

EXPEDITED
REVIEW

STATE OF HAWAII

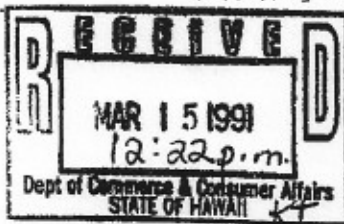
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

In the Matter of the
Incorporation

of

KEALAKEKUA BAY ESTATES
OWNERS' ASSOCIATION

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| 823 | 00101216 | 13- | 3/22/91 | 12.75 |
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ARTICLES OF INCORPORATION

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Attorney for Incorporator

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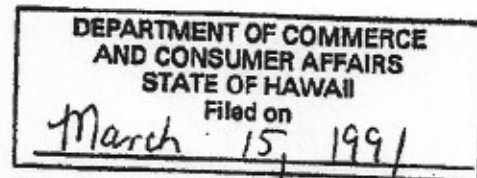
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STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

In the Matter of the
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KEALAKEKUA BAY ESTATES
OWNERS' ASSOCIATION



ARTICLES OF INCORPORATION

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii certifies as follows:

ARTICLE I

CORPORATE NAME

The name of the corporation shall be KEALAKEKUA BAY ESTATES OWNERS' ASSOCIATION.

ARTICLE II

LOCATION OF INITIAL OFFICE

The address of the corporation's initial office is Seven Waterfront Plaza, Suite 525, 500 Ala Moana Boulevard, City and County of Honolulu, State of Hawaii.

The post office address for the corporation's initial office is Seven Waterfront Plaza, Suite 525, 560 Ala Moana Boulevard, Honolulu, Hawaii 96813.

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ARTICLE III

DURATION

The corporation shall have perpetual duration.

ARTICLE IV

CORPORATE PURPOSES AND POWERS

Section 1. The corporation is organized for the following purposes:

(a) To provide the management, maintenance, protection, preservation, control and development of real property situated at Kahauioa 1, Kahauloa 2, and Keei 1, District of South Kona, County and State of Hawaii, within the subdivision known as Kealakekua Bay Estates.

(b) To own and acquire the common areas in the subdivision known as Kealakekua Bay Estates to be used for access, drainage, utility, recreational and cultural purposes and to operate and maintain such real estate for access, drainage, utility, recreational and cultural purposes for the use and benefit of the members of the corporation.

(c) To represent and promote the general welfare of the residents of the subdivision known as Kealakekua Bay Estates generally.

(d) To transact any or all lawful activities for which nonprofit corporations may be incorporated under Chapter 415B, Hawaii Revised Statutes.

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Section 2. And in furtherance of said purposes, the corporation shall have all powers, rights, privileges and immunities, and shall be subject to all of the liabilities conferred or imposed by law upon corporations of this nature, and shall be subject and have all the benefits of all general laws with respect to corporations.

ARTICLE V

DIRECTORS AND OFFICERS

The initial board of Directors, which shall consist of three (3) directors, and the officers of the corporation, who shall serve until their successors are duly elected and qualified, along with the residence address of each, are as follows:

| <u>Name</u> | <u>Position</u> | <u>Residence Address</u> |
|----------------------|--------------------------------------|--|
| Shinzo Nozaki | President Secretary/Director | 4954-4 Kilauea Avenue Honolulu, Hawaii 96816 |
| Edward Rapoza | Vice-President Treasurer/Director | 76-231 Olomea Place Kailua-Kona, Hawaii 96740 |
| Wendelin L. Campbell | Director | 21 Makalapa Drive Honolulu, Hawaii 96818 |

The board of directors shall be not less than three (3) in number, of which one director shall be a resident of the State of Hawaii. The number of directors may be increased or decreased at each annual meeting of the members of the corporation or at a special membership meeting called for the purpose of electing directors; provided that at no time shall there be less than three directors of the corporation. Directors and officers shall be elected or appointed in the manner provided by the By-Laws and shall

have the powers given to them in the By-Laws. Any person may hold two or more offices in the corporation unless forbidden to do so by the By-Laws or law. The officers of the corporation shall be a president, vice-president, a treasurer, and a secretary. The board of directors shall, except as limited in the By-Laws, have all powers necessary or proper to carry out all of the business of the corporation, and the directors may delegate such powers as they see fit, so long as such delegation is not prohibited by law or in the By-Laws.

ARTICLE VI

MEMBERSHIP

Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are collectively, the "Owner", as defined in the Declaration of Covenants, Conditions and Restrictions for Kealakekua Bay Estates (hereinafter the "Declaration"), of any lot within the subdivision known as Kealakekua Bay Estates shall be a member of the corporation. The term "lot" as used herein shall have the same meaning as that given in the Declaration. Proof of status as an "Owner" of any such lot for purposes of establishing membership in the corporation shall be furnished in accordance with provisions pertaining thereto set forth in the By-Laws. Membership shall be appurtenant to and may not be separated from the ownership of any such lot, and such ownership shall be the sole qualification for membership in the corporation.

ARTICLE VII

CLASSES OF MEMBERSHIP AND VOTING RIGHTS

The corporation shall have two classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" members shall be the Owners as defined in Article VI hereof, of lots, with the exception of the Declarant as defined in the Declaration, or any successor of Declarant who takes title for the purposes of development and sale. Class "A" members shall be entitled to one vote for each lot in which they hold the interest required for membership by Article VI herein. When more than one person holds such interest in any lot, the vote for such lot shall be exercised as those Owners themselves determine and advise the secretary prior to any meeting. In the absence of such advice, the lot's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "B". Class "B" members shall be the Declarant as defined in the Declaration, and any successor of the Declarant who takes title for the purposes of development and sale. The Class "B" members shall originally be entitled to one hundred sixty-five (165) votes, three (3) votes for each lot; this number shall be decreased by three (3) votes for each Class "A" member existing at any one time. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following: (i) when the total outstanding Class "A" votes equal or exceed the total outstanding Class "B" votes; or (ii) when in its discretion, the

Declarant so determines. From and after the happening of these events, whichever occurs earlier, the Class "B" members shall be deemed to be Class "A" members entitled to one vote for each lot under which it holds an interest required for membership under Article VI hereof. At such time, the Declarant shall notify the membership in writing of the termination of Class "B" status.

Notwithstanding anything to the contrary contained herein, the rights of members of the corporation to voting shall be subject to the voting requirements of Chapter 415B, Hawaii Revised Statutes, for purposes of voting on matters specified in Chapter 415B.

ARTICLE VIII

NONPROFIT NATURE

The corporation is nonprofit in nature, and shall not authorize or issue shares of stock. No dividends shall be paid and no part of the income or profit of the corporation shall be distributed to its members, directors or officers, except for services actually rendered to the corporation, and except upon liquidation of its property in case of corporate dissolution.

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ARTICLE IX

INDEMNITY

(a) The corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, of itself shall not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, that the person had reasonable cause to believe that the person's conduct was unlawful.

(b) The corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. 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 corporation unless and only to the extent that the court in which the action or suit was brought or in any other court having jurisdiction in the premises 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 which the court shall deem proper.

(c) To the extent that a director, officer, employee or other agent of the corporation or a person serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise has been successful on the merits or otherwise in defense of any action, suit or

proceeding referred to in Paragraph (a) or (b) of this Article IX, or in defense of any claim, issue, or matter therein, the person shall be indemnified by the corporation against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection therewith.

(d) Any indemnification under Paragraph (a) or Paragraph (b) of this Article IX (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or other agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Paragraph (a) or (b). Such determination shall be made (i) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; or (ii) if a quorum is not obtainable by independent legal counsel in a written opinion to the corporation; or (iii) by a majority vote of the members; or (iv) by the court in which the action, suit or proceeding was pending upon application made by the corporation or the director, officer, employee or other agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the director, officer, employee, agent, attorney or other person is opposed by the corporation.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in a particular case upon receipt of an undertaking by or on behalf of the director, officer, employee or other agent

to repay such amount unless it shall ultimately be determined that the person is entitled to be indemnified by the corporation as authorized in this Article IX.

(f) Any indemnification pursuant to this Article IX is not exclusive of any other rights to which those indemnified may be entitled, and shall continue as a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(g) The corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under this Article IX.

ARTICLE X

DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon the dissolution or winding up of the affairs of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be dedicated to the County of Hawaii or to any other governmental agency to be devoted to the purposes as nearly as practicable to the same as those to which they were required to be devoted by the corporation. In the event that such

dedication is refused acceptance, the assets of the corporation shall be distributed to a nonprofit fund, foundation or corporation, which is exempt from Federal Income Tax.


ARTICLE XI

AMENDMENT

These Articles may be amended by the members by the affirmative vote of at least two-thirds of the votes which members present at a meeting or represented by proxy are entitled to cast, at any annual meeting or at a special meeting duly called for such purpose.

I certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.

WITNESS MY HAND, this 14th day of March, 1991.



WENDELIN L. CAMPBELL
Incorporator