

# KOHALA RANCH

## Charter of Incorporation

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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Incorporation )  
  ) )  
  of    ) )  
  ) )  
KOHALA RANCH COMMUNITY                                ) )  
ASSOCIATION   ) )  

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CHARTER OF INCORPORATION

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, the undersigned Director of Commerce and Consumer Affairs of the State of Hawaii, send Greeting:

WHEREAS, DONALD K. IWAI, ROBERT E. STRAND and JEFFREY C. WILK, a majority of whom are residents of the State of Hawaii, have filed with me as Director of Commerce and Consumer Affairs a verified petition to grant to them and their associates a charter of incorporation as a nonprofit corporation, in accordance with the provisions of Section 415-20, Hawaii Revised Statutes;

NOW, THEREFORE, KNOW YE, That I, the said Director, in the exercise and execution of every power and authority in anywise enabling me in this behalf, do hereby constitute the said petitioners and their associates a corporation under the laws of the State of Hawaii for the purposes and in the form hereinafter set forth.

ARTICLE I

The name of the corporation shall be KOHALA RANCH COMMUNITY ASSOCIATION, hereinafter called the "Association."

ARTICLE II

The location of the principal office of the corporation shall be in the District of Kohala, Island, County and State of

Hawaii, and the specific address of its initial office shall be P. O. Box 10, Kamuela, Hawaii 96743.

#### ARTICLE III

The specific purpose for which the corporation is organized is to provide for the management, maintenance, protection, preservation, architectural control and development of certain real property situate at North Kohala, Island, County and State of Hawaii, within the area known as the "Kohala Ranch Subdivision," being the property described in that certain Declaration described hereinbelow, and to promote the health, safety and welfare of its members.

#### ARTICLE IV

In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to chartered nonprofit corporations, the corporation shall have succession and existence in perpetuity and shall have and exercise any and all powers, rights, privileges and immunities which are now or may hereafter be secured by law to chartered nonprofit corporations organized under the laws of the State of Hawaii. Without limitation as to other powers stated or referred to in this Charter, the corporation shall have the following powers:

(a) It may exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in that certain Kohala Ranch Declaration of Covenants, Conditions and Restrictions dated October 4, 1985, executed by Kohala Joint Venture, a Hawaii registered joint venture, as the same may be amended from time to time as therein provided, hereinafter called the "Declaration";

(b) It may fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association. The term "Association" as used herein shall have the meaning given it in the Declaration and shall be synonymous with the term "corporation" as used herein;

(c) It may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association; and

(d) It may borrow money, and mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the provisions of Article XI herein.

#### ARTICLE V

The corporation is organized for the purposes set forth in Article III hereinabove and is not organized for profit; it will not issue any stock, and no part of its assets, income or earnings shall be distributed to its members, directors or officers, except for services actually rendered to the corporation.

#### ARTICLE VI

There shall be a Board of Directors of the corporation to consist of not less than three nor more than nine directors, and the initial Board of Directors shall consist of three directors. At least one member of the Board of Directors shall be a

resident of the State of Hawaii, and in the absence of one such member, the Board of Directors shall not function.

Subject to the foregoing, the number of directors shall be fixed each year by the members of the corporation at their annual meeting. The members of the Board of Directors shall be elected or appointed at such times, in such manner and for such terms, subject to the provisions set forth in this Article VI, as may be prescribed by the Bylaws, which also may provide for the removal of directors and the filling of vacancies and may provide that the remaining members of the Board of Directors, although less than a majority thereof, may by the affirmative vote of the majority of such remaining members, fill vacancies in the Board of Directors, including temporary vacancies caused by the illness of directors or the temporary absence of directors from the State of Hawaii, but excluding vacancies caused by the removal of directors which may be filled only by a vote of the members of the corporation in such manner as may be prescribed by the Bylaws. The directors need not be members of the corporation. The Board of Directors shall have full power to control and direct the business and affairs of the corporation and to manage its properties, subject, however, to instructions by the members of the corporation and to any limitations which may be set forth in statutory provisions, in this Charter, in the Bylaws, or in the Declaration.

The names and residence addresses of the persons who are to act as the initial directors of the corporation until the first annual meeting of the members of the corporation are as follows:

Harry H. Otsuji

4308 Kahala Avenue  
Honolulu, HI 96816

Alan J. Stearn

111 Great Neck Road  
Great Neck, NY 11021

Donald M. Rosenberg

408 Ballymore Circle  
Wynnewood, PA 19096

#### ARTICLE VII

The officers of the corporation shall consist of a President, one or more Vice Presidents as may be prescribed by the Bylaws, a Secretary, a Treasurer, and such other officers and assistant officers and agents as may be prescribed by the Bylaws. The officers shall be elected or appointed, hold office and may be removed as may be prescribed by the Bylaws. No officer need be a director or a member of the corporation, except that the President shall be elected from among the directors. Any two or more offices may be held by the same person.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the Bylaws, or as may be determined by resolution of the Board of Directors not inconsistent with the Bylaws.

The names and residence addresses of the four persons who are to act as the initial officers of the corporation are as follows:

President	Harry H. Otsuji	4308 Kahala Avenue Honolulu, HI 96816
Vice President	Alan J. Stearn	111 Great Neck Road Great Neck, NY 11021
Secretary	Donald K. Iwai	1658 Kamole Street Honolulu, Hawaii 96821
Treasurer	Donald M. Rosenberg	408 Ballymore Circle Wynnewood, PA 19096

#### ARTICLE VIII

Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, the "Owner" of any "Lot" (within the Kohala Ranch Subdivision) as defined in the Declaration shall automatically be a member of the corporation. The term "Lot" as used herein shall have the meaning given it 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 the provisions pertaining thereto set forth in the Bylaws. 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. Each owner, or owners in the aggregate, of any Lots, whether individuals, corporations or other legal entities, shall be entitled to one vote per Lot. If more than one person or entity owns one given Lot, any one of said persons or entities may exercise said one vote on behalf of all the owners of said Lot, but no such vote shall be exercised if opposed by any one of such persons or entities.

#### ARTICLE IX

Additional property may be annexed to the area specified in Article III hereof, and so add to the membership of the corporation under the provisions of Article VIII hereof, pursuant to the terms and conditions of Article II of the Declaration, as the same now exists or as the same may from time to time be amended, and such additional property may be de-annexed from the area specified in Article III hereof, and so subtract from the membership of the corporation, pursuant to the terms and conditions of Section 2.06 of said Article II of the Declaration, as the same now exists or as the same may from time to time be amended.

ARTICLE X

The property of the corporation shall alone be liable in law for the payment of its debts and the discharge of its obligations. Neither the members of the corporation, nor the members of the Board of Directors, nor the members of the Architectural Control Committee provided in the Declaration, nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that the members of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as in the Declaration provided.

ARTICLE XI

The affirmative vote of a two-thirds (2/3) majority of the voting power of the corporation, which two-thirds (2/3) majority shall include a bare majority of the voting power of members of the corporation other than the Declarant, as defined in the Declaration, either in writing or at a meeting duly called and held, notice of which meeting shall have disclosed the purpose or purposes of said meeting, shall be required for any of the following actions by the corporation:

(a) Any exchange, sale or other disposition of any real property of the corporation in fee and of any personal property of the corporation having an aggregate fair market value in excess of five percent (5%) of the annual operating budget of the corporation;

(b) Any borrowing of money or mortgaging of the Common Areas, as defined in the Declaration, in an aggregate amount in excess of five percent (5%) of the annual operating budget of the corporation;



(c) Any election to re-build or not to re-build any capital improvement;

(d) Any incurring of aggregate expenditures for capital improvements to the Common Areas, as defined in the Declaration, in excess of five percent (5%) of the annual operating budget of the corporation, whether or not members are specially assessed therefor;

(e) Any assessment of members for monies necessary to make up any deficiency in insurance proceeds with respect to the Common Areas;

(f) Entering into any contract with a third person or entity wherein such person or entity will furnish goods or services for the Common Areas or the corporation for a term longer than one year with the following exceptions:

(1) a contract with a public utility company if the rates charged for the materials or services are regulated by the Hawaii state agency charged with regulating public utilities; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(2) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured; and

(g) Payment of compensation to members of the Board of Directors or to officers of the corporation for services performed in the conduct of the corporation's business; provided, however, that the Board of Directors may cause a Director or an officer to be reimbursed for expenses incurred in carrying on the business of the corporation.

The affirmative vote of a two-thirds (2/3) majority of the voting power of the corporation, which two-thirds (2/3) majority shall include a bare majority of the voting power of members of the corporation other than the Declarant, as defined in the Declaration, in writing or at a meeting duly called and held, notice of which meeting shall have disclosed the purpose of said meeting, shall be required for an authorization to assess members for capital improvements in excess of five percent (5%) of the annual operating budget of the corporation and/or for monies necessary to make up any deficiency in insurance proceeds.

#### ARTICLE XII

No voluntary dissolution of the corporation or liquidation of its assets shall take place without the affirmative vote of a three-fourths (3/4) majority of the voting power of the corporation, which three-fourths (3/4) majority shall include at least a bare majority of the voting power of members of the corporation other than said Declarant, present at a meeting of the members of the corporation duly called and held for the purpose of authorizing such dissolution or liquidation. Written notice, setting forth the purpose of the meeting shall be given to all members not less than thirty (30) days in advance of the meeting. Upon any such dissolution or liquidation, the assets of the corporation, whether real, personal or mixed, shall be dedicated to one or more appropriate public agencies, to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation,

association, trust or other organization to be devoted to charitable purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the corporation.

To the extent permitted by law, the corporation may participate in mergers and consolidations with other nonprofit corporations organized for similar purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) in voting interest of the members of the corporation, obtained as herein provided in the case of dissolution.

#### ARTICLE XIII

No contract or other transaction between the corporation and any other person, firm, corporation, association or other organization, and no act of the corporation shall be affected or invalidated by the fact that any of the directors or officers of the corporation are directors, officers, employees, stockholders or members of any such other firm, corporation, association or other organization, provided that the interest of such director or officer shall be disclosed or shall have been known to the Board of Directors authorizing or approving the same, or to a majority thereof. Any director of the corporation who is a director, officer, employee, stockholder or member of such other firm, corporation, association or other organization may not be counted in determining a quorum of any meeting of the Board of Directors which shall authorize or approve any such contract, transaction or act and may not vote thereon.

#### ARTICLE XIV

The Association shall indemnify each present and future officer and director of the Association and each person who

serves at the request of the Association as an officer or director of any other corporation, whether or not such person is also an officer or director of the Association, against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been such officer or director or by reason of any past or future action taken or authorized or approved by him or any omission to act as such officer or director, whether or not he continues to be such officer or director at the time of the incurring or imposition of such costs, expenses or liabilities, except such costs, expenses or liabilities as shall relate to matters as to which he shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of his negligence or willful misconduct toward the Association in the performance of his duties as such officer or director. As to whether or not a director or officer was liable by reason of negligence or willful misconduct toward the Association in the performance of his duties as such officer or director, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each officer and director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such officer or director may be entitled as a matter of law

or otherwise, and shall inure to the benefit of the heirs, personal representatives and assigns of each such officer or director.

ARTICLE XV

Notwithstanding anything to the contrary herein, the duties and powers of the corporation set forth herein are subject to the terms and provisions of the Declaration, and if there are conflicts or inconsistencies between the Declaration, this Charter of Incorporation or the Bylaws of the corporation, the Declaration, this Charter of Incorporation and the Bylaws, in that order, shall prevail.

ARTICLE XVI

Amendments of this Charter shall require (a) the affirmative vote of a two-thirds (2/3) majority of the voting power of the corporation, which two-thirds (2/3) majority shall include at least a bare majority of the voting power of members other than said Declarant, at a meeting duly called and held for the purpose, and (b) the affirmative vote of a bare majority of the Board of Directors, at a meeting of the Board of Directors duly called and held for that purpose, except that the amendment of any provision herein providing for a vote greater than a two-thirds (2/3) majority of the voting power of the corporation for an action to be taken shall require an affirmative vote of the voting power of the corporation which is not less than such greater percentage.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Office of the Department of Commerce and Consumer Affairs, at Honolulu, Hawaii, this 9<sup>th</sup> day of October, 1988.

*Thomas S. Hunt*  
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Director of Commerce and  
Consumer Affairs

By *William K. Young*  
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HAWAII CORPORATION AND SECURITIES  
Administrator