

BYLAWS
OF
MAHANA ESTATES HOMEOWNERS' ASSOCIATION

ARTICLE 1
DEFINITIONS

1.1 “**Articles**” means the Articles of Incorporation of the Association, as the same may be from time to time hereafter duly amended.

1.2 “**Association**” means **Mahana Estates Homeowners’ Association**, a Hawai`i nonprofit corporation and planned community association.

1.3 “**Board**” means the Board of Directors of the Association.

1.4 “**Business Day**” means a day on which the Bank of Hawaii or First Hawaiian Bank is open for business, but not including Saturdays and Sundays.

1.5 “**Declaration**” means that certain **Declaration of Covenants, Conditions, Easements and Restrictions of Mahana Estates**, executed by **SMC Mahana LLC**, a Hawai`i limited liability company, as Declarant, and recorded in the Bureau of Conveyances of the State of Hawai`i, as the same may be amended or supplemented from time to time in accordance with its terms. The provisions of the Declaration, as it may be amended from time to time, are hereby incorporated into and made a part of these Bylaws.

1.6 “**Lot**” means each of lots **1** through **51** inclusive, as shown on the Plan, or any new lots resulting from the consolidation or subdivision of any of them.

1.7 “**Member**” means a member of the Association, and each member shall be an “Owner,” as the term “Owner” is defined in the Declaration, except as set forth in Section 3.1(b) below.

1.8 “**Person**” means a natural person, a corporation, a partnership, a trustee, a limited liability company or any other legal entity.

1.9 “**Plan**” means the subdivision plat for the **Mahana Estates Subdivision** filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2513.

1.10 “**Project Documents**” means the Declaration, the Articles, these Bylaws, any rules and regulations adopted in accordance the Declaration, and the easements in favor of the Association provided for in the Declaration, as the same may be amended or supplemented from time to time in accordance with its terms.

1.11 “**Property**” shall mean the Mahana Estates subdivision, comprised of **Lots 1 to 63**, inclusive, as shown on the Plan, and any portion of the Property or any Lot, as well as any other real property that is owned by the Association.

1.12 “**State**” means the State of Hawai`i.

1.13 Whenever these Bylaws refer to a stated percentage of the “**total votes of all Members,**” or the “**total number of votes**” cast, such percentage shall refer to the percentage of the aggregate votes held by all Members, or all Members casting votes, as the case may be, whose voting rights are not suspended at the time the vote is being conducted. Whenever these Bylaws refer to a stated percentage of “**votes present at a (or the) meeting,**” such percentage shall refer to the percentage of the aggregate votes held by all Members whose voting rights are not suspended, and who are present in person or by proxy at the meeting of the Members at which such vote is conducted.

1.14 All references to “**President,**” “**Vice President,**” “**Secretary**” or “**Treasurer**” shall refer to, unless otherwise provided, the Person elected by the Board to hold such office of the Association.

1.15 All other words in these Bylaws with an initial capital letter shall, unless otherwise expressly defined herein, have the same meaning given them in the Declaration.

ARTICLE 2 OFFICES; MEETINGS; SEAL; AND FISCAL YEAR

2.1 **Mailing Address.** The mailing address of the initial principal office of the Association shall be at **636 Laumaka Street, Honolulu, Hawaii 96819**, or at such other place in the State as the Board shall from time to time determine.

2.2 **Registered Office and Registered Agent.** The Association shall continuously maintain in the State (a) a registered office that may be the same as any of its places of business; and (b) a registered agent, who may be: an individual resident, domestic entity, or foreign entity authorized to transact in the State, whose business office is identical with the Association’s registered office.

2.3 **Place of Meetings.** All meetings of the Members and of the Board shall be held at the principal office of the Association or at such other place in the State as is stated in the call for the meeting. All meetings shall be held in accordance with Chapter 414D of the Hawai`i Revised Statutes and Chapter 421J of the Hawai`i Revised Statutes, unless otherwise waived.

2.4 **No Seal.** The Association does not have a corporate seal.

2.5 **Fiscal Year.** The fiscal year of the Association shall be a calendar year.

ARTICLE 3
MEMBERS OF THE ASSOCIATION

3.1 Qualification; Proof of Status; Certificates.

(a) Each Person who is an “**Owner**,” as defined in the Declaration, shall be a Member, and no Person other than an Owner may be a Member. No person, however, shall be admitted as a Member of the Association without the person's consent.

(b) No Person shall exercise the rights of membership in the Association until satisfactory proof has been furnished to the Secretary that he, she, or it is an Owner. Such proof must consist of a copy of a duly executed, acknowledged and recorded (i) deed, (ii) lease giving a right of occupancy of a Lot having a term of **five (5)** or more years from its commencement date and the assignment by the Owner to the lessee under such lease of such Owner's rights of membership in the Association during the term of the lease, (iii) agreement of sale, if an Owner has assigned such Owner's rights of membership to a vendee under such agreement of sale and transferred all rights of possession and occupancy to the Lot, or (iv) as otherwise described in the Declaration; provided, however, that in each such case the transferee of said rights will not be recognized as an “Owner” by the Association unless a written notice of transfer is filed in the official ownership records of the Association. Any such deed, lease, or agreement of sale shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, lease, or agreement of sale. No assignment of an Owner's membership rights to a vendee under a lease or an agreement of sale shall be effective until a true and correct copy of the recorded lease or agreement of sale (or recorded short form thereof together with the unrecorded lease or agreement of sale) has been delivered to the Board.

(c) The Board may provide for the issuance of certificates evidencing membership in the Association that shall be in such form as may be determined by the Board. The name and address of each Member and the date of issuance of the certificate, if any, shall be entered on the records of the Association maintained by the Secretary. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefore upon such terms and conditions as the Board may direct. A certificate shall not authorize or issue shares of stock in the Association.

(d) Upon becoming an Owner, each Owner shall promptly furnish to the Secretary an address (“**record address**”) to which the Association may mail or deliver any and all notices, demands or documents required or permitted to be mailed or delivered by these Bylaws, the Declaration, the Articles, or by law or otherwise. In the event of an Owner's failure to furnish such address, the Owner's record address shall be deemed to be the address of the Owner's Lot; provided, however, that prior to the time such Owner's Lot is serviced by the postal service, such notices shall be sent to the Owner's address set forth in the deed or other instrument which is first delivered to the Association pursuant to this Section 3.1(b) above. All such notices shall be deemed to be received by the Owner on the earlier of actual date of delivery or three (3) Business Days after postmark (whether or not actually received by the Owner). If a Lot is owned by more than one Person, notice to any one Person shall be deemed to be notice to all such

Persons. Each Owner, upon receiving or conveying fee simple ownership of a Lot shall immediately deliver or cause the new Owner to deliver a true and correct copy of the recorded deed to the Association at the Association's principal office (or to such other address as the Association shall have previously given in writing to the Owners and sent by registered or certified mail). Until the Association receives a copy of such recorded deed, any notice identifying or sent to the Owner whose deed or other instrument was last received by the Association, shall be deemed notice to the current Owner of the Lot. Notwithstanding an Owner's assignment of such Owner's membership rights to a lessee under a lease or a vendee under an agreement of sale, all notices, demands or documents required or permitted to be mailed or delivered by these Bylaws, the Declaration, the Articles, or law or otherwise, may be sent to the Owner at the Owner's record address, and it shall be the Owner's responsibility to deliver or communicate such notice, demand or document to the Owner's lessee or vendee. Any notice, demand or document shall be deemed duly and properly given or sent by the Association if given or sent to the Owner as aforesaid, notwithstanding the failure of the Owner's lessee or vendee to receive the same.

3.2 Voting Rights; Proxies.

(a) At any meeting of the Members, or whenever the consent or vote of the Members is required or called for under these Bylaws, the Declaration, or the Articles, or pursuant to law or otherwise, each Member shall be entitled to cast the number of votes assigned to and permitted to be cast by such Member or on behalf of such Member in accordance with the provisions of Article IX of the Articles, which are incorporated into these Bylaws.

(b) If more than one Person is a co-Owner in any Lot, the vote for that Lot shall be exercised as such co-Owners shall, among themselves, determine, and any of the co-Owners shall notify the Secretary of the Association in writing prior to any required vote of the designated co-Owners' voting representative. In the absence of such written notice, the Lot's vote shall be suspended if more than one co-Owner seeks to exercise the vote, the co-Owners attempt to split vote for such Lot, or the Secretary is notified in writing that such co-Owners disagree as to how the vote should be cast, in which event the vote for the Lot shall not be counted unless such co-Owners unanimously agree. In no event shall more than one (1) vote be cast with respect to each Lot.

(c) Any Member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the Member and filed with the Secretary. Proxies are limited as provided in Section 421J-4 and 414D-113 of the Hawai'i Revised Statutes. Such proxy shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such Member, or upon termination of such Member's status as an Owner.

(d) Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers, by mail or other reasonable delivery method, a written ballot to every Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an

opportunity to vote for or against each proposed action. Member approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting of the Members authorizing the action, and the number of approvals equals or exceeds the number of votes of the Members that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of directors, and specify the time by which a ballot must be received by the Association in order to be counted. Once submitted, a written ballot may not be revoked.

3.3 Resignation, Suspension.

- (a) No Resignation. A Member may not resign from the Association.
- (b) Suspension. The voting rights of any Member may be suspended by action of the Board as set forth in the Declaration. The procedures for suspension of voting rights are set out in Section 8.3 below.

3.4 Meetings; Notice; Quorum.

(a) Annual Meetings. An annual meeting of the Members shall be held each fiscal year on such date and at such time as the Board may determine, and at the principal office of the Association or at such other place in the State as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting. At the annual meeting, the President and Treasurer shall report on the activities and financial condition of the Association.

(b) Special Meetings. Special meetings of the Members may be held at such time and at the principal office of the Association or at such other place in the State, and for such purposes as shall be specified in a call for any such meeting made by the President, the Board, or Members entitled to cast **fifty percent (50%)** of the total votes of all Members.

(c) Quorum; Adjournment; Action. At any meeting of the Members, the presence of Members in person or by proxy having more than fifty percent (50%) of the total votes of all Members shall constitute a quorum, but whether a quorum be present or not, the concurrence of more than fifty percent (50%) of the votes present at the meeting may adjourn such meeting from time to time without having to give notice of such adjournment or the new meeting date to the Members not present at the adjourned meeting but may not transact any other business. An adjournment for lack of quorum shall be to a date not less than two (2) days and not more than sixty (60) days from the original meeting date when a quorum is present at any meeting. The concurring vote of more than fifty percent (50%) of the votes present at the meeting shall be valid and binding upon the Association except as otherwise provided by law, the Articles, the Declaration or these Bylaws.

(d) Notice. Notice of any annual or special meeting shall be given in comprehensible form to each Member by mailing written notice thereof postpaid and correctly addressed to each Member's last known address as shown on the Association's current record of Members, not less than ten (10) nor more than sixty (60) days prior to the date set for the meeting. The Board may fix or provide the manner of fixing a date as the record date for determining the Members entitled to notice of a membership meeting. If no such record date is fixed, Members at the close of business on the Business Day preceding the day on which notice is given, or if such notice is waived, at the close of business on the Business Day preceding the day on which the meeting is held, are entitled to notice of the meeting. To the extent approved by the Board and permitted by Chapter 414D HRS and Chapter 421J HRS, in lieu of mailing, Member notices may be given to Owners via electronic mail or by posting on the Association's website, if applicable, and proxies may be delivered by Owners to the Association, and votes cast, via electronic mail or through the Association's website, if applicable.

(e) Rules of Order. All membership meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised, unless otherwise waived by a vote of the Members.

(f) Member Lists. Subject to Section 3.1(d) above, the Association shall use good faith efforts to keep an accurate and current list of the names and addresses of the Members. If the list is not provided directly to Members, the Association shall develop a reasonable procedure by which Owners may solicit votes or proxies or provide information to other Owners with respect to Corporation matters. The Board may require Members to furnish the Association with an affidavit stating that the use of the list is requested in good faith for the business of the Association, its Members, or both. The Association will exercise reasonable efforts to comply with the requirements of Hawai'i Revised Statutes Sections 414D-109 and 305 to the extent they do not conflict with the foregoing requirements of this paragraph.

ARTICLE 4 BOARD OF DIRECTORS

4.1 Number; Election; Tenure; Removal; Vacancies.

(a) The Board shall have three (3) members, each of whom shall be called a "**Director**" and all of whom collectively shall be called the "**Directors**," until the number of seats on the Board is otherwise determined by the Board, but the Board shall always have an odd number of members. The number of Directors for the ensuing year shall be fixed by the Members at each annual meeting, and the number so designated shall then be elected by ballot by the Members to hold office until the next annual meeting and thereafter until their successors shall be duly elected, and the number of Directors may be decreased or increased by the Members at any annual or special meeting and, in case the number is increased, the additional Directors shall be elected by ballot as if elected at an annual meeting. Notwithstanding the foregoing, the Members may, by vote of a majority of them, determine that the Directors shall serve on a staggered basis, with one-third (1/3) of the Directors to be elected for a one-year term,

one-third (1/3) for a two-year term, and one-third (1/3) for a three-year term, with one-third (1/3) of the Board elected annually thereafter for a three-year term.

(b) Every Director shall be a Member (or duly authorized representative of a Member that is an entity or trust), and the Members shall elect the Directors.

(c) Except for the Declarant, there shall not be more than one representative on the Board from any one Lot that is owned by any Person. So long as the Declarant is a Member, the Declarant shall be entitled to occupy a minimum of one seat on the Board.

(d) Except as provided above, each Director shall hold office for a term of one (1) year, or until his or her successor shall have been appointed or elected, or until his or her death or resignation or removal from office. Directors may serve consecutive terms.

(e) Prior to any meeting called for the purpose of electing Directors, any Member may nominate candidates for such election; provided, however, that all nominations not made by the Board must be in writing, must identify the name and address of the nominee and contain a summary of such nominee's business background and other qualifications, and must be received by the Secretary at least five (5) Business Days prior to the date of the meeting for the election of directors. There shall be no cumulative voting for directors by Members.

(f) A Director may be removed by the Members, with or without cause; provided, however, that unless the entire Board is removed from office by seventy-five percent (75%) or more of the votes present at a meeting of the Members, no individual director may be removed prior to the expiration of his or her term of office if the votes cast against removal would be sufficient to elect such director.

(g) Vacancies on the Board created by the death, incapacity or resignation of a Director shall be filled by the Members of the Association at a special meeting called for such purpose, except in emergency situations deemed by the remaining Directors that require Board action prior to the holding of a such a special meeting in which event the remaining Directors shall appoint the replacement director pro tem until such special meeting can be duly noticed, convened and whereat the Members shall elect the replacement Director. Each Director so elected by the Members to fill a vacancy shall serve for the remaining unexpired term in respect of which the vacancy occurred.

4.2 Meetings; Notice; Quorum.

(a) An annual meeting of the Board shall be held each fiscal year immediately after the annual meeting of the Members of the Association and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board, other than annual meetings, shall be held on such day and at such time and at the principal office of the Association or such other place in the State as shall be determined

from time to time by the Board, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board may be called by the President or by any two (2) Directors, and any such meeting shall be held on such day, at the principal office of the Association or such other place in the State, as shall be specified by the Person or Persons calling the meeting.

(b) The Secretary shall give notice of each meeting of the Board in writing by mailing the same not less than **three (3) days** before the meeting or by giving notice personally, by telephone or electronic mail (email) not less than **two (2) days** before the meeting, or as otherwise prescribed by the Board. The failure of the Secretary to give any notice required by the foregoing, or the failure of any director to receive such notice, shall not invalidate the proceedings of any meeting at which a quorum of directors is present. Notice need not be given to any Director who shall, either before or after the meeting, submit a signed waiver of notice, and the presence of any Director at a meeting shall be the equivalent of a waiver by such Director of notice of the meeting. Except as otherwise provided by law, the Articles or by these Bylaws, a notice or waiver of notice need not state the purposes of such meeting.

(c) A majority of the total Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of Directors of such quorum, within the scope of the authority of the Board, shall be valid and binding on the Association. Any business within the scope of the authority of the Board may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

(d) Notwithstanding anything to the contrary contained in the foregoing, (1) the Board may take actions without a meeting if all of its Directors consent in writing to the action to be taken, and (2) Directors may participate in a meeting of the Board by means of a conference telephone or similar communication equipment by means of which all persons participating in the meeting can simultaneously hear each other, and participation by this means shall constitute presence in person at such meeting.

(e) Minutes of the meetings of the Board shall include the recorded vote of each Director on all motions except motions voted upon in executive session.

(f) No Director shall vote by proxy at Board meetings.

(g) A Director who has a conflict of interest on any issue before the Board shall disclose the nature of the conflict of interest prior to a vote on that issue at the Board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(h) All meetings of the Board shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised, unless otherwise waived by a vote of the Board or the Board otherwise sets its own rules of procedure which shall not be inconsistent with these Bylaws.

4.3 Compensation of Directors. The Directors shall receive no compensation for their services as directors but they may, subject to the Board's approval, be reimbursed for actual reasonable expenses incurred and indemnified for actions covered by ARTICLE 7 herein.

4.4 General Powers. The property, business and affairs of the Association shall be managed and controlled by the Board, which shall have and may exercise all of the powers of the Association, including, without limitation, all of the powers of the Association as set forth in the Declaration and the Articles, except such as are expressly reserved to or may from time to time be conferred upon the Members by law, the Articles, the Declaration or these Bylaws. Such powers and duties include, without limitation, the following:

(a) To contract and incur liabilities in connection with the exercise of any of the powers and duties of the Board;

(b) To have custody and control over all funds of the Association, open and close bank accounts on behalf of the Association, transfer funds on behalf of the Association, and designate the signatories of those accounts;

(c) To keep books of accounts and records with respect to the Common Areas, the Designated Areas, and the Improvements and Facilities;

(d) To maintain, repair, replace and restore the Common Areas, the Designated Areas, and the Improvements and Facilities and make any additions and alterations thereto, as provided in and subject to the Declaration;

(e) To make additions, alterations and improvements to the Common Areas, the improvements thereon, and repair and restore the Common Areas, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty or as a result of condemnation;

(f) To purchase, maintain and replace any equipment and provide all utility services required for the Common Areas and the improvements thereon, as provided in and subject to the Declaration;

(g) To employ, supervise and dismiss such personnel as may be necessary for the operation, repair, maintenance and replacement of the Common Areas and the Improvements thereon, as provided in and subject to the Declaration;

(h) To procure legal, accounting, and management services with appropriate staff personnel, necessary or proper for the administration of the affairs of the Association or the interpretation, enforcement or implementation of the Declaration, these Bylaws and any other material documents affecting the Property;

(i) To obtain and maintain in effect of all policies of insurance and bonds as may be required or authorized by the Declaration, these Bylaws or the Board;

(j) To cause to be prepared and to approve operating statements or budgets, in accordance with the Declaration;

(k) To make Assessments, to establish the means and methods of collecting such Assessments, and to levy and collect Assessments and other charges payable by the Owners, all in accordance with the Declaration;

(l) To pay all expenses which the Association is required to pay pursuant to the Declaration, these Bylaws or law or which, in the Board's opinion, shall be necessary or proper for the administration of the affairs of the Association, provided that if any such payment is required because of a particular wrongful or negligent action by any Owner, the cost thereof shall be specially assessed for such expense, as provided in the Declaration;

(m) To pay and discharge any lien, encumbrance, tax or assessment levied against all or any portion of any real property, including any improvements thereon or therein, belonging to the Association which may, in the opinion of the Board, constitute a lien against such real property. If one or more Owners are responsible for the existence of any such lien, they alone shall be jointly and severally liable for the cost of discharging such lien and for the costs incurred by the Association by reason of such lien;

(n) To enforce the provisions of the Project Documents, and establish, assess and collect such penalties and fines and any interest as the Board deems appropriate with respect to such enforcement, including penalties, fines and interest for failure or refusal to pay on demand all costs and expenses required to be paid hereunder; provided that such penalties, fines and interest are not inconsistent with the law or the provisions of these Bylaws or the Declaration. The unpaid amount of such penalties and fines against any Member shall constitute a lien against such Member's interest in such Member's Lot, which may be foreclosed by the Board;

(o) To delegate its powers and duties to committees, agents, officers, representatives and employees;

(p) To keep, or cause the managing agent, if any, to keep, an accurate and current list of Members and their current addresses;

(q) To make available to any prospective purchaser of a Lot, any Owner, any holder of a first mortgage on a Lot, and the holders, insurers and guarantors of any first mortgage on any Lot, current copies of the Project Documents and all other relevant (in the discretion of the Board) books, records and financial statements of the Association;

(r) To exercise the voting rights of Owners of Lots in Mahana Estates in the Kapalua Resort Association pursuant to the Amended and Restated Declaration of Covenants and Restrictions recorded September 30, 1987 in the Bureau of Conveyances of the State of Hawaii in Liber 21185 at Page 173.

4.5 Committees. The Board may appoint committees of two or more Directors, who shall serve at the pleasure of the Board. The creation of a committee and appointment of any Director to it must be approved by a majority of the entire Board. If the Board appoints an executive or other committee, the executive or other committee may exercise all powers of the Board, except that the executive or other committee may not: (a) authorize distributions; (b) approve or recommend to the Members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Association's assets; (c) elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; or (d) adopt, amend or repeals the Articles or these Bylaws.

4.6 Open Meetings.

(a) Whenever practicable, all meetings of the Board, other than executive sessions, shall be open to all Members. Members who are not on the Board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board votes otherwise.

(b) The Board, with the approval of a majority of a quorum of the Directors, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, litigation in which the Association is or may become involved, or as may be necessary to protect the attorney-client privilege of the Association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

**ARTICLE 5
OFFICERS AND AGENTS**

5.1 Designation; Duties.

(a) Appointment. The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, who shall be appointed by the Board and who shall hold office until their successors are appointed and qualified. In the absence of any specified term, all officers shall be elected or appointed for a term of one (1) year by the Board, provided that the failure to reappoint and qualify any officer shall not affect the legality of the officer's actions performed within the scope of his or her duty. The Association may have such other subordinate officers, agents and employees as may be deemed necessary or desirable, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board. So far as is permitted by law, the same Person may hold any two or more offices. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as the Board shall from time to time designate. In all cases where the duties of any officer, agent or employee are not specifically prescribed by these Bylaws or by the Board, such officer, agent or employee shall obey the orders and instructions of the President. No officer need be a Member of the Association.

(b) President. Subject to the control of the Board, the President shall be the chief executive officer of the Association and shall exercise general supervision

and direction over the management and conduct of the affairs and business of the Association. Unless the Board otherwise directs, the President shall preside at all meetings of the Members of the Association.

(c) Vice President. The Vice President, or if more than one shall have been appointed, the Vice Presidents in order of priority of appointment, shall assume and perform the duties of the President whenever the office of President is vacant. Each Vice President shall have such other powers and duties as may be given to such Person by law or in these Bylaws and as may be assigned to such Person from time to time by the Board or by the President.

(d) Secretary. The Secretary shall have charge of the membership ledger, all documents pertaining to the title of all real property owned or held by the Association, all Project Documents and other documents required to be filed with the Association or in the office of the Association by the Declaration. An original or duplicate of each such item shall be open to the examination of every Member, at all times during the usual hours of business, at the principal office of the Association or such other location as may be required by the Board. The Secretary shall record all proceedings of the meetings of the Members and Directors in a book that shall be the property of the Association, to be kept for that purpose at the principal office of the Association, provided such documents can be made available for examination by any member at no cost as required by law. The Secretary shall perform such other duties as shall be assigned to the Secretary. In the absence of the Secretary from any such meeting, a temporary secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book.

(e) Treasurer. Subject to the direction and under the supervision of the Board, and except as delegated to the Secretary above, the Treasurer shall have the care and custody of the Association's funds and valuable papers, shall have the power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Association or its order, and shall keep or cause to be kept accurate financial books and accounts of the Association and to render statements of the same in such form and as often as required by the Board.

5.2 Removals; Reservations; Vacancies. The Board may, at any meeting called for the purpose, by vote of a majority of their entire number, remove from office any officer of the Association, for or without cause. The Board may, at any meeting, accept the resignation of any officer of the Association, or remove or accept the resignation of any agent or employee or any member of any committee appointed by the Board. Any vacancy occurring in the office of President, Vice President, Secretary, Treasurer or any other office shall be filled by the Board, and the officers so chosen shall hold office for the unexpired term in respect of which the vacancy occurred and until their successors shall be duly elected and qualified.

5.3 Compensation. Officers of the Association shall receive no compensation for their services as officers but they may, subject to the Board's approval,

be reimbursed for reasonable actual expenses incurred and indemnified for actions covered by ARTICLE 7 herein.

ARTICLE 6 EXECUTION OF INSTRUMENTS

All checks, notes, bonds, deeds, leases, contracts and other instruments shall be executed by such Person or Persons as shall be provided by general or special resolution of the Board, and in the absence of any such general or special resolution of the Board, then such instrument or instruments shall be executed by any two (2) of the following officers: the President, a Vice President, the Treasurer or the Secretary; provided, however that the two (2) officers shall not be one and the same Person.

ARTICLE 7 INDEMNIFICATION

7.1 No Liability. For purposes of this ARTICLE 7, a “**Person Serving the Association**” means an individual Person who is a Director, officer, employee, or committee member of the Association or of any committee or division of the Association, or who is or was serving at the request of the Association as a Director, officer, employee, member or agent of another corporation, partnership, limited liability company, joint venture, trust, committee or other enterprise. No Person Serving the Association and no heir, devisee, or personal representative of any such Person, shall be liable to the Association for any loss or damage suffered by the Association on account of an action or omission by such Person as a Person Serving the Association if such Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Association.

7.2 Indemnification Generally. The Association shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the Person is or was a Person Serving the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with the action, suit or proceeding if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe the Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which the Person reasonably believed to be in or not opposed to the best interests of the Association or, with respect to any criminal action or proceeding, create a presumption that the Person had reasonable cause to believe that the Person's conduct was unlawful.

7.3 Suits By or in the Right of the Association. The Association shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the Person is or was a Person Serving the Association, against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of the action or suit if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue or matter as to which the Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of the Person's duty to the Association unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

7.4 Effect of Success in Defense. To the extent that a Person who is or was a Person Serving the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.2 and 7.3 above, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith.

7.5 Authorization for Indemnification. Any indemnification under Sections 7.2 and 7.3 above (unless ordered by a court) shall be made by the Association only if authorized in the specific case upon a determination that indemnification of the Person is proper in the circumstances because the Person has met the applicable standard of conduct set forth in Sections 7.2 and 7.3 above. The determination may be made:

(a) by the Board by a majority vote of a quorum consisting of Directors who were not parties to the action, suit or proceeding;

(b) if a quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion to the Association;

(c) if a quorum of disinterested Directors so directs, by a vote of a majority of the votes present at a meeting of the Members of the Association; or

(d) by the court in which the proceeding is or was pending upon application made by the Association or the agent, attorney, or other Person rendering services in connection with the defense, whether or not the application by the agent, attorney or other Person is opposed by the Association.

7.6 Advances. Expenses incurred in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the Person to repay the

amount unless it shall ultimately be determined that the Person is entitled to be indemnified by the Association as authorized in this ARTICLE 7.

7.7 Indemnification Not Exclusive. The indemnification provided by this ARTICLE 7 shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a Person who has ceased to be a Person Serving the Association and shall inure to the benefit of the heirs and personal representatives of the Person. Nothing in these Bylaws is intended to limit or curtail the liability limitations set forth in the Articles, the Declaration, or otherwise available by law, insurance, or other contractual agreement.

7.8 Insurance. The Association shall have the power, but not the obligation, to purchase and maintain insurance on behalf of any Person who is or was a Person Serving the Association, against any liability asserted against the Person and incurred by the Person in any such capacity or arising out of the Person's status as such, whether or not the Association would have the power to indemnify the Person against such liability under the provisions of this ARTICLE 7. Insurance may be procured from any insurance company designated by the Board.

ARTICLE 8

MEMBER RESPONSIBILITY; NOTICE AND HEARING PROCEDURE

8.1 Member Responsibility; Expenses. Each Member shall abide by and comply with the provisions of the Project Documents. Each Member shall pay when due all such dues, assessments, penalties and other charges which may be levied or assessed under the Project Documents. Further, every Member shall pay all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association in collecting any delinquent assessments against such Member, in foreclosing its lien therefore or in enforcing any provision of the Project Documents against such Member.

8.2 Mediation of Disputes. In accordance with Hawai'i Revised Statutes §421J-13, at the request of any party, any dispute concerning or involving one or more Members and the Association, its Board, managing agent, manager, or one or more other Members relating to the interpretation, application, or enforcement of Hawai'i Revised Statutes Chapter 421J or the Project Documents, including the resolution of any deadlocks among the Directors with respect to matters requiring a majority vote of the Board, shall first be submitted to mediation under the commercial mediation rules of Dispute Prevention & Resolution, Inc., a Hawaii corporation ("**DPR**"), if available, or another dispute resolution group that is acceptable to the parties to the dispute; provided, however, that nothing in this Section 8.2 shall be interpreted to mandate the mediation of any dispute involving:

(a) Actions seeking equitable relief involving threatened property damage or the health or safety of the Member or any other person;

(b) Actions to collect assessments;

(c) Personal injury claims; or

(d) Actions against the Association, its Board, 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 would be unavailable for defense or judgment because mediation was pursued.

If any mediation under this Section 8.2 is not completed within two (2) months from commencement, no further mediation shall be required unless agreed to by the Association and the relevant Member(s), or in the case of a deadlock among the Directors, agreed to by a majority of the Board; provided, however, that thereafter any party may submit the dispute to binding arbitration before a single arbitrator, to be administered by DPR, if available, or another dispute resolution group that is acceptable to the parties. The arbitrator shall be selected by mutual agreement of the parties to the dispute, and if they cannot so agree within thirty (30) days after the arbitration initiation date, the arbitrator shall be selected through such procedures as DPR regularly follows. The arbitrator shall have the authority to award any remedy or relief permitted under these Bylaws, the Declaration, or the Articles that a court of the State of Hawaii could order or grant, including, where appropriate and if otherwise permitted under these Bylaws, the Declaration, or the Articles, without limitation specific performance, injunctive relief, or an award of liquidated damages. The arbitrator may order limited discovery as he or she deems appropriate and shall make a determination as to an award of attorneys' fees to the prevailing party, if any. The arbitration award shall be in writing and shall specify the factual and legal basis for the award. The award shall be final and binding on the parties, without appeal or review except as permitted by Chapter 658A, Hawaii Revised Statutes, as the same may be amended; provided, however, that no award of general, consequential or punitive damages (other than liquidated damages) shall be permitted.

8.3 Suspension of Privileges. In the event of an alleged violation of the Declaration or any rule and/or regulation adopted thereunder, and after written notice of such alleged violation is delivered (in the manner prescribed in the Declaration) to the Member or any agent of the Member ("**respondent**") alleged to be in default, the Board shall have the right, after affording the respondent an opportunity for an appropriate hearing, which hearing may be waived, as hereinafter provided, and upon an affirmative vote of a majority of all directors on the Board, to take any one or more of the following actions ("**Sanctions**"): (1) levy a special assessment as provided in Section 8 of the Declaration; (2) suspend or condition the right of said Member to use any facilities owned, operated or maintained by the Association, as provided in the Declaration; (3) enter upon a Lot to make necessary repairs or to perform maintenance that is the responsibility of the Owner thereof, as set forth in the Declaration; or (4) record a notice of noncompliance encumbering the Lot of the respondent. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after it becomes delinquent) may be imposed for so long as the violation continues. The failure of the Board to enforce any provision of the Declaration or any other Project Document shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth

above and otherwise provided by these Bylaws, may be exercised only by the Board. If the expulsion or termination of membership is the result of a judicial or nonjudicial foreclosure proceeding, no other proceeding may be brought to challenge the expulsion or termination and in no event shall this provision give rise to any right of redemption.

8.4 Written Complaint. A hearing to determine whether a right or privilege of the respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a special assessment should be levied, shall be initiated by the filing of a written “**Complaint**” with the President or other presiding member of the Board, which Complaint may be initiated by any officer or Director. The Complaint shall constitute a written statement of the charges, and shall set forth, in ordinary and concise language, the acts or omissions with which the respondent is charged, and it shall include a reference to the specific provisions of the Project Document that the respondent is alleged to have violated. A copy of the Complaint shall be delivered to the respondent in accordance with the notice procedures set forth in the Declaration or these Bylaws, together with statements which shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying Complaint is delivered or mailed to the Board within fifteen (15) days after the date noted on the Complaint, the Board may proceed upon the Complaint without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled “**Notice of Defense**” to the Board at the following address: _____, _____, Hawai`i _____.

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board, you may contact the Association’s secretary.

The respondent shall be entitled to a hearing on the merits of the matter if a Notice of Defense is timely delivered or mailed to the Board; provided, however, that if the Complaint involves the failure to pay an assessment, the disputed amount shall first be paid in full to the Association. The respondent may file a separate statement by way of mitigation, even if the respondent does not file a Notice of Defense.

8.5 Notice of Hearing. If a hearing is requested by the respondent and the Notice of Defense is timely delivered or mailed, the Board shall serve a “**Notice of Hearing**,” as provided herein, on all relevant parties at least ten (10) days prior to the hearing. The hearing shall be held no sooner than thirty (30) days after the Complaint is mailed or delivered to the respondent as provided in Section 8.4 above. The notice to the respondent shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the **Board of the Mahana Estates Homeowners' Association** at _____ on the ____ day of _____, _____, at the hour of __:__, __.m., upon the charges made in the Complaint served upon you. You may be present at the hearing, you may, but need not, be represented by counsel, you may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by requesting such attendance and/or production from the Board of the Association.

8.6 Hearing. If the Notice of Defense is timely delivered or mailed, the hearing shall be held before the Board or before a forum of Members appointed by the Board in executive session on the date specified in the Notice of Hearing delivered to the respondent. If the Notice of Defense is not timely delivered or mailed, the respondent's right to a hearing shall be deemed waived and the Board, in executive session, may proceed upon the Complaint without a hearing. Prior to the effectiveness of any Sanction hereunder, proof of delivery of the Notice of Hearing shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the Notice of Hearing and a statement of the date and manner of delivery are entered by the officer or Director who mailed or delivered such notice. The notice requirement shall be deemed satisfied if respondent appears at the meeting. The minutes of the meeting shall contain a written statement of the results, limitation or action. Any proceeding challenging a suspension or other Sanction imposed by the Board under this **ARTICLE 8**, including a proceeding by which defective delivery of Notice of Hearing is alleged, must be brought within thirty (30) days after the effective date of the suspension or other Sanction of the hearing and the Sanction, if any, imposed.

8.7 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Project Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit in equity or at law to enjoin any violation, to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the respondent responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees, actually incurred.

ARTICLE 9 AMENDMENT; RECONCILIATION OF CONFLICTS

9.1 Amendment. These Bylaws may be amended by the Board after receiving the approval vote of the holders of **three-quarters (3/4s)** of the total votes of the Members at a meeting at which a quorum is present, upon notice given as provided in these Bylaws, provided that so long as Declarant is a Member any amendment of these Bylaws shall require its approval.

9.2 Reconciliation of Conflicts. In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In the case of any conflict between Chapter 414D Hawai'i Revised Statutes and Chapter 421J Hawai'i Revised Statutes, Chapter 421J shall control.

ARTICLE 10 ASSOCIATION RULES & REGULATIONS

Each Member recognizes the right of the Board from time to time to establish and amend such uniform rules and regulations as the Board may deem necessary for the management and control of the Association and the Property, as more particularly described in the Declaration. Each Member agrees to obey all such rules and regulations as the same now are or may from time to time be amended, and see that the same are faithfully observed by the family, invitees, guests, employees, tenants and vendees of the Member.

ARTICLE 11 EMERGENCY BYLAWS

11.1 Emergency Bylaws. The provisions of this ARTICLE 11 shall be effective only in an emergency where a quorum of Directors cannot readily be assembled because of some catastrophic event. All provisions of the other sections of these Bylaws consistent with this section remain effective during the emergency.

11.2 Notice of Emergency Board Meeting. Any Director or officer may call an emergency meeting of the Board. Notice of such meeting need be given only to those Directors whom it is practicable to reach, and may be given in any practical manner, including by publication and radio. Such notice shall be given at least six (6) hours before commencement of the meeting.

11.3 Temporary Directors and Quorum. One or more officers present at an emergency meeting of the Board shall be deemed to be Directors for the meeting, in order of rank, and within the same rank, in order of seniority, as necessary to achieve a quorum of the Board. In the event that less than a quorum of the Directors are present (including any officers who are to serve as Directors for the meeting), then those Directors present (including the officers serving as Directors) shall constitute a quorum notwithstanding the higher quorum requirement elsewhere in these bylaws.

11.4 Permitted Actions. The Board, after notice and as so constituted, may: (i) prescribe emergency powers to any officer; (ii) delegate to any officer or Director any of the powers of the Board; (iii) designate lines of succession of officers and agents in the event that any of them are unable to discharge their duties; (iv) relocate the Association's principal place of business, or designate successive or simultaneous principal places of business; and (v) take any other action, convenient, helpful, or necessary to carry on the business of the Association.

CERTIFICATE

The undersigned President of MAHANA ESTATES HOMEOWNERS' ASSOCIATION (the "Association") hereby certifies that the foregoing Bylaws were duly adopted by the board of directors of the Association at a meeting thereof, or by unanimous written consent effective as of April 24, 2019, and that they remain in full force and effect.

DATED: April 24, 2019.



President