

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

**HILO HILLSIDE ESTATES  
COMMUNITY ASSOCIATION, INC.**

HRS § 414D-32

FILED 08/09/2016 2:50 PM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii



ARTICLES OF INCORPORATION

OF

**HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.**

Rodd H. Yano, Esq.  
CARLSMITH BALL LLP  
1001 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813

Attorney for  
HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

**HILO HILLSIDE ESTATES  
COMMUNITY ASSOCIATION, INC.**

HRS § 414D-32

**ARTICLES OF INCORPORATION  
OF  
HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.**

The undersigned, desiring to form a nonprofit corporation in accordance with the laws of the State of Hawaii and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, does hereby execute the following Articles of Incorporation.

**I. NAME**

The name of the Association shall be **HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.**

**II. MAILING ADDRESS**

The mailing address of the Association shall be **1050 Bishop Street, Suite 252, Honolulu, Hawaii 96813.**

**III. INITIAL REGISTERED OFFICE; INITIAL REGISTERED AGENT**

The name of the Association's initial registered agent in the State of Hawaii is **James G. Lee**. The street address of the Association's initial registered office is **1050 Bishop Street, Suite 252, Honolulu, Hawaii 96813.**

08/10/20162: Sess 10007

**IV. INCORPORATOR**

The name and address of the incorporator is:

| <u>Name</u>  | <u>Address</u>  |
|--------------|---|
| James G. Lee | 1050 Bishop Street, Suite 252<br>Honolulu, Hawaii 96813 |

**V. PERIOD OF DURATION**

The period of the Association's duration is perpetual.

**VI. DEFINITIONS**

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Recorded Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions as may be amended from time to time (the "**Declaration**").

**VII. PURPOSES**

This Association shall be a nonprofit corporation within the meaning of Chapter 414D of the Hawaii Revised Statutes. The Association is and is intended to be a homeowner's association as that term is defined in Internal Revenue Service Code 528 and the corresponding provisions of any subsequent tax laws.

The Association is organized for the following specific purposes and powers:

To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law;

To provide an entity for the furtherance of the interests of the Owners of real property subject to the Declaration; and

To have and exercise all of the powers conferred by law on nonprofit corporations.

### VIII. POWERS

The powers of the Association shall include and be governed by the following provisions:

(a) The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Hawaii law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration, including, without limitation, the power:

(i) to fix, collect, and enforce payment, by any lawful means, of assessments and other charges to be levied against the Lots and/or Apartments;

(ii) to manage, control, operate, maintain, repair, and improve the property subject to the Declaration and any other property for which the Association, pursuant to the Declaration, other covenants, easements or contracts, has a right or duty to provide such services;

(iii) to make rules and regulations and to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of Owners of Lots and/or Apartments subject to the Declaration;

(v) to buy or otherwise acquire, sell, dedicate for public use, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, own, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, subject to such limitations as may be set forth in the Declaration or Bylaws;

(vi) to borrow money for any purpose, subject to such limitations as may be contained in the Declaration or Bylaws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(ix) to adopt, alter, and amend or repeal the Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;

(x) to provide any and all supplemental municipal services to the real property subject to the Declaration as the Board of Directors may determine necessary or proper; and

(xi) to sue and be sued.

(b) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other rights and powers which may now or hereafter be permitted by law; the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph of this Article.

(c) The Association shall make no distribution of income to its Members, directors or officers, except as otherwise authorized by the Declaration or Bylaws.

## **IX. MEMBERS**

The Association shall have Members. The authorized number and qualifications of Members of the Association, the different classes of membership, if any, the property, voting and other rights and privileges of the Members, and their liabilities to dues and assessments and the method of collection thereof, shall be as set forth in the Declaration and Bylaws.

## **X. BOARD OF DIRECTORS**

The business and affairs of the Association shall be managed by the Board of Directors, which shall consist of not less than three (3) members and may be increased in accordance with the Bylaws. The Members of the Board of Directors shall be elected or appointed at such times, in such manner and for such terms as may be prescribed by the Bylaws.

## **XI. APPOINTMENT OF DIRECTORS**

The following three (3) Persons shall act as the initial Directors of the Association until their successors are duly elected or appointed as provided for in the Bylaws:

| <u>Name</u>           | <u>Address</u>  |
|-----------------------|---|
| James G. Lee          | 1050 Bishop Street, Suite 252<br>Honolulu, Hawaii 96813 |
| James Pappas          | 1050 Bishop Street, Suite 252<br>Honolulu, Hawaii 96813 |
| Christopher Brilhante | 1050 Bishop Street, Suite 252<br>Honolulu, Hawaii 96813 |

The method of election, removal, and filling of vacancies on the Board and the terms of office of Directors shall be as set forth in the Bylaws.

Subject to the terms of the Bylaws, the Board may delegate all or any portion of its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

**XII. DIRECTOR CONFLICT OF INTEREST**

No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable because of the relationship or interest or because the Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies the contract or transaction or because the vote of the interested Director or Directors are counted for that purpose, if:

(a) The material facts of the transaction and the Director's relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of the interested Director or Directors; or

(b) The contract or transaction is fair and reasonable to the Association at the time it is entered into.

**XIII. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS**

(a) As used in this Article, unless the context otherwise requires:

"Person" means any Person who is or was a Director, Officer, employee or other agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, trustee, employee or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Association or of another enterprise at the request of the predecessor corporation.

"Expenses" include, without limitation, attorney's fees and any expenses of a completed action or proceeding, whether civil, criminal, administrative or investigative.

(b) The Association shall have power to indemnify any Person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the name of the Association or where the Person was found liable on the basis of his or her improper receipt of a personal benefit) by reason of the fact that the Person is or was an agent of the Association against expenses (including reasonable attorneys' fees and expenses), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such

proceeding if the Person acted in good faith and in a manner the Person reasonably believed to be (1) in or not opposed to the best interests of the Association if the Person was acting in an official capacity; or (2) in all other cases, at a minimum, did not oppose the Association's best interests; and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the Person was unlawful. 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 negligence or misconduct in the performance of the Person's duty to the Association. A Director's conduct with respect to an employee benefit plan for a purpose the Director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subparagraph (2) hereof. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative of the Person's failure to meet the standard of conduct described herein.

(c) The Association shall have the power to indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action 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 an agent of the Association against expenses (including reasonable attorneys' fees and expenses) actually and reasonably incurred by the Person in connection with the defense or settlement of such action if the Person acted in good faith and in a manner the Person shall reasonably believed to be in or not opposed to the best interests of the Association. 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 negligence or 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 circumstances of the case, the Person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

(d) To the extent that a Person has been successful on the merits or otherwise in defense of a proceeding referred to in subsection (b) or (c), or in defense of any claim, issue or matter therein, the Person shall be indemnified by the Association against expenses (including reasonable attorneys' fees and expenses) actually and reasonably incurred by the Person in connection therewith.

(e) Any indemnification of a Person under subsection (b) or (c) of this Article shall be upon a determination made by the Association only as authorized in the specific case. The determination shall be made in the following manner: (1) the Board of Directors by a majority vote of a quorum consisting of Directors who were not at the time parties to the proceeding; or (2) if a quorum is not obtainable, the majority vote of a committee duly designated by the Board consisting of two or more Directors not at the time parties of the proceeding; or (3) independent legal counsel selected by (1) or (2); or (4) the full Board of Directors if a quorum cannot be obtained under (1) or a committee appointed under (2); or (5) the Members of the Association; or (6) the court in which the proceeding is or was pending upon application made by the Person.

(f) Expenses incurred in defending any proceeding may be paid by the Association in advance of the final disposition of the proceeding upon (1) receipt of a written affirmation of the Person's good faith belief that the Person has met the applicable standard of

conduct under subsection (b) or (c) of this Article; (2) receipt of a written undertaking by or on behalf of the Person to repay such amount if it shall ultimately be determined that the Person did not meet the applicable standard of conduct; and (3) the Association making a determination that the facts then known would not preclude indemnification.

(g) The indemnification provided by this Article is not exclusive of any other rights available to the Person being indemnified, and shall inure to the benefit of the heirs and personal representatives of such a Person.

(h) The Association shall have the power to purchase and maintain insurance on behalf of any Person against any liability asserted against or incurred by the Person whether or not the Association would have the power to indemnify the Person against such liability under the provisions of this Article. Any such insurance may be procured from any insurance company designated by the Board of Directors, including any insurance company in which the Association shall have any equity or other interest through stock ownership or otherwise.

(i) This Article does not apply to any proceeding against any investment manager or other fiduciary of an employee benefit plan in such Person's capacity, though such Person may also be an agent of the employer corporation as defined in subsection (a). Nothing contained in this Article shall limit any right to indemnification to which a trustee, investment manager or other fiduciary may be entitled by contract or otherwise.

**XIV. DISSOLUTION**

In the event that the Association as a corporate entity is dissolved, then unless otherwise provided for by the Association, a *nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated Association shall be governed by the laws of the State of Hawaii and, to the extent not inconsistent therewith, by the Declaration, Articles and Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.*

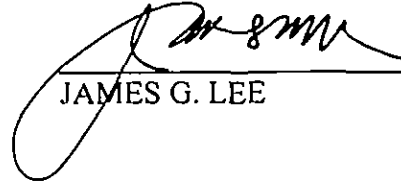
**XV. BYLAWS**

The initial Bylaws of the Association shall be adopted by the Board of Directors. The Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, in the manner provided for in the Bylaws.

I certify, under the penalties of Section 414D-12 of the Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.



Witness my hand this 9<sup>th</sup> day of August, 2016.



A handwritten signature in black ink, appearing to read 'James G. Lee', is written over a horizontal line.

JAMES G. LEE

Incorporator

08/10/2016 2:58:55 10007

**BYLAWS OF THE  
HILO HILLSIDE ESTATES COMMUNITY ASSOCIATION, INC.**

**ARTICLE I. PURPOSES; NONPROFIT CHARACTER**

**SECTION 1.1 Purposes.** The purposes of the Association shall be as specifically set forth in Article I of the Articles of Incorporation.

**SECTION 1.2 Nonprofit Character.** The Association shall be a nonprofit corporation. The Association shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income or earnings which may be derived from its operations, in pursuance of the purposes of the Association, shall be distributed to or inure to the benefit of any Member, Director or Officer of the Association, or any private individual, but shall be used to promote the purposes of the Association.

**ARTICLE II. DEFINITIONS**

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Hilo Hillside Estates Declaration of Covenants, Conditions and Restrictions as may be amended from time to time (the "**Declaration**").

**ARTICLE III. PRINCIPAL OFFICE; PLACE OF MEETINGS; SEAL**

**SECTION 3.1 Principal Office.** The principal office of the Association shall be maintained at such place within or without the State of Hawaii, and the Association may have such other offices within or without the State of Hawaii, as the Board of Directors shall determine.

**SECTION 3.2 Place of Meetings.** All meetings of the Members and of the Board of Directors shall be held at the principal office of the Association, unless some other place is stated in the call. Any meeting, regular or special, of either the Board of Directors or of the Members may be held by conference telephone or similar communication equipment as long as all Directors or all Members participating in the meeting can hear one another, and all such Directors or Members shall be deemed to be present in person at the meeting.

**SECTION 3.3 Seal.** The Association may have a corporate seal as the Board of Directors shall determine.

**ARTICLE IV. MEMBERS**

**SECTION 4.1 Members.** The Association shall have two classes of membership consisting of Class "A" and Class "B," as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated herein by this reference.

**SECTION 4.2 Annual Meeting.** The annual meeting of the Members shall be held on such day within ninety (90) days following the close of each fiscal year as the Board of Directors shall designate, or, if the Board of Directors shall not have designated such day by the end of the

second month following the close of the fiscal year, the annual meeting shall be held on the first Monday of April in each year, if not a legal holiday, and if a legal holiday, on the next calendar day following.

**SECTION 4.3 Regular Meetings.** The Members may establish regular meetings to be held in such places and at such times as the Members may from time to time by vote determine, and when such meeting or meetings shall be so determined, no further notice thereof shall be required.

**SECTION 4.4 Special Meetings.** Special meetings of the Members may be held at any time upon the call of the President or any two (2) Directors, or upon the call of twenty-five percent (25%) of all of the Class "A" Members. Upon receipt of such call or written request, the Secretary shall send out notices of the meeting to all Members in the same manner as for annual meetings of the Members.

**SECTION 4.5 Notice of Meetings.** Subject to Section 4.3 above, notice setting forth the time and place of the annual and any special meetings and the general nature of the business to be considered thereat shall be given by the Secretary, or by the person or one of the persons calling the meeting, to each Member. Such notice shall be given to each such Member by advising him or her of the meeting by telegram or by personally delivering written notice thereof to him or her, in each case not less than forty-eight (48) hours prior to the time set for the meeting, or by mailing written notice thereof, postage prepaid, addressed to him or her at his or her residence or usual place of business at least ten (10) nor more than sixty (60) days prior to the time set for the meeting. Non-receipt by a Member of notice of a meeting mailed to such Member by first class or certified mail shall not invalidate any business done at the meeting while a quorum is present.

**SECTION 4.6 Waiver of Notice.**

(a) Any Member may waive notice of any meeting of Members in writing signed by himself or herself or his or her duly authorized proxy or attorney-in-fact either prior to, at or after the meeting.

(b) The presence or representation at any meeting of any Member shall be the equivalent of the waiver of the giving of notice of such meeting to such Member, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting.

**SECTION 4.7 Quorum.** At any meeting of the Members of which proper notice has been given, a majority of Class "A" Members present in person or by proxy (provided that not more than three-fourths (75%) of the votes present are by proxy) shall constitute a quorum, and 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 law, these Bylaws or the Articles of Incorporation.

**SECTION 4.8 Voting; Proxies.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by reference. The authority given by a Member to any person to represent such

Member at meetings of the Members shall be in writing specifying the Lot or Apartment for which it is given, signed by such Member, dated and shall be filed with the Secretary prior to the meeting for which it is to be effective. No proxy shall be valid after eleven (11) months from the date of such proxy, unless otherwise provided in such proxy.

**SECTION 4.9 Adjournment.** Any meeting of the Members, whether annual or special, may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, unless a new record date is or must be fixed under Hawaii Revised Statutes § 414D-107, in which event notice of the adjourned meeting shall be given to the Members of record as of the new record date. Such adjournment may be to such time and to such place as shall be determined by a majority of the Members present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the original meeting as originally called.

**SECTION 4.10 Action by Members Without a Meeting.** Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by eighty percent (80%) of the Class "A" Members with respect to the subject matter thereof and filed with the records of the meetings of the Members. Such consent shall have the same effect as a vote of the Members at a meeting and may be stated as such in any articles or documents filed with the Director of the Department of Commerce and Consumer Affairs.

**SECTION 4.11 Assessments.** Members shall be liable for such assessments as set forth in the Declaration. The provisions of the Declaration pertaining to assessments are incorporated herein by this reference.

## **ARTICLE V. BOARD OF DIRECTORS**

**SECTION 5.1 Powers.** The Board of Directors shall manage the property and business of the Association and shall have and may exercise all of the powers of the Association except such as are reserved to or may be conferred from time to time by law, the Declaration, the Articles of Incorporation and any amendments thereto, or the Bylaws upon the Members of the Association.

### **SECTION 5.2 Number; Appointment/Election.**

(a) There shall be a Board of Directors of the Association, to consist of not less than three (3) members, all appointed by the Class "B" Member during the Class "B" Control Period as provided in Section 7.4(b) of the Declaration.

(b) Following the termination of the Class "B" Control Period as provided in the Declaration, 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 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 of Directors elected annually thereafter for a three-year term.

**SECTION 5.3 Chairman.** The Board of Directors may appoint from among its members a Chairman who shall preside at all meetings, serve during the pleasure of the Board of Directors, and perform such other duties as may be assigned to him or her by the Declaration, the Articles of Incorporation, these Bylaws or the Board of Directors.

**SECTION 5.4 Annual Meeting.** A meeting of the Board of Directors shall be held at the place of each annual meeting of the Members and immediately following such meeting. At such annual meeting, the Board of Directors shall elect the Officers of the Association for the ensuing year.

**SECTION 5.5 Regular Meetings.** The Board of Directors may establish regular meetings to be held in such places and at such times as it may from time to time by vote determine, and no further notice thereof shall be required.

**SECTION 5.6 Special Meetings.** Special meetings of the Board of Directors may be called at any time by the President or by any two (2) Directors.

**SECTION 5.7 Notice of Meetings.** Except as otherwise expressly provided, reasonable notice of any meeting of the Board of Directors shall be given to each Director (other than the person or persons calling the meeting and other than the person giving notice of the meeting) by the Secretary, or by the person or one of the persons calling the meeting, by advising the Director of the meeting by word of mouth or by telephone or by leaving written notice thereof with him or her or at his or her residence or usual place of business. Such written notice shall be mailed not less than ten (10) days prior to the date of the meeting. Nonreceipt by a Director of any written notice of a meeting mailed to such Director shall not invalidate any business done at the meeting while a quorum is present.

**SECTION 5.8 Waiver of Notice.**

(a) Any Director may, prior to, at the meeting, or subsequent thereto, waive notice of any meeting in writing, signed by him or her.

(b) The presence at any meeting of any Director shall be the equivalent of a waiver of the requirement of the giving of notice of said meeting to such Director, unless the Director, at the beginning of the meeting or prior to the vote on a matter not properly noticed, objects to the lack of notice and does not thereafter vote or assent to the objected action.

**SECTION 5.9 Quorum.** A majority of the total number of Directors at which the Board of Directors has been fixed by the Class "B" or Class "A" Members shall constitute a quorum to transact business, and, in order to be valid, any act or business must receive the approval of a majority of such quorum. A vacancy or vacancies in the membership of the Board of Directors shall not affect the validity of any action of the Board of Directors, provided there is present at the meeting a quorum of all the Directors at which the Board of Directors has been fixed.

**SECTION 5.10 Adjournment.** In the absence of a quorum at a meeting duly called, the President or a majority of the Directors present may adjourn the meeting from time to time without further notice, and may convene or reconvene the meeting when a quorum shall be present.

**SECTION 5.11 Action by Directors Without a Meeting.** Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors with respect to the subject matter thereof and filed with the records of the meetings of the Board of Directors. Such consent shall have the same effect as a unanimous vote of the Board of Directors and may be stated as such in any articles or documents filed with the Director of the Department of Commerce and Consumer Affairs.

**SECTION 5.12 Permanent Vacancies.** If any permanent vacancy shall occur in the Board of Directors through death, resignation, disqualification, removal or other cause other than temporary absence, illness or disability, the remaining Directors, by the affirmative vote of a majority of all remaining members of the Board of Directors, may elect a successor Director to hold office for the unexpired portion of the term of the Director whose place shall be vacant or until the Class "B" or Class "A" Members shall appoint or elect a successor Director.

**SECTION 5.13 Temporary Vacancies, Substitute Directors.** If any temporary vacancy shall occur in the Board of Directors through the sickness or disability of any Director, the remaining Directors, whether constituting a majority or a minority of the whole Board of Directors, may by the affirmative vote of a majority of such remaining Directors appoint some person as a substitute Director, who shall be a Director during such absence, sickness or disability and until such Director shall return to duty or the office of such director shall become permanently vacant.

**SECTION 5.14 Proxies.** Voting by proxy shall not be permitted at any meeting of the Board of Directors or of any committees, boards or bodies created by the Board of Directors.

**SECTION 5.15 Executive and Other Committees.**

(a) The Board of Directors, by resolution adopted by a majority of the Board of Directors, may designate and appoint an Executive Committee and any other committees, each of which, to the extent provided in the resolution, the Declaration, the Articles of Incorporation or these Bylaws, shall have and may exercise all the authority of the Board of Directors; except that no such committee shall have the authority of the Board of Directors in reference to:

- (1) Authorizing distributions;
- (2) Approving or recommending to the Members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the property and assets of the Association;
- (3) Electing, appointing or removing any member of any such committee or any Director or Officer of the Association;

(4) Adopting, amending, altering or repealing the Articles of Incorporation or Bylaws;

(b) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual Director of any responsibility imposed upon the Board of Directors or the Director by law.

**SECTION 5.16 Compensation.** The Board of Directors shall have authority to fix the compensation of members of the Board of Directors.

**SECTION 5.17 Gifts and Contributions.** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes, or for any special purpose, of the Association.

**SECTION 5.18 Procedure.** The Board of Directors shall fix its own rules of procedure which shall not be inconsistent with these Bylaws.

## **ARTICLE VI. OFFICERS AND MANAGEMENT**

**SECTION 6.1 Appointment, Term, Removal.** The Officers of the Association shall be the President, Vice President, the Secretary, the Treasurer, and in addition thereto, one or more Assistant Secretaries, one or more Assistant Treasurers and such other Officers, with such duties, as the Board of Directors shall from time to time determine. The Officers shall be elected annually by the Board of Directors at the first meeting thereof after the annual or special meeting of the Members at which the Board of Directors is appointed or elected and shall hold office at the pleasure of the Board of Directors until the next annual meeting and thereafter until their respective successors shall be duly elected or appointed and qualified. Each Officer must be a Director and Member of the Association. Any person may hold more than one office. The Board of Directors may, in its discretion, from time to time limit or enlarge the duties and powers of any officer appointed by it.

**SECTION 6.2 The President.** The President shall be the Chief Executive Officer of the Association. He or she shall preside at all meetings of the Members and in the absence of the Chairman of the Board of Directors, or if no Chairman of the Board of Directors shall have been appointed, the President shall preside at all meetings of the Board of Directors. He or she may call special meetings of Members at his or her discretion and shall call annual meetings of Members, as provided by these Bylaws. Subject to the direction and control of the Board of Directors, the President shall:

(a) be in personal charge of the principal office of the Association;

(b) have the general management, supervision and control of all of the property, business and affairs of the Association, prescribe the duties of the managers of all branch offices, and exercise such other powers as the Board of Directors may from time to time confer upon him or her; and

(c) subject to approval of the Board of Directors, appoint heads of departments and generally control the engagement, government and discharge of all employees of the Association, and fix their duties and compensation.

He or she shall at all times keep the Board of Directors fully advised as to all of the Association's business.

**SECTION 6.3 The Vice President or Vice Presidents.** The Vice President shall, in such order as the Board of Directors shall determine, perform all of the duties and exercise all of the powers of the President provided by these Bylaws or otherwise during the absence or disability of the President or whenever the office of President shall be vacant, and shall perform all other duties assigned to him, her or them by the Board of Directors or the President.

**SECTION 6.4 The Secretary.** The Secretary shall attend all meetings of the Members and of the Board of Directors, and shall record the proceedings thereof in the minute book or books of the Association. He or she shall give notice, in conformity with these Bylaws, of meetings of Members and, where required, of the Board of Directors. In the absence of the Chairman of the Board of Directors and of the President and the Vice President, he or she shall have power to call such meetings and shall preside thereat until a President Pro Tempore shall be chosen. The Secretary shall perform all other duties incident to his or her office or which may be assigned to him or her by the Board of Directors or the President.

**SECTION 6.5 The Treasurer.** The Treasurer shall have custody of all of the funds, notes, bonds and other evidences of property of the Association. He or she shall deposit or cause to be deposited in the name of the Association all monies or other valuable effects in such banks, trust companies or other depositories as shall from time to time be designated by the Board of Directors. He or she shall make such disbursements as the regular course of the business of the Association may require or the Board of Directors may order. He or she shall perform all other duties incident to his or her office or which may be assigned to him or her by the President or the Board of Directors.

**SECTION 6.6 Assistant Secretary and Assistant Treasurer.** The Assistant Secretary or Assistant Secretaries and Assistant Treasurer or Assistant Treasurers, if elected or appointed, shall, in such order as the Board of Directors may determine, perform all of the duties and exercise all of the powers of the Secretary and Treasurer, respectively, during the absence or disability, and in the event of a vacancy in the office, of the Secretary or Treasurer, respectively, and shall perform all of the duties assigned to him, her or them by the President, the Secretary in the case of Assistant Secretaries, the Treasurer in the case of Assistant Treasurers, or the Board of Directors.

**SECTION 6.7 Absence of Officers.** In the absence or disability of the President and Vice President, the duties of the President (other than the calling of meetings of the Members and the Board of Directors) shall be performed by such persons as may be designated for such purpose by the Board of Directors. In the absence or disability of the Secretary and of the Assistant Secretary, or Assistant Secretaries if there be more than one, or of the Treasurer and the Assistant Treasurer, or Assistant Treasurers if there be more than one, the duties of the Secretary



or of the Treasurer, as the case may be, shall be performed by such person or persons as may be designated for such purpose by the Board of Directors.

**SECTION 6.8 Compensation.** The Board of Directors shall have the authority to fix the compensation, if any, of the Officers, agents and employees.

## **ARTICLE VII. REMOVALS**

During the Class "B" Control Period, the Class "B" Member may at any time depose or remove from office any Director, Officer, subordinate Officer, agent or employee, whenever, in their judgment, the best interests of the Association will be served thereby. Following the termination of the Class "B" Control Period, the Class "A" Members may at any time depose or remove from office any Director, Officer, subordinate Officer, agent or employee, whenever, in their judgment, the best interests of the Association will be served thereby. The number of votes cast to remove a Director must be sufficient to elect the Director at a meeting to elect Directors. The Board of Directors may at any time remove from office or discharge from employment any Officer, subordinate Officer, agent or employee appointed by it or by any person under authority delegated by it, whenever, in their judgment, the best interests of the Association will be served thereby.

## **ARTICLE VIII. AUDIT OF BOOKS**

The Board of Directors shall cause a complete audit to be made of the books of the Association at least once in each fiscal year and more often if required by the Board of Directors, and shall thereafter make appropriate reports to all Members and the Board of Directors. The Board of Directors may appoint some person, firm or corporation engaged in the business of auditing to act as the auditor of the Association.

## **ARTICLE IX. EXECUTION OF INSTRUMENTS**

**SECTION 9.1 Proper Officers.** Except as hereinafter provided or as required by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, bills of exchange, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, mortgages and other instruments or writings of any nature, which require execution on behalf of the Association, shall be signed by (a) the Chairman of the Board and the President or one of such officers and (b) the Vice President, the Secretary or the Treasurer. The Board of Directors may from time to time authorize any such documents, instruments or writings to be signed by such Officers, agents or employees of the Association, or any one of them, in such manner as the Board of Directors may determine.

**SECTION 9.2 Facsimile Signatures.** The Board of Directors may, from time to time by resolution, provide for the execution of any corporate instrument or document, including but not limited to checks, warrants, letters of credit, drafts and other orders for the payment of money, by a mechanical device or machine or by the use of facsimile signatures under such terms and conditions as shall be set forth in any such resolution.

**SECTION 9.3 Funds.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

## **ARTICLE X. CORPORATE BOOKS AND RECORDS; INSPECTION OF SAME AND BYLAWS**

**SECTION 10.1 Books and Records.** The Association shall keep correct and complete books and records of account of the Association and minutes of the proceedings of its Members, Board of Directors and any committee having any of the authority of the Board of Directors, and shall keep at its registered office or principal office in the State a record of the names and addresses of its Members. All books and records of the Association may be inspected, upon written demand, by any Member, Member's agent or attorney or any holder, insurer or guarantor of a first Mortgage on a Lot or Apartment for any proper purpose at any reasonable time. Demand of inspection other than at a meeting shall be made in writing upon the President, the Secretary or any other officer designated by the Board of Directors.

**SECTION 10.2 Inspection of Bylaws.** The Association shall keep in its principal office for the transaction of business a copy of the Bylaws of the Association as amended or otherwise altered to date, which shall be open to inspection by the Members at all reasonable times during office hours.

## **ARTICLE XI. FISCAL YEAR**

The fiscal year of the Association shall be such as may from time to time be established by resolution by the Board of Directors.

## **ARTICLE XII. AMENDMENT TO BYLAWS**

**SECTION 12.1 By Class "B" Member.** During the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws. Following the termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots or Apartments; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots or Apartments; provided, however, that any such amendment shall not adversely affect the title to any Lot or Apartment unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect upon any right of any Class "A" Member.

**SECTION 12.2 By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing fifty-one percent (51%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the

percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**SECTION 12.3 Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon the effective date specified therein. Any procedural challenge to an amendment must be made within six months of the effective date specified therein, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

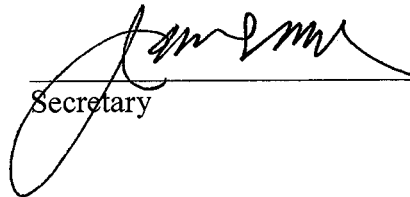
No amendment may remove, revoke or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member or the assignee of such right or privilege.

### CERTIFICATE OF SECRETARY

I certify that:

1. I am the Secretary of Hilo Hillside Estates Community Association, Inc.
2. The attached Bylaws are the Bylaws of the Association adopted by unanimous written consent of the Board of Directors effective as of August 9, 2016.

DATED: August 9, 2016.

  
\_\_\_\_\_  
Secretary