

BYLAWS OF HAWAIIAN SHORES COMMUNITY ASSOCIATION

ARTICLE 1 Recitals and Definitions

Section 1.01. Name of Association. The name of this corporation is the HAWAIIAN SHORES COMMUNITY ASSOCIATION and shall be referred to herein as the "Association."

Section 1.02. Association Is Nonprofit. The Association is a Hawaii nonprofit corporation.

Section 1.03. Specific Purpose. The specific and primary purpose of this Association shall be to own, repair, maintain and manage the common areas and common facilities within the HAWAIIAN SHORES RECREATIONAL ESTATES (the "Properties") located on the Big Island, State of Hawaii, enforce the rules and regulations adopted by the Board of Directors, from time to time, and the terms and conditions of the Declaration, and to otherwise enhance and promote the use and enjoyment of the common areas and common facilities by the owners.

Section 1.04. Definitions.

- (a) **County.** "County" means the County of Hawaii, State of Hawaii.
- (b) **Declaration.** "Declaration" means the declaration of covenants, conditions and restrictions of the Hawaiian Shores Recreational Estates as amended.
- (c) **Charter.** "Charter" means the Articles of Incorporation of the Hawaiian Shores Community Association.
- (d) **Majority of a Quorum.** "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting or the number of ballots cast equals or exceeds the quorum requirement specified in Section 4.05, below.

Section 1.05. Principle Office. The principle office of the association shall be maintained within Hawaiian Shores Recreational Estates, Pahoa, Hawaii, State of Hawaii and its mailing address shall be 15-2793 S. Honu Street or at such other place or address in the State of Hawaii as its Board of Directors from time to time shall determine.

ARTICLE II Membership

Section 2.01. Membership of the Association. Every Owner of a Lot within the Properties is a Member of the Association. Membership in the Association is appurtenant to, and may not be separated from, ownership of any Lot. The term "Owner" as used in these Bylaws shall include a vendee under any valid contract of sale and shall mean the singular or plural or member, individuals, trustees or corporations and each of their respective successors, executors, and administrators.

Section 2.02. Multiple Ownership of Lots. Ownership of a Lot shall give rise to a single Membership vote in the Association. Accordingly, if more than one person owns a Lot, all of said persons shall be deemed to be one Member for voting purposes, although all such Owners shall have equal rights as Members to use and enjoy the Common Areas and Common Facilities. Anyone of the multiple Owners shall be entitled to vote the Membership, unless the secretary of the Association is notified in writing of the Owner designated by his or her co-Owners as having the sole right to vote the Membership on their behalf. If such notification does not occur and more than one of the multiple Owners votes a Membership, the Association secretary or the inspector of election, if an inspector is appointed, shall be entitled to disqualify the vote of such co-Owners.

Section 2.03. Term of Membership. Each owner shall remain a Member until he or she no longer qualifies as such under Section 2.01, above. Upon the conveyance or other transfer of an Owner's interest in a Lot, the Owner's Membership interest appurtenant to the Lot shall automatically transfer to the Lot's new Owner(s).

Section 2.04. Furnishing Evidence of Membership. A person shall not be entitled to exercise the rights of a Member until such person has advised the Association's secretary in writing that he or she is qualified to be a Member under Section 2.01 above, and, if requested by the secretary, has provided the secretary with evidence of such qualification in the form of a certified copy of a recorded grant deed or a currently effective policy of title insurance. Exercise of Membership rights shall be further subject to the rules regarding record dates for notice, voting and actions by written ballot and eligibility for voting set forth in Section 4.07 below.

ARTICLE III

Membership Voting

Section 3.01. Single Class Membership. The Association shall have one class of voting Membership comprised of Owners of Lots within the Properties.

Section 3.02. Member Voting Rights. On each matter submitted to a vote of the Members, whether at a meeting of the Membership called and held pursuant to the provisions of these Bylaws or otherwise, each Member shall be entitled to cast one vote for each lot that he or she owns. Single Memberships in which two or more persons have an indivisible interest shall be voted as provided in Section 2.02, above.

Section 3.03. Eligibility to Vote. Only Members in good standing shall be entitled to vote at any Membership meeting. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Lot(s), not be subject to any suspension of any voting privileges as a result of any disciplinary proceeding, not have a water bill delinquency of more than \$100, and not have any fine payment delinquency of more than 90 days. A Member's good standing shall be determined as of the record date established in accordance with Section 4.07, below.

Section 3.04. Manner of Casting Votes.

- (a) **Voting at Membership Meetings.** Voting at any Membership meeting may be made by voice or by ballot; provided, however, that the voting in any election of directors shall be conducted by secret ballot. The vote on any other issue properly before a meeting of the Members shall be conducted by secret ballot when determined by the chairman of the meeting, in his or her discretion, or when requested by 10 percent of the Members present in person at the meeting.
- (b) **Voting by Absentee Ballot.** In addition to voting in person at a meeting, Members votes may be cast by absentee written ballot.
- (c) **Proxy Voting.** Proxy voting shall not be allowed.
- (d) **Balloting Time Requirements.** Written ballots shall be distributed to all eligible Members at least 30 days prior to the final date the written ballots must be received by the Association in order to be counted. All written ballots shall provide a reasonable time within which to return the written ballot to the Association and shall state on the face of the ballot or in an accompanying notice the date by which the written ballot must be returned in order to be counted. The time fixed for the return of written ballots may only be extended if the Board so notifies the Members on the face of the ballot or in the balloting solicitation materials originally sent to Members and then for no more than two successive periods of thirty days each.
- (e) **Content of Written Ballots-Issues.** Any written ballot, including absentee ballots, distributed to the Members to vote on any issue shall set forth the issue to be voted upon and provide a place on the ballot to vote YES or NO on the issue.
- (f) **Contents of Written Ballots- Candidates.** Any written ballot, including absentee ballots, distributed to the Members to elect Directors shall list the candidates and the number of seats available and provide a place on the ballot for the Member to vote for the candidates of the Member's choice to fill the seats available. If a Member does not follow ballot instructions, the Member's vote (s) shall be counted only towards quorum.
- (g) **Signature Verification.** The Association shall distribute signature cards to all current and future owners. In order to exercise the right to vote, all members must sign and return signature cards to be used for verification of the member's signature in all elections, petitions and ballot measures. Ballots and signature cards shall be made available to all members in good standing who can provide picture ID at the election table on the day of the election.

ARTICLE IV

Membership Meetings

Section 4.01. Place of Meeting. Meetings of the Members, including the annual meeting, shall be held within the Hawaiian Shores Recreational Estates.

Section 4.02. Annual Meeting. There shall be an annual meeting of the Members held on the third Saturday in April of each year. A Board member shall preside over the meeting. In the absence of a Board member, the Members present shall nominate and elect a chairperson to preside over the Annual Meeting. At the annual meeting, the president, treasurer and standing committee chairpersons of the Board shall make their annual reports to the Members. The Members shall elect the Members of the Board of Directors, and transact any general business which may be brought before the meeting and may take any corporate action.

Agenda items for the annual meeting of the membership shall be submitted in writing to the association office no later than February 15th preceding the annual meeting.

Section 4.03. Special Meetings. Special Meetings of the Members of the corporation may be held at any time upon the call of the president, or on the call of a majority of the Board of Directors, or upon the petition of five percent (5%) of Memberships in good standing who present to any corporate officer or the Board of Directors a request for such a meeting, giving the necessity or specific reason for calling a special meeting. The Secretary shall verify the signature of each petitioner by comparing the signature on the petition with that provided by the Member pursuant to Section 3.04(f), prior to the calling of the special meeting. No business other than that for which the special meeting is called shall be transacted at such meeting.

Section 4.04. Notice of Member Meetings. A written or printed notice of every meeting of the Members, stating whether it is annual, regular or special, the authority for the call of the meeting, the place, day and hour thereof and the purpose therefore shall be given to each member by the Secretary of the Association, at least ten (10) but not more than sixty (60) days before the day set for such meeting. Such notice shall be given to each member in any of the following ways:

- (a) by leaving the same with him personally, or
- (b) by leaving the same at the residence or usual place of business of such Member, or
- (c) by mailing it, postage prepaid, addressed to such Member at his address as it appears on the Membership list of the association.
- (d) by email at the email address of record or other verifiable electronic communication on file with the association .

If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of meetings shall in no way invalidate the meeting or any proceeding thereat.

Section 4.05. Quorum. At any meeting of the Members for which proper notice has been given, one hundred (100) or more of the Members of the Association in good standing, present in person or by absentee ballot, shall constitute a quorum. The concurring vote of a majority of the Members constituting a quorum shall be valid and binding upon the Association except as otherwise provided by the law or by these bylaws or by the charter of the Association. Preferential vote by the Members shall be valid and binding upon the Association for election of directors except as otherwise provided by the law or by these bylaws or by the charter of the Association

Section 4.06. Adjournment. Any meeting of the members of the Association, annual or special, whether or not quorum is present, may be adjourned to another time and/or place (but not for more than 45 days) by the vote of a majority of the Members present in person at the meeting. Unless there is an absence of a quorum (in which case no business, other than a vote to adjourn the meeting, may be transacted), the reconvened meeting may take any action which might have been transacted at the original meeting.

Section 4.07. Record Dates for Member Notice and Voting. For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting or exercise any rights in respect to any other lawful action, the Board of Directors may fix, in advance, a "record date" and only Members of record on the dates so fixed are entitled to notice, to vote, or take any action by written or absentee ballot or otherwise, as the case may be, except as otherwise provided in the Charter, by agreement, or in the Hawaii Revised Statutes. Any transfer of or change in Membership status on the membership list of the Association after the record date shall not change the Members of record as established on the record date. The record dates established by the Board pursuant to this section must be in accordance with the following requirements

- (i) in the case of determining those Members entitled to a notice of the meeting and entitled to vote at a meeting, the record date shall not be more than ninety (90) days nor less ten (10) days before the date of the meeting; and
- (ii) in the case of determining Members entitled to exercise any rights in respect to other lawful action or acquire Member approval, the record date shall not be more than ninety (90) days prior to the date of such other action.

Section 4.08. Robert's Rules of Order. All meetings of the membership shall be conducted in accordance with the most current edition of Robert's Rules of Order.

ARTICLE V Board of Directors

Section 5.01. Number and Qualification of Directors. The Board of Directors shall consist of not less than five (5) nor more than nine (9) persons who shall be owners of lots within the properties and whose Memberships are in good standing with all assessments current and are not subject to any suspension of Membership rights. Only one owner per lot shall be eligible to serve on the Board at any time.

Implementation Note:

- A) In the year in which the amendment is adopted (2009), the ten sitting and elected Board members shall retain their positions.
- B) In the first year following the adoption of the amendment (2010), only four of the five expiring positions shall be filled, leaving a nine-member Board. Three of the four positions shall be elected to three-year terms. One of the positions to be filled shall be elected to a one-year term. The ballot shall indicate the term length of each position next to the name of the candidate for election.
- C) In the second year following the adoption of the amendment (2011), six positions shall be filled. Three of the positions shall be elected to three year terms. Three of the positions shall be elected to one-year terms. The ballot shall indicate the term length of each position next to the name of the candidate for election.
- D) In the third year following the adoption of the amendment (2012), three positions shall be filled for three-year terms.

Section 5.02. Election and Term. Voting results from ballots, including absentee ballots, received for the election of Directors shall be announced at the annual meeting of the Members of the Association. Directors shall, unless sooner removed by the Members of the Association as provided in these Bylaws, hold office until their successors are duly elected. Each director shall serve for a term of three (3) years with three (3) new Directors being elected each year. No Director shall serve more than two consecutive three-year terms. No Director who has just completed two three-year terms shall be eligible for appointment to fill a vacancy on the Board. A term commences when a Director is elected by the Members of the Association.

Section 5.03. Nomination of Directors. Nominations for Directors shall be made by any Member in good standing by submission in writing with the written concurrence of the nominee to the Association office by February 15th for election in that year.

Section 5.04. Resignation of Directors. Any Director may resign at any time by giving written notice to the Board or to the president or to the Secretary. Any such resignation shall take effect on 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. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 5.05. Removal of Directors. The Board of Directors shall have the power and authority to remove a Director and declare his or her office vacant if she or he:

- (i) has been declared of unsound mind by a formal order of court;
- (ii) has been convicted of a felony; or
- (iii) fails to attend four meetings of the Board of Directors, whether regular or special, which have been duly noticed in accordance with these Bylaws, within a twelve-month period or less;
- (iv) has violated the Code of Conduct for Members of the Board of Directors.

Except as provided above, a Director may only be removed from office prior to expiration of his or her term by the affirmative vote of a majority of a quorum of the Members present in person or by absentee ballot at a special meeting called and held for such purpose.

Section 5.06. Vacancies. If a vacancy occurs on the Board of Directors, for any reason, the remaining Directors, by a majority vote, shall appoint a successor to serve until the next election of directors.

ARTICLE VI Board Meetings

Section 6.01. Place of Meetings. Regular and special meetings of the Board of Directors shall be held within the Hawaiian Shores Recreational Estates.

Notwithstanding the above, a regular or special meeting of the Board may be held at any place within the County of Hawaii, consented to in writing by all of the board Members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting.

Section 6.02. Annual Meeting of the Directors. The annual meeting of the Board of Directors of the Association shall be held at the place of each annual meeting of the Members and immediately following such meeting. At the annual meeting, the Directors shall elect the officers of the Association for the following year, may transact any general business which may be brought before the meeting and may take any Association action.

Section 6.03. Regular Meetings of the Directors. The Board of Directors may establish regular meetings to be held at such places and at such times as it may from time to time come up by vote determine and when any such meeting or meetings shall be so determined, no further notice thereof shall be required.

Section 6.04. Special Meetings. Special meetings of the Board of Directors may be called at any time by the president or by any two (2) Members of the Board.

Section 6.05. Notice of Special Meetings. Notice of each special meeting of the Board of Directors of the Association stating the authority for the call of the meeting and place, day and hour thereof, shall be given to each director by the office of the Association or by the person calling. Such notice shall be given to each Director in any of the following ways:

- (a) by leaving the same with the Director personally; or
- (b) by leaving the same at the Director's residence or usual place of business; or
- (c) by mailing it, postage prepaid, addressed to the Director at the Director's address as it appears on the membership list of the Association; or
- (d) notice may be given by phone call, facsimile, or email.

Section 6.06. Quorum for Meeting of Directors. A majority of the total number of Directors in office immediately before a meeting begins shall constitute a quorum to transact business. To be valid, any act of business must receive the approval of a majority of such quorum. A vacancy or vacancies in the Memberships of the Board shall not affect the validity of any action of the Board.

Section 6.07. Action Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all Members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall, be filed with the minutes of the proceedings of the Board and shall have the same force and effect as a unanimous vote of the Board. If prompt or immediate action of the Board is necessary and there is insufficient time to comply with the notice requirements set forth herein, reasonable efforts shall nonetheless be made to contact all Board Members regarding the proposed action in advance thereof, rather than relying upon notification after the fact.

Section 6.08. Compensation. Directors, officers and Members of committees shall not be entitled to compensation for their services as such, although they may be reimbursed for such actual expenses as may be determined by resolution of the Board of Directors to be just and reasonable. Expenses for which reimbursement is sought shall be supported by a proper receipt or invoice. Board Members shall not be reimbursed for expenses, such as travel, to attend a Board meeting.

Section 6.09. Director Proxies. At all meetings of the Board of Directors, voting by proxy shall not be allowed. This provision does not prohibit a Director from voting by telephonic conference call at the time of the meeting, when personal health or emergency prevents the Director from voting in person.

Section 6.10. Robert's Rules of Order. All meetings of the Board of Directors shall be conducted in accordance with the most current edition of Robert's Rules of Order.

ARTICLE VII

Duties and Powers of the Board

Section 7.01. Specific Powers. Without prejudice to the general powers of the Board of Directors as set forth above, the Directors shall have the power to:

- (a) Exercise all powers vested in the Board under the governing documents and the laws of the State of Hawaii.

- (b) Appoint and remove all officers of the Association, the Association's manager (subject to any contractual commitments which may exist), and other Association employees; prescribe any powers and duties for such persons that are consistent with law, the Articles of Incorporation and these Bylaws; and fix their compensation.
- (c) Appoint such agents and employ such other employees, including attorneys and accountants, as it sees fit to assist in the operation of the Association, and to fix their duties and to establish their compensation.
- (d) Adopt and establish rules and regulations subject to and consistent with the provisions of the Declaration.
- (e) Enforce all applicable provisions of the Governing Documents relating to the control, management, and use of the Lots, Common Areas, Common Facilities and the private streets within the properties.
- (f) Perform all acts required of the Board under the Charter and Declaration.
- (g) Contract for and pay for maintenance landscaping, utilities, materials, supplies, labor and services that may be required from time to time in relation to the properties.
- (h) Delegate its duties and powers hereunder to the officers of the Association or to committees established by the Board subject to the limitations expressed below.
- (i) Levy and control assessments from the Members of the Association in accordance with the Charter and these Bylaws.
- (j) To purchase, lease for a period of more than five (5) years, or sell any real property owned by the Association provided that they have received a concurring vote of three fourths (3/4) of the Members of the Association present in person or by absentee ballot at a meeting of the Members duly called for this purpose, except as provided in (k) below. Facts pertaining to such offer to purchase or sell, such as price, terms, buyer, intended use, etc. must be included in the notice of the meeting to provide each member the time to make an educated decision. The Board shall have the authority upon itself to lease any real property owned by the Association for a period of less than five (5) years upon a unanimous vote of the Board of Directors.
- (k) To sell any real property acquired through foreclosure.

ARTICLE VIII

Officers

Section 8.01. Officers. Officers of the Association shall be a president, a vice-president, a secretary and a chief financial officer (who shall be known as treasurer). The Association may also have, at the discretion of the Board, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed with the provisions set forth below. Any person may hold two or more offices, except that neither the secretary nor the chief financial officer may serve concurrently as president. All Officers of the Associations must be directors.

Section 8.02. Election of Officers. The officers of the Association, except such officers as may be appointed in accordance with provisions set forth below, shall be chosen annually by majority vote of the Board at its first regular meeting following the annual meeting of the Members.

Section 8.03. Removal of Officers. Any officer may be removed, either with or without cause, by the Board at any regular or special meeting.

Section 8.04. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board or to the president or to the secretary. 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. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 8.05. 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.

Section 8.06. President. The president shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control over the affairs and officers of the Association. He or

she shall preside at all meetings of the Board, and shall have the general power and duties of management usually vested in the office of president of a corporation, together with such other powers and duties as may be prescribed by the Board or the Bylaws.

Section 8.07. Vice President. In the absence or disability of the president, the vice president shall perform all the duties of the president and when so acting shall have all powers of, and be subject to all of the restrictions upon the president. He or she shall have such other powers and perform such other duties as from time to time may be prescribed by the Bylaws.

Section 8.08. Secretary. The secretary shall: (i) keep, or cause to be kept, at the principle office or such other place as the Board may order a book of minutes of all meetings of directors and Members; (ii) keep, or cause to be kept, appropriate current records showing the Members of the Association, together with their addresses; (iii) give, or cause to be given, notice of all meetings of the Board and the Members required by the Bylaws or by the law to be given; (iv) keep the seal of the Association in safe custody; (v) perform such other duties and responsibilities as may be prescribed by the Board or by the Bylaws. At a minimum, the minutes shall note the date, time and location of the meeting, the persons in attendance, a general description of the matters discussed and an accurate record of the actions taken or duly approved by the Board or the Members, as the case may be.

Section 8.09. Chief Financial Officer/Treasurer. The Chief Financial Officer, who shall be known as treasurer, shall: (i) keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and other matters customarily included in financial statements; (ii) deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board; (iii) disburse the funds of the Association as may be ordered by the Board (iv) render to the president and directors whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the Association and (v) exercise such other powers and perform such other duties as may be prescribed by the Board or the Bylaws. If required by the Board, the treasurer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his or her office and for restoration to the Association of all its books, papers, vouchers, money, and other property of every kind in his or her possession or under his or her control on his or her death, resignation, retirement or removal from office.

Section 8.10. Auditor. The Members of the Association may, at an annual meeting, or any special meeting called for that purpose, elect some person, firm or corporation engaged in the business of auditing to act as auditor for the Association. No director, officer or member shall be eligible to serve as auditor of the Association. The auditor shall, as often as is required by the Directors examine the books and papers of the Association and prepare the statement of the treasurer with the books and vouchers of the association and thereafter, make appropriate reports to the directors and shall within thirty (30) days of the completion of such audit, make a copy thereof available to each member, as requested.

Section 8.11. Liability of Officers and Directors. Each Director or Officer shall be free from all personal liability for any acts done on behalf of the Association or for any losses incurred or sustained by the Association as long as said Officer Director shall have acted in good faith and with the best interest of the Association in mind. Every Director or Officer shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorneys fees) actually and necessarily incurred by or imposed upon and in connection with or resulting from any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his being or having been a Director or Officer of the Association, whether or not he continues to be such Director or Officer of the Association at the time of the incurring or imposition of such cost, expense or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful conduct, willful neglect, negligence or bad faith toward the Association and the performance of his duties as such Director or Officer.

ARTICLE IX

Rules, Regulations, and Committees

Section 9.01. Adoption. The Board of Directors may from time to time make such rules and regulations concerning the use of the common areas and facilities of the Association as it deems necessary or advisable, including the manner of the use of such facilities by guests of Members or of the Association.

Section 9.02. Promulgation. The Association office shall mail a true and correct copy of all rules and regulations or amendments thereto to each Member of the Association as it appears on the Membership role of the Association to his last known address and shall enter upon the record of the Association his or her certificate of such mailing.

Section 9.03. Effective Date. Any such rule or regulation or amendment thereto, adopted by the Board of Directors shall be effective commencing at 12:01 a.m. on the fifth (5th) day following the date of such mailing, unless the Board of Directors specifies some other effective date.

Section 9.04. Committees. The Board of Directors may create and appoint one or more committees. Such committees shall have a name or names as may be determined by the Board of Directors. All committees shall be accountable to the Board of Directors and shall report directly thereto. The chairperson and Members of all committees shall serve at the pleasure of the Board of Directors and may be removed thereby with or without cause. Each committee shall have at least two Board Members. The Board shall appoint such other members to the committees as the Board deems reasonable and desirable to provide information or expertise to the committees. Each committee shall make recommendations to the Board for Board action.

ARTICLE X

Member Assessment Obligations and Association Finances

Section 10.01. Description of Assessments to Which Owners are Subject. Owners of Lots within the Properties are subject to regular, special and special individual assessments as more particularly described below.

Section 10.02. Regular and Annual Assessments. The Board of Directors shall annually assess the Membership in an amount sufficient to carry out the purposes of the Association for the ancillary year. The effective date of such an assessment shall be January 31 of each year. The Board of Directors shall notify each member in writing, on or before September 30 of each year, the effective date of the annual assessment and the amount of the assessment levied against each member as hereinafter provided.

Section 10.03. Special Assessment. If at any time the Board of Directors shall determine that the funds of the Association are or will be insufficient to reasonably enable the Association to accomplish its purposes, the Board may, at any special or regular meeting thereof, levy such other and further assessments against the Members of the Association as it deems are necessary or appropriate to accomplish its purposes. The Board of Directors shall notify each Member of the Association as to the amount of any such special assessment and its effective date, which shall be at least fifteen (15) days after the date of mailing such notice.

Section 10.04. Special Individual Assessments and Covenants, Conditions & Restrictions (CC&Rs) Violation Fining.

- (a) **Circumstances giving rise to special individual assessments.** In addition to assessments and special assessments levied against all Members in accordance with the above, the Board of Directors may impose special individual assessments against a member in any of the circumstances described in sub paragraphs (i) through (iii) below. Provided however, that no special individual assessment may be imposed against a Member pursuant to this section until the Member has been afforded the notice and hearing rights to which the Member is entitled pursuant to Article X, Section 10.10 below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with these Bylaws or the Declaration. Subject to the forgoing, the acts and circumstances giving rise to liability for special individual assessments include the following:
 - (i) **Damage to common areas or common facilities.** In the event that any damage to, or destruction of, any portion of the common area or common facilities is caused by the willful misconduct or negligent act or omission of any Member or a Member of his/her family, or any of his or her tenants, guests, servants, employees, licensees, or invitees, the Board of Directors shall cause the same to be repaired or replaced, or all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such member as a special individual assessment;
 - (ii) **Expenses incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses to: (a) accomplish the payment of delinquent assessments or special assessments; (b) otherwise bring the member and/or his/her Lot into compliance with any provisions of the Bylaws or the Declaration, the amount incurred by the Association (including reasonable attorneys fees and costs) shall be assessed and charged solely to and against said Member as a special individual assessment.
 - (iii) **Required Maintenance on Lots.** (a) If any lot is maintained so as to become a nuisance, fire or a safety hazard for any reason, the Association shall have the right to enter said lot, correct the condition and recover the cost of such action through imposition of a special individual assessment against the offending party;

- (b) Levy of special individual assessment and payment. Once a special individual assessment has been levied against a Member for any reason described herein, and subject to the conditions imposed in sub paragraph (a) of this section, such special individual assessment shall be recorded on the Association's assessment role and notice thereof shall be mailed to the effected Member within thirty (30) days of said levy. The special individual assessment shall thereafter be due as a separate debt of the Member payable in full to the Association within thirty (30) days after the mailing of notice of the assessment.

Special individual assessments shall be subject to the imposition of a lien and enforceable through foreclosure as fully set forth in the Declaration upon the failure of a member to pay any special individual assessment within the time set forth above and subject to the Member having been afforded the notice and hearing rights to which the member is entitled as to Article, Section 10.10 below

- (c) CC&R Violation Fining. The Association's CC&Rs permit fining for violations that occur. The Association shall adopt procedures that provide each Member with two separate written violation notices, 30 days apart, and these notices shall be sent return receipt, certified mail. Members shall also be given an opportunity to appeal fines at a fine hearing before the fines are levied. Fine payments shall be due as a separate debt of the member made payable in full to the Association within thirty (30) days after the mailing of such fine notice. Fines shall be subject to the imposition of a lien and enforceable through foreclosure as duly set forth in the Declaration upon failure of a member to pay the fine within the time set forth above and subject to the Member having been afforded the notice and hearing rights to which the member is entitled as contained in this section.

Section 10.05. Veto of Assessments. If at any time the Board of Directors either (a) increases the last prior regular annual assessment by more than thirty three percent (33%) or (b) declared any special assessment, the Members, by an affirmative vote of a 2/3rds majority of the Members of the Association present either in person or by absentee ballot, may veto such increase or special assessment at a special or regular meeting duly noticed for that purpose. Unless such a meeting is held within one hundred twenty (120) days of the notice of assessment, the assessment as declared by the Board shall be effective as of the date originally announced. A petition by the members for (a) a special meeting to veto any such increase or special assessment, or (b) to have the matter placed on the agenda at the annual membership meeting, must be presented to the Board within sixty (60) days of the notice of assessment, pursuant to Section 4.03.

Section 10.06. Approval of Members for Assessments which relate to Community Facilities Other than Maintenance and Landscaping. Anything in these Bylaws to the contrary notwithstanding, if at any time the Board of Directors establishes and declares an assessment or a portion thereof which relates to common facilities or common areas other than maintenance and landscaping, such assessment shall not be effective unless and until the Members approve and ratify the same at a special meeting duly called or a regular meeting duly noticed for that purpose, by an affirmative vote of not less than sixty (60) percent of the Membership of the association present either in person or by absentee ballot.

Section 10.07. Payment Assessments, Delinquency. Every assessment or special assessment whether annual or special, shall be deemed levied against each member as hereinafter provided as of the effective date of such assessment. The portion of an assessment levied against a member shall be in proportion to the number of lots in the Hawaiian Shores Recreational Estates Subdivision owned by that Member and shall be computed by dividing the number of lots owned by all Members and multiplying said quotient by the total amount of the assessment. All assessments, annual and special, shall be due and payable on the effective date thereof. Any assessment not paid within two months of its effective date shall bear interest, retroactive from the effective date, at the rate of one (1) percent per month, or at such other rate as the Board of Directors shall establish for all such payments, which rate shall not exceed the maximum rate allowed by law. The covenant of the Members to pay assessments shall run with the land and new Members shall be liable for any unpaid assessments on lots which they have purchased.

Section 10.08. Lien. Subject to Section 10.04 and Section 10.10 below as to fines and special individual assessments, each fine and special assessment shall constitute a lien upon each lot against which it is levied and such lien may be foreclosed by the corporation in the same manner as a real estate mortgage may be foreclosed pursuant to Chapter 667 and Section 501-118, Hawaii revised statutes 1959, as the same now or hereafter be amended.

A reminder will be mailed to delinquent Members advising them that a lien will be filed for recording with the Bureau of Conveyances thirty days from the date of the reminder. If the lien is not remedied within thirty days of filing, a sixty day written notice of the filing and of the Association's right to foreclose shall be mailed to each delinquent Member.

Such lien shall be prior to all liens, except (i) liens for taxes and assessments lawfully imposed by governmental authority against such lots and (ii) all sums unpaid on mortgages of record. Notwithstanding the foregoing right of the Association

Adopted April 17, 2021

to foreclose on any such lien, the Association may, at its sole option, sue to recover a money judgment or any unpaid fines or assessments, and such suit may be maintained without foreclosing or waiving the lien. If suit is brought, whether for foreclosure or money judgment, the Member shall be responsible for all costs thereof, including reasonable attorney's fees.

Section 10.09. Water System.

- (a) **Notification and owner responsibilities.** Before commencing any machine work on a lot, the owner or operator shall contact the Association office to have the water lines/easements marked to eliminate the possibility of broken water lines and the expense of the repairs. The owner shall be responsible for any damages to roads, road side easements, ditch lines, water lines, and/or adjoining lots resulting from work being done by contractors or persons working on their lots.
- (b) **Appurtenances.** It is the lot owner's responsibility to keep appliances and fixtures in working order, including but not limited to solar panels, water heaters and ice makers, to prevent damage from water turn off.
- (c) **Payment obligations.** Each lot owner shall pay a water hook up fee before starting construction or landscaping on his lot. After installation of water meter and box by HSCA, monthly water billing will commence and continue thereafter until notified by lot owner. Payment on water bills is due thirty (30) days after the billing date on the notice.
- (d) **Late fees, shut-offs and liens.** HSCA may apply late fees established by the Board of Directors for nonpayment of water bills. Nonpayment of water bills unpaid within ninety (90) days of the due date may be subject to a property lien. HSCA reserves the right to turn the water off for nonpayment of any bill delinquent over ninety (90) days, substantial water leakage, and/or high water usage resulting in the disruption of the water distribution system. Water charges in excess of ninety (90) days past due may be turned off due to non-payment unless the responsible party contacts the association and participates in an approved payment plan.

Section 10.10. Notice and Hearing on Special Individual Assessments. Prior to the recordation or imposition of any lien arising out of a special individual assessment, the member shall be provided with a notice of said special individual assessment as provided in Article X, Section 10.04 above, and shall have an opportunity to appeal imposition of said special individual assessment.

Any appeal by a Member of the Imposition of a special individual assessment must be made in writing within fifteen (15) days of receipt of the notice of special individual assessment and delivered to the Board of Directors and said appeal shall stay imposition of the lien. A hearing shall be held on said appeal within fifteen (15) days of the date the Board receives the written request for an appeal. An appeal hearing shall be held before the Board of Directors in executive session and a Member shall have an opportunity to present witnesses, evidence and argument as to why the special individual assessment is inappropriate and why a lien should not be imposed or recorded against the Member's Lot. Likewise, the Board of Director shall be entitled to present witnesses, evidence and argument as to why the special individual assessment is appropriate and why a lien should be imposed or recorded against the member's lot. The Board of Directors shall provide the Member with a written decision on the appeal within ten (10) days of the date of the hearing. In the event that the Board of Directors upholds the decision to impose a special individual assessment, the Member shall have fifteen (15) days from receipt of the Board of Director's decision to pay all amounts assessed in said special individual assessment. In the event the special individual assessment is not paid in full within said fifteen (15) days, the Board of Directors may proceed to impose or record a lien against the member's lot in the amount of the special individual assessment and said lien shall be subject to foreclosure as more fully set forth in the Charter, Declaration, and Bylaws.

ARTICLE XI Amendment to Bylaws

Section 11.01. Procedure. These Bylaws may be amended, restated or replaced, upon resolution of the Board of Directors, by an affirmative vote of not less than two thirds (2/3rds) of the Members in good standing of the Association whose ballots are cast. Such a vote shall only be conducted by ballot, including absentee ballot.

ARTICLE XII Enforcement

Section 12.01. Provisions Enforceable. The association may take any lawful action to enforce any provisions following, except as may be otherwise expressly provided herein or by law.

- a) the Declaration;
- b) the Articles of Incorporation; and
- c) these Bylaws.

Section 12.02. Mediation of Disputes.

- a) At the request of any party, any dispute concerning or involving one or more members and an association, its board of directors, managing agent, manager, or one or more other members relating to the interpretation, application, or enforcement of this chapter or the association documents, shall first be submitted to mediation.
- b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:
 - (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
 - (2) Actions to collect assessments;
 - (3) Personal injury claims; or
 - (4) Actions against an association, a board of directors, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board of directors would be unavailable for defense or judgment because mediation was pursued.
- c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the association and the member.

Section 12.03. Fees and Costs. The corporation may recover all reasonable fees and costs incurred by it in the prosecution of any action against any member, or former member, or in respect to any lot within the subdivision and/or as provided thereof.