee, such owner or lessee shall have no claim or cause of action for such loss, damage or destruction against the Board, the Managing Agent, any other apartment owner, or the Association. All policies of insurance referred to in this Article VII shall contain appropriate waivers of subrogation.

Section 3. The provisions of this Article VII shall be subject to the provisions of Paragraphs N and O of the Declaration and also be subject to Section 514B-43, Hawaii State Statutes, as amended.

ARTICLE VIII

MORTGAGES

Section 1. Notice to Board. An apartment owner who mortgages his interest in an apartment shall notify the Board through the Managing Agent of the name and address of his mortgagee and also of the release of such mortgage. The Board or its designee shall maintain such information in its record of ownership of the Association.

Section 2. Notice of Unpaid Common Expenses. The Board, through the Managing Agent, whenever so requested in writing by a purchaser or mortgagee of an interest in an apartment, shall promptly report any then unpaid assessments for common expenses due from the owner of the apartment involved.

Section 3. Notice of Default. The Board, when giving notice to an apartment owner of a default in paying common expenses or other default, shall send a copy of such notice to each holder of a mortgage covering such apartment or interest therein whose name and address has theretofore been furnished to the Board.

Section 4. Examination of Books. Each owner and each mortgagee of an apartment shall be permitted to examine the books of account of the Association at reasonable times on business days.

ARTICLE IX

CONDEMNATION

In the event of a taking by eminent domain of part or all of the common elements all compensation payable for or on account of the taking of any land or on account of the taking of any buildings or improvements on the land shall be payable to each apartment owner affected, and his mortgagee, if any, in proportion to their respective common interest, after deducting the cost of removing the buildings or improvements and restoring the remaining land to a clean and orderly condition and even grade and after deducting the amount of any unpaid assessments the owner may owe the Association; provided that in the event of a partial taking of an apartment or apartments and improvements which shall be capable of being restored, then the award payable on account of such apartment or apartments and improvements shall be payable to a condemnation trustee, which shall be a bank or trust company designated by the Board doing business in Hawaii having net assets of not less than Five Million Dollars (\$5,000,000). The Board of Directors shall arrange for the repair and restoration of such apartment or apartments and improvements so that the same will be restored as nearly as possible in accordance with the design thereof immediately prior to such condemnation, or if such repair and restoration in accordance with said design are not permissible under the laws then in force, in accordance with such modified plans as shall have been approved by the Board and the first mortgagee of record of any interest in an apartment directly affected thereby. The condemnation trustee shall disburse the proceeds of such award received by such trustee to the contractor engaged in such repair and restoration as required by contract or otherwise in the condemnation trustee's reasonable discretion; and in the event such proceeds are insufficient to pay the costs thereof the Board shall pay any deficiency out of the Maintenance Reserve Fund, and if the Maintenance Reserve Fund is insufficient for this purpose, the Board shall levy a special assessment on each remaining apartment owner.

ARTICLE X

MISCELLANEOUS

Section 1. Amendments. These bylaws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of sixty-seven per cent (67%) of the apartment owners, effective only upon the recording of an instrument for such purpose setting forth such amendment of these bylaws.

Section 2. Owners May Incorporate. All of the rights, powers, obligations and duties of the Association imposed here-under may be exercised and enforced by a non-profit membership corporation formed under the laws of the State of Hawaii for the purposes herein set forth. Said corporation shall be formed upon the written approval of a majority of apartment owners. The formation of said corporation shall in no way alter the terms, covenants and conditions herein set forth and the articles and bylaws of said corporation shall be subordinated hereto and controlled hereby. Any action taken by said corporation which is in violation of any or all of the terms, covenants or conditions contained herein shall be void and of no effect.

Section 3. Notices. All notices hereunder to the Board of Directors shall be mailed to the Board of Directors c/o the Managing Agent, or, if there is no Managing Agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereafter designate from time to time, by notice in writing to all owners and to all mortgagees of apartments. All notices to any owner shall be mailed to the building or to such other address as may have been designated by him from time to time, in writing, to the Board of Directors. All notices to mortgagees of apartments shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 4. Captions. The captions herein are inserted only for convenience and for reference, and in no way define, limit or describe the scope of these bylaws, or the intent of any provisions thereof.

Section 5. Gender. The use of any gender in these bylaws shall be deemed to include either or both of the other genders and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 6. Waiver. No term, covenant, condition, restriction, obligation or provision contained in these bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 7. Interpretation. The provisions of these bylaws shall be liberally construed to effectuate the purpose of creating a uniform condominium complex whereby

the owners of apartments shall carry out and pay for the operation and maintenance of the project as a mutually beneficial and efficient establishment.

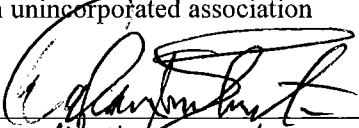
Section 8. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision.

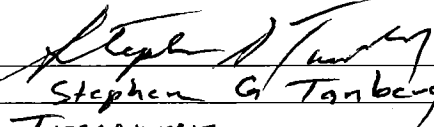
Section 9. Subordination. These bylaws are subordinate and subject to all provisions of the Declaration and any amendments thereto and Chapter 514B, Hawaii Revised Statutes, as amended, in effect on the date hereof, which shall control in case of conflict. All terms herein (except where clearly repugnant to the content) shall have the same meaning as in the Declaration or said Chapter 514B.

Section 10. Application. All present and future apartment owners, mortgagees, tenants and occupants of apartments and their employees, and any other persons who may use the project in any manner are subject to these bylaws, the Declaration and the House Rules. The acceptance of an assignment of lease or conveyance or the entering into of a lease or the act of occupancy of an apartment shall constitute an agreement that these bylaws, the House Rules and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

4th IN WITNESS WHEREOF, the undersigned have executed this instrument this day of May, 2018.

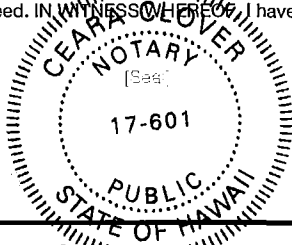
ASSOCIATION OF APARTMENT
OWNERS OF KANALOA AT KONA,
an unincorporated association


By: William Lambertson
Its: President


By: Stephen G. Tanberg
Its: Treasurer

STATE OF Hawaii)
COUNTY OF Hawaii) SS:

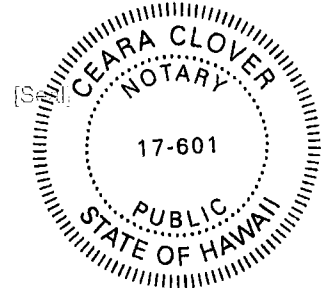
On May 4th, 2018, personally appeared William Lambertson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to within the foregoing instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the foregoing instrument, he/she, or entity on behalf of which he/she acted, executed the instrument as his/her/its free act and deed. IN WITNESS WHEREOF, I have hereunto set my hand and seal.



(Notary Signature) [Signature]
Printed Name: Ceara Clover
My commission expires: 17-22

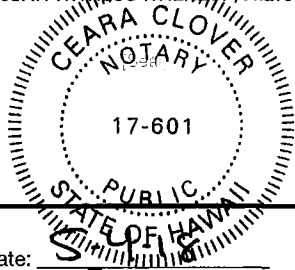
Doc. Date: <u>5-4-18</u>	# Pages: <u>25</u>
Notary Name: <u>Ceara Clover</u>	
Circuit: <u>3rd</u>	
Doc. Description: <u>Amended and Restated Bylaws of the Association of Apartment Owners of Kaneloa at Kona</u>	
Notary Signature: <u>[Signature]</u>	Date: <u>5-4-18</u>

NOTARY CERTIFICATION



STATE OF Hawaii)
COUNTY OF Hawaii) SS:

On May 4, 2018, personally appeared Stephen G. Tanberg, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to within the foregoing instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the foregoing instrument he/she, or entity on behalf of which he/she acted, executed the instrument as his/her/its free act and deed. IN WITNESS WHEREOF, I have hereunto set my hand and seal.



[Signature]
(Notary Signature)
Printed Name: Ceara Clover
My commission expires: 1-7-22

Doc. Date: <u>5-4-18</u>	# Pages: <u>25</u>
Notary Name: <u>Ceara Clover</u>	
Circuit: <u>Third</u>	
Doc. Description: <u>Amended and Restated Bylaws of the Association of Apartment Owners of Kapa'ua at Kona</u>	
Notary Signature: <u>[Signature]</u>	Date: <u>5-4-18</u>

NOTARY CERTIFICATION

