

PROPOSED REVISED BY-LAWS OF  
HAWAIIAN RANCHOS  
ROAD MAINTENANCE CORPORATION

Annual Membership Meeting 2020

Whereas, Article IX, Section 9.1 of the By-Laws of Hawaiian Ranchos Road Maintenance Corporation, revised on 10/2017 states in relevant part that the By-Laws may be altered, amended, added to or repealed “by an affirmative vote of two-thirds (2/3) of the members voting by ballot, proxy or in person at any annual meeting or special meeting called for that purpose.”

Whereas, Article IX, Section 9.1 of the By-Laws, revised on 7/2019 did not alter, amend, add or repeal any part of Article IX, Section 9.1 of the By-Laws revised on 10/2017.

Whereas, the Board has proposed to amend the By-Laws and provided notice of the proposed amendments by giving notice of the annual meeting to the members and including with such notice the proposed amendments included on the ballot sent with the notice to the members.

NOW, THEREFORE, in accordance with the terms and provisions of the By-Laws, the annual meeting was held on \_\_\_\_\_, and the undersigned hereby certify that the these Revised By-Laws dated \_\_\_\_\_, 2020 were approved by an affirmative vote of two-thirds (2/3) of the members voting by ballot, proxy or in person at said annual meeting called for that purpose.

**ARTICLE I. DEFINITIONS (Amended and Re-sequenced)**

**1.1 “Planned Community Associations Act”** shall refer to Hawaii Revised Statutes (“HRS”), Chapter 421J or its successor.

**1.2 “Hawaii Nonprofit Corporations Act”** shall refer to HRS, Chapter 414D, as amended, or its successor.

**1.3 “Developer”** means Hawaii Ranchos, Inc., a Hawaii corporation or its successor.

**1.4 “Corporation”** means Hawaiian Ranchos Road Maintenance Corporation, a Hawaii nonprofit corporation or any successor corporation authorized by the membership and the Board.

**1.5 “Articles of Incorporation”** means the Articles of Incorporation of the Hawaiian Ranchos Road Maintenance Corporation dated October 16, 1991, including any amendments, filed with the appropriate state agency for purposes of incorporation.

**1.6 “By-laws”** shall mean this document and its codes and rules, adopted pursuant to the Hawaii Nonprofit Corporations Act, as amended from time to time.

**1.7 “Board”** means the Board of Directors of the Corporation.

**1.8 “Corporation property”** means any real or personal property interest owned, leased, licensed, or otherwise held by the Corporation.

**1.9 “Lot” or “Ranchos lot”** mean each of the subdivided lots intended for residential or commercial use and not a Road Lot, designated and shown on the map of the Hawaiian Ocean View Ranchos Subdivision, Increments I, II and III, such maps filed in the Bureau of Conveyances of the State of

Hawaii as File Plan Nos. 1125, 1145 and 1183, respectively, located in the District of Ka'u, State and County of Hawaii.

**1.10 “Road lots”, “Ranchos road lot” or “Ranchos road system”** are synonymous and mean those private roads located within the subdivision as certain roadways designated and shown on the map of the Hawaiian Ocean View Ranchos Subdivision, Increments I, II and III, as shown on the maps filed in the bureau of Conveyances of the State of Hawaii as File Plans Nos. 1125, 1145 and 1183, respectively, located in the District of Ka'u, State and County of Hawaii and shall be all roadways located within the above-mentioned subdivision, provided, however, that any portion or portions of the roadways which may be dedicated or conveyed to the County of Hawaii, State of Hawaii, or other governmental authority shall cease to be part of the Ranchos road system immediately upon such dedication or conveyance and the acceptance thereof by said governmental authority.

**1.11 “Owner”** means any person who is the record owner of a fee simple interest in any lot; provided, however, that the lessee, or if there is a suboriginal term of more than thirty (30) years, and the purchaser under a recorded agreement of sale or an unrecorded agreement of sale between Title Guaranty Escrow, Inc., as Trustee, and a purchaser, shall be deemed to be the owner of such lot, to the extent provided in such lease or agreement of sale. For purposes of these By-laws, the developer shall be deemed to be the owner of the lots owned by Title Guaranty Escrow Services, Inc., as Trustee, except for those lots which have been sold by unrecorded agreements of sale or otherwise to new owners. In the event of a dispute or conflict between the fee simple owner and any such lessee, sublessee, or purchaser (under a recorded document), as to who shall be the owner for purposes of these By-laws, then such lessee, sublessee or purchaser under a recorded document shall be deemed to be the owner until such dispute or conflict is resolved. Any person who holds any interest in a lot merely as security for the performance of an obligation shall not be deemed an owner. A trustee, personal representative, or receiver shall be deemed an owner of lots held or administered in that capacity.

**1.12 “Person”** means a natural individual, corporation, partnership, or any other legal entity.

**1.13 “Dues”** means monthly, annual or other dues, fees, charges, levies, liens, judgments, and assessments established by the Board of Directors or obtained in favor of the Corporation against a Lot, Lots, or an Owner.

**1.14 “Membership meeting”** means any noticed and conducted meeting of the membership of the Corporation.

## **ARTICLE II. MEMBERSHIP**

**2.1 Membership.** Each owner of a lot within the Ranchos Subdivision, by virtue of being such an owner, and for so long as he is an owner, shall be a member of the Corporation.

**2.2 Transfer of Membership.** Membership in the Corporation is appurtenant to the ownership of an interest in a lot and cannot be granted separately from ownership of a lot. Any attempted assignment, pledge, mortgage, conveyance, or other transferred disposition of membership separately from the interest in a lot shall be void. The transfer of title to a lot shall simultaneously transfer the membership appurtenant to the lot to the grantee, whether or not such transfer is mentioned in the deed. The lot owner and any purchaser of a lot shall do all things necessary to inform and provide evidence to the

Road Maintenance Corporation immediately of the change of ownership with the name and address of the new owner. There shall be no fee charged for transfer of ownership.

**2.3 Proof of Status.** Upon challenge by the Corporation, no person shall exercise the rights of membership in the Corporation until satisfactory proof has been furnished to the Secretary of the Corporation that he is an owner of a lot. Such proof may consist of a copy of a duly executed, acknowledged and recorded deed, an agreement of sale, or a lease for an original term of not less than thirty (30) years, or a title insurance policy, or certificate of title from a licensed abstractor, or as shown by County records, showing the person to be the owner of a lot. In the event of a dispute as to ownership, the Corporation shall treat the previously recognized owner as the owner entitled to exercise the rights of membership in the Corporation and all owners shall indemnify and hold the Corporation harmless from any such dispute.

**2.4 Record Date.** The record date for the determination of members entitled to notice of any meeting of the members shall be the close of business on the business day preceding the day on which notice is given unless the Board fixes an alternative record date which shall not be more than seventy (70) days prior to the date of the meeting. When a record date is so fixed, only members of record on that date shall be entitled to notice of the meeting. The record date for determining members entitled to vote at a Membership meeting shall be the date of the meeting unless the Board fixes an alternative record date which shall be not more than seventy (70) days prior to the meeting. Proof of Status for voting purposes, including that a person is a member in good standing may be made at any time up to and including the time of any vote of the members as set forth in these By-laws and may be attached to any ballot or proxy assigned for the purposes of a vote.

**2.5 Voting Rights.** At any Membership meeting, each lot shall be entitled to one vote, which vote shall be exercised only by members in good standing and cast in person, by ballot or by proxy. If two or more members in good standing are record owners of the same lot, such members shall decide amongst themselves how to cast the undivided vote for said lot and cast the vote accordingly. In the absence of a dispute, one co-owner in good standing may exercise the vote of the other co-owners. If two or more members as record owners of the same lot cannot decide or are in conflict on how the vote shall be cast for said lot, the vote for such lot shall not be cast, or if cast shall be rejected. Votes may be cast in person or by proxy.

**2.6. Member in Good Standing.** A member is not a “member in good standing” and that member’s voting rights shall be suspended for all Lots during any period in which that member is delinquent in paying any Dues, and during any period in which such delinquency continues including until release of any lien placed by the Board of Directors against the property owner or any of their Lots. The Board of Directors, by mailing written notice to the last known address of the member shown on the Corporation’s records, shall provide not less than fifteen days prior written notice to a member of the proposed suspension of the member’s voting rights, the reasons therefor, and that the member has the opportunity to be heard by providing a written response to the Board received not less than seven (7) days before the effective date of the suspension of voting rights. The Board may conclude that a member’s voting rights shall be suspended and the member is not in good standing effective as of the date provided in the written notice to the member in the event (a) the member does not timely provide a written response to the Board’s notice or (b) after taking into consideration all relevant facts and circumstances including the member’s timely response. The Board shall have the power to reinstate the member’s voting privilege for good and sufficient cause.

**2.7 Other Methods of Voting.** The Board, upon giving notice to members in the same manner as Membership meetings, may take action without a meeting by delivering a ballot to every member entitled to vote on the matter either in written form or in the form of an electronic transmission and as provided for in the Hawaii Nonprofit Corporations Act, HRS §414D-104.5, as amended.

**2.8 Proxies.** At any Corporation meeting, a member in good standing may vote in person or through a duly executed and filed proxy in accordance with the Planned Community Associations Act, HRS 421J-4, as amended.

**2.9 Annual Meeting.** There shall be an annual meeting of the members held on the second Saturday in December of each year unless otherwise ordered by the Board. At the annual meeting the Board President shall report on the activities and financial condition of the Corporation. At the annual meeting, the results of all voting in accordance with Sections 2.7 and 3.3 since the last annual meeting shall be announced and placed in the minutes of the meeting.

**2.10 Special Meetings.** Special meetings of the members of the Corporation, shall be held at such time and at such place as may be designated by the Board and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board or by a writing filed with the Secretary, signed by the President, a majority of the directors, or a petition signed and dated no more than thirty (30) days prior to the filing by members in good standing representing at least seventy-five (75) lots owned by different owners.

**2.11 Membership Records.** The Board shall do all things necessary to maintain a reasonably up-to-date membership list. Such membership list should accurately reflect changes of ownership within ninety (90) days of any actual change of ownership. All ballots, notices of meetings and assessments notices shall contain a change of ownership form and language notifying the recipient that if the recipient is no longer the owner(s) of a Lot, he should so notify the Board and such recipient should forward the notice and agenda to the new owner if known. The Board may adopt such other procedures in its discretion necessary to maintain this updated membership list.

**2.12 Notice of Meetings.** Except as otherwise required by law, notice of each Membership meeting, specifying the day, time, and place of the meeting, the purpose of the meeting, and specifying whether it is an annual or special meeting, shall be given by or under the direction of the Secretary to each member of the Corporation at least forty-five (45) days before the date fixed for such meeting. Such notice shall be in writing and shall be sent to the owner at his residence address or his usual place of business, as it appears on the books of the Corporation, by mail, first class, postage prepaid, addressed to him or her at such address or electronic transmission, if elected by the member. For those who so select, electronic transmission may be used as notification for any business matters between the Corporation and member. Any member may revoke the use of electronic transmission at any time. If notice is given pursuant to the provisions of these By-laws, non-receipt of the actual notice of any meeting by any member of the Corporation shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any member of the Corporation may waive notice of any meeting either prior to or after the meeting, with the same effect as though notice of the meeting had been given him or her. The presence of any member of the Corporation at a meeting shall be the equivalent of a waiver by him or her of notice of the meeting. The notice of the Annual Meeting shall include an agenda including, but not limited to the paving plan and budget. A proxy shall be available upon request on the website or other electronic means. Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of the members are those matters that are described in the meeting notice and agenda. In

addition to the right of the Board to set the agenda or place items on any official ballot, issues shall be added to the agenda or ballot in the following manner: a signed petition representing at least thirty-five (35) lots of members in good standing owned by different owners delivered to the Corporation office or any Director at least twenty-five (25) days prior to the notice of any annual or any special meeting called pursuant to Section 2.9 for that purpose shall cause that issue to be added to the agenda or ballot.

**2.13 Financial Report and Newsletter.** A newsletter shall be made available at least annually on an internet accessible website to all property owners which shall contain a full accounting (on a cash basis) of the prior year's budget. The newsletter shall also include any change in the Board membership, Officers, and road work plans for the following year with a proposed budget to support it.

**2.14 Membership Meeting Quorum.** The quorum for any Membership meeting shall be 10% of the number of Lots represented by members in good standing. A majority vote at any meeting at which a quorum is present shall constitute acts of the Corporation unless another vote is required by law, the Articles, or these By-laws.

**2.15 Declaration of Emergency; Disaster.** In the event of a natural disaster or an emergency declaration by any state or local governmental authority, any Membership meeting may be conducted by any means that provides for Internet, teleconference, videoconference, or other electronic transmission technology in a manner that allows members the opportunity to simultaneously participate in the proceedings. A member or proxy participating in a meeting in this manner shall be deemed present in person at the meeting.

### ARTICLE III. BOARD OF DIRECTORS

**3.1 Number of Directors.** There shall be a Board of Directors of the Corporation of not less than five (5) nor more than nine (9) members. As near as possible, one third (1/3) of the directors shall be elected each year by the members of the Corporation to hold office until their successors have been elected, provided that the number of directors may be decreased or increased by the members subject to the foregoing limitations, and if increased, the additional directors may be elected by the members at any special meeting called for such purpose to hold office until their successors have been elected. All members of the Board of Directors must be members of the Corporation and no two members of the same household may serve at the same time unless there are less than 5 members elected to the Board.

**3.2 Nomination of Directors.** All members in good standing of the Corporation are eligible to be nominated to serve on the Board. Nominations may be self-made, or made by another member, must be in writing, and must be accompanied by a resume of not more than one hundred words and mailed in such a manner that it is received by the Corporation no later than 75 calendar days prior to the scheduled date of the Annual meeting. The Corporation will not be responsible for lost, misdirected, or mail not received for any other reason, and any nominations received after the due date outlined herein will not be considered. Nominations and resumes will be either available on an internet website or sent to all members with the Annual meeting notice.

**3.3 Election and Tenure.** Directors shall be elected to serve a term of three (3) years beginning January 1st of the year following the election. Each director shall continue to exercise the powers and duties of the office until his successor has been elected by the Corporation. Election of Directors for expiring terms, vacancies, or any interim filling of vacancies previously filled by the Board shall be by

mail or any other reasonable procedure permitted by the Hawaii Nonprofit Corporations Act in accordance with procedures adopted by the Board. Nothing herein shall restrict the right of the Board to temporarily fill vacancies resulting from the resignation, removal or other vacancy of a director prior to the termination of their respective term occurring between Membership meetings or after any notice of mail or Internet ballot is sent to the members. In any election, those candidates receiving (a) a minimum of a majority of the required quorum in Section 2.14, and (b) the most votes, shall be elected beginning with the longest terms, and continuing until all positions are filled. No director may be elected by a designated class, chapter, unit, region or other geographic grouping of the members.

**3.4 Removal of Directors.** The entire Board or any individual Director may be removed from office without cause by vote of a majority of the Lots represented by members in good standing voting by proxy, ballot, or in person at any annual or special membership meeting, provided that the proposed removal is in the notice of the meeting. Notwithstanding anything to the contrary, if the proposed removal is not in the notice of the meeting, a vote of sixty-seven (67%) of Lots represented by members in good standing shall be required. A Director shall be subject to removal by the Board for absence of more than two (2) consecutive regular Board meetings unless the absence is waived by the Board.

**3.5 Vacancies.** Vacancies on the Board may be filled by the vote of a majority of the remaining directors though less than a quorum, or by the sole remaining director, and each director so elected shall hold office until his successor is elected at the earliest of the next election of a replacement director in accordance with (a) Section 3.3 of these Bylaws, (b) Annual Meeting, or (c) duly noticed Special meeting. Any director elected in this manner shall be elected to fill the remainder of the term of the vacant director.

**3.6 Compensation.** No Director shall receive compensation for the services he may render to the Corporation. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties with Board approval.

**3.7 Board Meetings.** An Annual Board meeting consisting of the incoming Directors shall be held each year immediately after the adjournment of the Annual meeting and at the place of such Annual meeting, without call or formal notice for the purpose of electing Officers of the Corporation for the following year. Board members who start or continue in office at the start of the next year shall be eligible to be Officers of the Corporation. Special meetings may be called by the President of the Corporation or by any two (2) members of the Board, and any such meeting shall be held on such day, at such time and such place in the community as shall be specified by the person or persons calling the meeting. The Board shall meet monthly, or quarterly, and any such meetings shall be held on such date, time and place in the community as shall be specified by the Board. Special Board meetings may be called at any time by the President or Vice President to deal with any matters requiring attention between Board meetings.

**3.8 Notices of Board Meetings.** Notice of each regular and special Board Meeting specifying the day, time and place of the meeting and the proposed agenda shall be given at least seven (7) days prior to the regular Board Meeting or two (2) days prior to the special Board Meeting by or under the direction of the Secretary, or by a person calling the meeting, to each member of the Board. The notice shall be sent by (a) mail to the director at his address in the Corporation's books, (b) personal delivery, (c) telephonic communication, or (d) some other method approved by the Board. Any proposal to alter the Corporation's approved budget or paving plan must be included in the notice of the proposed Board meeting in order to be considered valid. If notice is sent as provided herein, non-receipt of notice by any member of the Board shall not invalidate the meeting, any proceedings taken, or any business done at the meeting. Any member of the Board may waive notice of any meeting either prior to or after

the meeting, with the same effect as though notice of the meeting had been given him or her. The presence of any member of the Board at a meeting shall be the equivalent of a waiver by him or her of notice of the meeting.

**3.9 Agenda for Regular and Special Board Meetings.** The notice required for the regular and special Board Meetings of the Board shall include an agenda of the matters expected to be decided upon at such meeting. Action at a special Board Meeting is limited to the items on the notice and agenda.

**3.10 Quorum.** A majority of the established size of the Board shall constitute a quorum for the conduct of business and any decision by majority vote shall be valid and binding on the Corporation unless a greater number is required by law or these By-laws.

**3.11 Notice of Board Meetings to Membership.** In addition to the notice required in Section 3.8, if the Board has on the agenda for any regular or special Board Meeting a proposal to alter the previously accepted road maintenance plan or budget, in addition to the notice above, notice of such meeting and the agenda including the proposed changes, shall be published in one newspaper at least weekly and having a general circulation in the County of Hawaii for at least two (2) weeks prior to such meeting and such notice and agenda shall be mailed to the membership, first class mail, at least fourteen (14) days prior to such meeting. Notice of any other Board Meeting provided to the Membership shall be given at least seven (7) days before any regular Board meeting by posting notice of such meeting and the agenda at the Corporation office on the Bulletin Board and elsewhere as determined by the Board.

**3.12 Attendance and Participation by Members; Executive Session.** All meetings of the Board, other than executive sessions, shall be open to all members to provide input on the matters being discussed. Members who are not on the Board may participate in any deliberation or discussion, other than during executive sessions, unless the Board votes otherwise. The Board may adjourn any meeting and reconvene in executive session as provided by the Planned Community Associations Act.

## ARTICLE IV. OFFICERS AND AGENTS

**4.1 Officers and Agents; Designation of Duties.** The Officers of the Corporation shall be a President, a Vice-President, a Secretary, a Treasurer, who shall be elected by the Board and any assistant officers appointed by the Board, and each shall hold office until their successors are elected. The Corporation may have such other Officers, agents, and factors as may be deemed necessary, who shall be elected in such manner and hold their offices for such terms and have such authority and duties as may be determined by the Board. All Officers shall be members of the Corporation and the Board. In addition to the duties and powers set forth herein, each Officer shall have such duties and powers as are commonly instant to his office and 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 By-laws, or by the Board, such Officer, agent or employee shall obey the orders and instructions of the President.

**4.2 President.** Subject to the control of the Board of Directors, the President shall be the chief executive officer of the Corporation and shall exercise general supervision and direction over the management and conduct of affairs and business of the Corporation.

**4.3 Vice-President.** The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice-President

shall have such other powers and duties as may be given to him or her by law or in these By-laws or as may be assigned to him or her from time to time by the Board or by the President.

**4.4 Secretary.** The Secretary shall have charge of the membership ledger, all documents pertaining to the title to all real property owned or held by the Corporation, and all rules, regulations, and other documents required to be filed with the Corporation or in the office of the Corporation by these By-laws. The Secretary shall prepare and cause to be preserved all minutes of proceedings of the Corporation meetings and Board meetings in a book and in an electronic format approved by the Board, which shall be the property of the Corporation, with the original or duplicate copy to be kept for that purpose at the office of the Corporation in Hawaii, and perform such other duties as shall be assigned to him or her including authentication of the records of the Corporation.

**4.5 Treasurer.** Subject to the direction and under the supervision of the Board and the provision of these By-laws, the Treasurer shall oversee the care and custody of the funds and valuable papers of the Corporation, shall have power to endorse for deposit or collection all notes, checks, drafts, and other obligations for the payment of money to the Corporation or its order, and shall keep or cause to be kept accurate financial books and accounts of the Corporation and to render reports on a cash basis as often as required by the Board.

**4.6 Assistant Officers.** The Board may appoint such assistant officers such as Assistant Vice-President, Assistant Secretary, or Assistant Treasurer, or other designation to act and assist in such roles as designated above.

**4.7 Officer Removals and Vacancies.** The Board may, at any meeting called for the purpose by a vote of a majority of the Board, remove from office any Officer of the Corporation with or without cause. Any vacancy occurring in the office of any Officer shall be filled by the Board and the Officer so chosen shall serve until a successor is duly elected.

## **ARTICLE V. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**5.1 General Powers and Duties.** The business, property, and affairs of this Corporation shall be managed by the Board. The Board shall have all powers and duties as provided by law and as may be necessary or proper to accomplish the purposes of the Corporation, including without limitation the General Purposes and Powers authorized by the Articles of Incorporation.

**5.2 Managing Agent.** The Board may employ a responsible managing agent to manage and operate the affairs of the Corporation, subject at all times to direction by the Board, and having such powers and duties and at such compensation as the Board may establish. Any contract for the employment of a managing agent shall be subject to the approval by a majority vote of the membership of the Corporation casting votes.

## **ARTICLE VI. ASSESSMENTS**

**6.1 Definition of Road Maintenance Expenses.** Road maintenance expenses means all costs and expenses of operating and administering the Corporation during a fiscal year. Road maintenance expenses shall include, without limiting the generality of the foregoing, all costs and expenses of repairing, maintaining, and improving the Ranchos road system, all expenses for salaries, taxes,



assessments, utilities, operating expenses, insurance and bond premiums, accounting and legal fees, management fees, deficits and income from prior years, the establishment of operating and other reserves, and all other charges and outgoing of every description to which the Corporation or its property may be assessed or become liable.

**6.2 Purpose.** It is the intent of these By-laws that each owner of a Lot shall be responsible for and pay a proportionate share of the road maintenance expenses. Each Lot owner's share of such road maintenance expenses shall be due and payable in annual, semi-annual, or quarterly installments, as determined by the Board and shall be due within sixty (60) days after mailing notice of assessment by the Corporation. The Board may determine that semiannual or quarterly installments may be assessed interest as set forth in Section 6.8.

**6.3 Assessment for Road Maintenance Expenses.** Each owner of a Lot, or in the event of multiple owners, such multiple owners jointly and severally, shall be responsible for and shall pay to the Corporation a proportionate share of the annual road maintenance expenses by way of assessment as set out in these By-laws.

**6.4 Apportionment of Road Maintenance Assessments and Supplemental Assessments.** The assessment payable by each Lot owner shall be equal to a fraction of such total expenses, the numerator of which fraction shall be the total number of Lots owned by such owner, and the denominator of which shall be the total number of all the Lots.

**6.5 Determination of Assessment.** Subject to the provisions of these By-laws and the Articles of Incorporation, the Board shall have the power and authority to determine all matters in connection with the respective assessments payable to it, including, without limitation, power and authority to determine where, when and how such assessments shall be paid, and each owner shall comply with all such determinations.

**6.6 Supplemental and Special Assessments.** Subject to the provisions of the By-laws and the Articles of Incorporation, in addition to the road maintenance assessments, the Board may levy supplemental assessments as a result of natural disasters, payable over such period as the Corporation may determine for the purpose of defraying any expense incurred as a direct result of actual material or labor cost increases from those set forth in the approved budget. Such supplemental and special assessments must be approved at a Corporation meeting or by a voting procedure permitted in Section 2.7. In addition to road maintenance assessments and supplemental assessments, the Corporation may levy special assessments against individual Lot owners for expenses which are incurred or to be incurred by the Corporation as provided in the By-laws. Specifically, the Corporation may levy special assessments against those who abuse or damage the road system, including those assessments necessary to bring the Lot Owner into compliance with the provisions of the By-Laws, and control through tariff, charges or other means the use of heavy and/or commercial vehicles on the Hawaiian Ranchos road system. The Corporation may levy special assessments on Lots with commercial activities to pay for the extra maintenance required. The Board shall have the sole discretion to levy such assessments. Specific situations which are subject to a special assessment include, but are not limited to: 1) Commercial enterprises which increase traffic and therefore increase maintenance expenses; 2) Damage by construction equipment; 3) Damage by delivery vehicles; 4) Any misuse of roads which causes damage to them resulting in expenses to the Corporation.

**6.7 Lien for Assessments, Dues and Other Amounts.** All road maintenance assessments, supplemental and special assessments, and Dues together with late charges, interest, costs and

reasonable attorneys' fees, shall be a charge and lien on the land and the Corporation shall have a continuing lien against the owner's interest in such Lot to secure payment of any assessments, charge, Dues or other amount due and owing to the Corporation, plus late charges and interest as provided in Section 6.8, from the date due and payable until paid, plus all costs and expenses of collecting the unpaid amount, including attorneys' fees.

**6.8 Effect of Nonpayment of Assessment; Remedies of Corporation.** Any assessment which is not paid within sixty (60) days of its due date shall be delinquent. In the event that an assessment becomes delinquent, the Corporation in its sole discretion, may take any or all of the following actions: a) assess a late charge of ten (10%) percent of the amount delinquent per delinquency; b) assess interest thereon in an amount not to exceed twelve (12%) percent per annum; c) bring an action at law against any owner personally obligated to pay assessments should the Lot be sold; d) file a Notice of Delinquency, and Statement of Lien with respect to the Lot; and foreclose on the lien as more fully set forth in Section 6.9 hereof. Any such action shall be in addition to any other remedies provided by law for the enforcement of such obligations.

**6.9 Foreclosure of Lien.** In the event that any assessment is delinquent for a period of six (6) months or more, the Corporation may file a Notice of Delinquency and Statement of Lien which may be recorded in the Bureau of Conveyances of the State of Hawaii with a written statement with respect to the Lot, setting forth the name of the Lot owner, the legal description of the Lot, the name of the Corporation and the amount of delinquent assessments then owing, which statement shall be duly signed and acknowledged by an Officer or Director of the Corporation. A copy of such statement shall be mailed by certified mail, return receipt requested, to the owner at the address of the Lot or at such other address as the Corporation may have in its records for such owner. If no return receipt or other proof of acceptance results from such mailing, then the Notice of Default shall be posted on the property and published in accordance with Hawaii Revised Statutes §667-20, as amended. At any time commencing fourteen (14) days after the mailing of such notice, or publication and posting, the Corporation may proceed to enforce its lien in accordance with Hawaii Revised Statutes Chapter 421J, including foreclosure of the lien in the manner for foreclosure of mortgages pursuant to Hawaii Revised Statutes, Chapter 667. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such obligations.

## **ARTICLE VII. BUDGET AND ROAD MAINTENANCE PLAN**

**7.1 Determination of Budget for Road Maintenance Assessments.** The fiscal year of the Corporation shall be the calendar year. Prior to sending the notice of the annual membership meeting, as set forth in Section 2.12, the Board shall determine the total amount to be raised by road maintenance assessments during that fiscal year and prepare a proposed budget as set forth below. The amount to be raised by the assessments for any fiscal year shall be determined in the following manner. The Corporation shall prepare, or cause to be prepared, and approve a budget for the fiscal year showing, in reasonable detail, the estimated road maintenance expenses which will be payable in that fiscal year to fulfill the regular operating functions and obligations of the Corporation in the fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry over reserve for the next fiscal year (the "operating budget") including any amount necessary to pay for improvements of the Ranchos road system. The Board shall subtract from the operating budget the amount equal to the anticipated surplus attributable to Corporate income received and assessments collected but not disbursed in the fiscal year immediately preceding the fiscal year for which the

operating budget has been prepared. If the Board fails to determine or cause to be determined the total amount to be raised by its assessments in any fiscal year, and/or fails to notify the owners of the amount of such assessments for any fiscal year, then the amounts of assessments shall be deemed to be either the amount assessed in the previous fiscal year.

**7.2 Determination for Road Maintenance Plan.** Prior to giving notice of the annual meeting, as set forth in Section 2.12, the Board shall determine a plan for maintenance, repair, and improvement of the Ranchos road system to be completed for that fiscal year. The road maintenance plan will specifically identify roads scheduled for repair, an estimated schedule for completion, the nature of the maintenance, repair and/or improvement and respective costs. In developing the road maintenance plan, the Board shall endeavor to utilize equitable principles in allocating the resources fairly among lot owners, with priority given to the primary road system, defined as all boulevards running in a makai direction from Highway 11, and Maile Dr.

**7.3 Approval of Budget and Road Maintenance Plan at Annual Meeting.** At each annual meeting of the members, the proposed budget and road maintenance plan will be submitted to the membership for voting. The proposed budget and paving plan and ballot for approval shall be submitted to the membership with the notice of annual meeting and agenda at least forty-five (45) days prior to the annual meeting. The budget and road maintenance plan must be approved by a majority of the Lot owners voting and in good standing. In the event that the budget and road maintenance plan is not approved, a new budget and road maintenance plan, shall be proposed by the Board which may not exceed the previous year's budget by ten (10%) percent. The Board must notify the membership of the revised road maintenance plan, budget and resulting assessment no later than the beginning of the fiscal year.

## **ARTICLE VIII. USE OF RANCHOS ROAD SYSTEM**

**8.1 Use by Owners.** All owners of Lots, and their guests, shall utilize the Ranchos road system in a reasonable manner as determined by the Board.

**8.2 Road Use Regulations.** The Board may adopt reasonable regulations controlling the use of the Ranchos road system, including without limitation speed limits, road markings, placement of stop signs and other road signs, and use of and parking on road rights of way. Such regulations may require permits for vehicles in excess of certain weights or reasonable charges for special or commercial road usage as determined by the Board. No track vehicles shall be allowed on the Ranchos road system.

## **ARTICLE IX. CONTRACTS, LOANS, CHECKS AND DEPOSITS, BONDING**

**9.1 Contracts.** All notes, acceptances, conveyances, contracts, and other instruments shall be signed by the President and Vice-president or the President or Vice-president and the Treasurer or Secretary on behalf of the Corporation, only after resolution by the Board.

**9.2 Loans.** No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless specifically authorized by a resolution of the Board. General authority will not be permitted. Such loans shall be executed by the President and Vice-president or the President or Vice-president and Treasurer or Secretary pursuant to such resolution.

**9.3 Checks, Drafts, Etc.** All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness shall only be executed upon specific resolution by the Board and executed by the President and Vice-president or the President or Vice-president and the Treasurer or passed by the Board.

**9.4 Deposits.** All funds of the Corporation, not otherwise employed, shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories in the State of Hawaii, the deposits of which are insured by an agency of the United States government for the full amount of the balance of the account as the Board may select. The Board in its discretion subject to the advice and counsel of the Corporation accountant may deposit a portion of corporate funds in non-insured investments and accounts for purposes of obtaining higher interest on investments. However, such investments shall be conservative and prudent. The Board may hire an accountant or professional investment advisor to handle and safeguard all corporate investments.

**9.5 Bonding.** All Officers and directors with the authority to handle funds of the Corporation shall be adequately bonded at the expense of the Corporation, by standard fidelity bonds, provided, however, that in all cases the President, Treasurer, and office manager shall be bonded. Adequate bonding as required hereunder shall mean a bond of sufficient size to adequately protect the Corporation from any acts of malfeasance or misfeasance of corporate personnel commensurate with the amount of money being handled by such person or persons. Any Officer, director or office manager who is not bonded is not authorized by these By-Laws to handle funds of the Corporation.

## ARTICLE X. AMENDMENTS

**10.1 These By-laws may be amended** by (a) an affirmative vote of two-thirds (2/3) of the members voting by ballot, proxy, or in person at any annual meeting or special meeting called for that purpose, or (b) two-thirds (2/3) of the members voting using an authorized method provided in Section 2.7. Notice of the proposed amendments shall have been given in the notice of annual or special meeting and such proposed amendments included on the ballot sent with the notice to the members. If an amendment is permitted by the Planned Community Associations Act without notice and presented at a Corporation meeting without prior notice, the vote requirement shall be increased to two-thirds (2/3) of all members in good standing in the Corporation. However, such amendments shall not change or alter the powers and purposes as set forth in the Articles of Incorporation and these By-laws.

## ARTICLE XI. GENERAL PROVISIONS

**11.1 Parliamentary Authority.** The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern all meetings of the Corporation and the Board in all cases to which they are applicable where they are not inconsistent with these By-laws, any special rules of order of the Corporation that may be adopted, or any provisions of local, state or national law applicable to non-profit corporations.

**11.2 Inspection of Records.** A member is entitled to inspect and copy Corporate records and other records of the Corporation as set forth in the Hawaii Nonprofit Corporations Act, at the Corporation office, Monday through Friday between the hours of 10:00 a.m. and 3:00 p.m. upon the written demand with at least five (5) business days' notice before the member wishes to inspect and copy. To the extent that any member's demand to inspect or copy must be made in good faith and for a proper purpose

according to the Hawaii Nonprofit Corporations Act, inspection and copying will not be allowed unless the written demand describes with particularity the purpose and the records the member desires to inspect, and those records must be directly connected to the designated purpose..

**11.3 Indemnification.** The Corporation shall indemnify every Director and Officer and his personal representative against all expenses actually and reasonable incurred by or imposed on him or her in connection with any action, suit, or proceeding to which he or she may be made a party by reason of being or having been an agent of the Corporation if such person acted in good faith; if acting in their official capacity he or she reasonably believed that they were conducting themselves in the best interests of the Corporation; and in any instance that they did not oppose the Corporation's best interest. The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

**11.4 Caption.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-laws, or the intent of any provisions hereof.

**11.5 Annual Accounting.** Corporate documents, including the most current financial statements, general ledgers, accounts receivable and payable ledgers, and similar financial accounting information shall be made available for examination by members at reasonable hours and on reasonable terms at a location designated by the Board, provided the member pays all costs associated with the examination of the documents. An annual internal bookkeeping report, including statement of income and disbursements, shall be available for inspection by members without cost at the Corporation office not later than 120 days after the close of the Corporation's fiscal year or, upon request, sent to any member for a fee to be determined from time to time by the Board to cover expenses associated with the satisfaction of such request .

**11.6 Inspection of By-laws.** The Corporation shall keep in its principal office for the transaction of business the original or a copy of these By-laws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the members at all reasonable times.

**11.7 Gender.** The use of a pronoun of any gender in these By-laws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural whenever the context requires.

**11.8 Waiver.** No restriction, condition, obligation, or provision contained in these By-laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**11.9 Severability.** The provisions of these By-laws shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision.

**11.10 Dissolution.** Upon the dissolution of the Corporation, the assets shall be disposed of in accordance with the applicable Internal Revenue Service regulations that apply to Nonprofit corporations and otherwise, as directed by the Membership.

Dated: Ocean View, Hawaii, \_\_\_\_\_, 2020.

Hawaiian Ranchos Road Maintenance Corporation

By: \_\_\_\_\_  
Roy Thornton  
President

By: \_\_\_\_\_  
Chris Pinnow  
Vice-President

By: \_\_\_\_\_  
Packy Taylor  
Vice-President

By: \_\_\_\_\_  
Matts Fogelvik  
Treasurer

By: \_\_\_\_\_  
Phillis May  
Secretary

By: \_\_\_\_\_  
Paul Scott  
Director

By: \_\_\_\_\_  
Gabe Hechler  
Director

By: \_\_\_\_\_  
Mike Gerbo  
Director