

11/10/2014 20:10:3

FILED 11/07/2014 12:26 PM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810
Phone No. (808) 586-2727



11/10/2014 20:10:3

AMENDED AND RESTATED ARTICLES OF INCORPORATION
(Section 414D-184, Hawaii Revised Statutes)

237737 D2

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, duly authorized officers of the corporation submitting these Amended and Restated Articles of Incorporation, certify as follows:

1. The name of the corporation is:
WAIMEA COMMUNITY ASSOCIATION

2. The Amended and Restated Articles of Incorporation adopted is attached.

3. The Amended and Restated Articles of Incorporation was adopted on: NOVEMBER 3, 2014
(Month Day Year)

(Check one)

at a meeting of the *members*:

Designation (class) Of membership	Total Number of Memberships (votes) outstanding	Total Number of Votes Entitled to be Cast By each Class	Number of Votes Cast by each class For Amendment	Number of Votes Cast by each class Against Amendment

OR

by written consent of the *members* holding at least eighty per cent of the voting power.

OR

by a sufficient vote of the *Board of Directors* or *incorporators* because member approval was not required.

4. Check one:

The written approval of a specified person or persons named in the articles of incorporation was obtained.

The written approval of a specified person or persons is not required.

5. The attached Amended and Restated Articles of Incorporation supersedes the original Articles of Incorporation and all amendments thereto.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements, I/we are authorized to make this change, and that the statements are true and correct.

Signed this 3RD day of NOVEMBER, 2014

PAUL F. JOHNSTON (TREASURER)
(Type/Print Name & Title)

(Type/Print Name & Title)

(Signature of Officer)

(Signature of Officer)

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
-OF-
WAIMEA COMMUNITY ASSOCIATION**

**I.
NAME**

The name of the Corporation shall be WAIMEA COMMUNITY ASSOCIATION.

**II.
OFFICES**

The mailing address of the principal office of the Corporation is Post Office Box 1185, Kamuela, Hawaii 96743. The physical address is 62-2040 Mahua St., Kamuela, Hawaii 96743. The Corporation may have such other offices within and without the State of Hawaii as the Board of Directors may designate.

**III.
PERIOD OF DURATION**

The period of the Corporation's duration is perpetual.

**IV.
PURPOSES AND POWERS**

This Corporation shall be a nonprofit corporation within the meaning of Chapter 414D of the Hawaii Revised Statutes.

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

- (a) Preserve, maintain, enhance and protect the community values by embracing our diversity and sense of place;
- (b) Gather and present information and facilitate communication and discussion of issues affecting Waimea;
- (c) Promote open participation in the development of policies and legislation affecting Waimea;
- (d) Inform community members how and where to make their voices heard, individually or collectively;
- (e) Encourage new generations of leaders to continue Waimea's tradition of community building;
- (f) Have and exercise all of the powers conferred by law on nonprofit corporations;

provided, however, that the foregoing shall be strictly limited to charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws. The Corporation is not organized for profit and it will not issue any stock. No part of its assets, income or earnings shall be distributed to any Director, Officer, employee or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its objects and purposes or for reimbursement of expenses incurred in behalf of the Corporation. No Director, Officer or employee of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the Corporation's assets on dissolution of the Corporation. No part of the activities of the Corporation shall include participating or intervening in (including the publication or distribution of statements), or contributing to, any political campaign on behalf of any candidate for public office. However, nothing herein shall prevent members of the Corporation's Board of Directors and personnel of the Corporation from testifying or making other appropriate communications in matters concerning legislation relating to the public purposes of the Corporation or public appropriations to programs and activities of the Corporation.

Further, and without limiting the generality of the foregoing, if the Corporation is determined to be a private foundation under Section 509 of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws,

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws.

(b) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws.

(c) The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws.

(d) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws.

(e) The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent Federal tax laws.

Notwithstanding any other provision herein, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any subsequent Federal tax laws, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding provision of any subsequent Federal tax laws.

V.
INCORPORATORS

The Incorporators of this Corporation are:

<u>Name</u>	<u>Address</u>
Sherman Warner	62-2040 Mahua St. Kamuela, HI 96743
Patricia Cook	64-5246 Iokua Pl. Kamuela, HI 96743
Nancy Carr-Smith	62-2007 Mahua St. Kamuela, HI 96743
Paul Johnston	64-604 Mana Rd. Kamuela, HI 96743

VI.
MEMBERS

The Corporation shall not have any Members.

VII.
BOARD OF DIRECTORS

The business and affairs of the Corporation shall be managed by the Board of Directors, which shall consist of not less than three (3) or more than nineteen (19) members. Directors may be regular members of the Board, or after three years of service on the Board, may become Honorary Directors with voting rights but with no expectations concerning meeting attendance or participation in the Corporation. 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.

VIII.
APPOINTMENT OF DIRECTORS

The number of Directors currently constituting the Board of Directors is Eight (8). The following persons are currently Directors of the Corporation until their successors are duly elected or appointed as provided for in the Bylaws:

<u>Name</u>	<u>Mailing Address</u>
Nancy Carr Smith	PO Box 6633 Kamuela HI 96743
Patti Cook	PO Box 6960 Kamuela, HI 96743
John Edney	66-1250 Lalamilo Farm Rd. Kamuela, HI 96743
Wayne Higaki	68-3673 Lahilahi Street Waikoloa, HI 96738
Paul Johnston	PO Box 437297 Kamuela, HI 96743
J William Sanborn	PO Box 1892 Kamuela, HI 96743
Riley Smith	PO Box 6633 Kamuela, HI 96743
Sherman Warner	PO Box 1185 Kamuela, HI 96743

IX. OFFICERS

The Officers of the Corporation shall be a President, one or more Vice-Presidents, a Secretary, a Treasurer and such other Officers and assistant Officers as are prescribed in these Articles of Incorporation. One person may hold more than one office as long as there are at least two (2) persons as Officers of the Corporation. The Officers shall be duly elected or appointed at such times, in such manner and for such terms as may be prescribed in either these Articles of Incorporation or the Bylaws.

X. APPOINTMENT OF OFFICERS

The following persons shall act as Officers of the Corporation until their successors are duly elected or appointed and qualified as provided for in the Bylaws:

<u>Office</u>	<u>Name</u>	<u>Mailing Address</u>
President	Sherman Warner	PO Box 1185 Kamuela, HI 96743

Vice President	Patricia Cook	PO Box 6960 Kamuela, HI 96743
Secretary	Nancy Carr Smith	PO Box 6633 Kamuela, HI 96743
Treasurer	Paul Johnston	PO Box 437297 Kamuela, HI 96743

XI.

AGENT

The Corporation shall have and continuously maintain in the State of Hawaii a registered Agent who shall have a business address in the State of Hawaii. The Agent may be an individual who resides in the State of Hawaii, a domestic entity or a foreign entity authorized to transact business in the State of Hawaii.

(a) The name of the Corporation's registered Agent in the State of Hawaii is Sherman Warner.

(b) The street address of the place of business of the Agent of the Corporation is 62-2040 Mahua St., Kamuela, HI 96743 USA, at which address service of process and other notice and documents being served on or sent to the Corporation may be delivered.

XII.

CONTRACTS

The Board of Directors may make contracts with any person, firm, corporation, association or organization to act as an agent or employee of the Corporation, to perform duties and services and to exercise power and authority on behalf of the Corporation, including ministerial, executive and discretionary powers, subject always to the supervision and control of the Board of Directors. Any such contract (a) shall contain such terms and provisions with respect to the duties, services, powers and authority to be performed by such agent or employee, compensation therefore and such other provisions as the Board of Directors may determine, and (b) may permit such agent or employee to deal his own behalf with the Corporation, to hold similar positions for other corporations with which the Corporation may do business and to receive compensation therefore.

XIII.

INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

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

"Agent" means 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 agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Corporation 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 Corporation 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 right of the Corporation) by reason of the fact that the person is or was an agent of the Corporation against expenses (including reasonable attorneys' fees), 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 in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) The Corporation shall have 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 Corporation to procure a judgment in its favor by reason of the fact that the person is or was an agent of the Corporation against expenses (including reasonable attorneys' fees) 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 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 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 an agent has been successful on the merits or otherwise in defense of proceeding referred to in subsection (b) or (c), or in defense of any claim, issue or matter therein, the agent shall be indemnified by the Corporation against expenses (including reasonable attorneys' fees) actually and reasonably incurred by the agent in connection therewith.

(e) Any indemnification under subsection (b) or (c) of this Article shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c). The determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors

who were not parties to the proceeding, or (2) if a quorum is not obtainable, by independent legal counsel in a written opinion, or (3) the court in which the proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the Corporation.

(f) Expenses incurred in defending any proceeding may be paid by the Corporation in advance of the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall ultimately be determined that the agent is entitled to be indemnified by the Corporation as authorized in this Article.

(g) The indemnification provided by this Article is not exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of disinterested Directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(h) The Corporation shall have the power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in any such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify him 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 Corporation shall have any equity or other interest through stock ownership or otherwise.

(i) This Article does not apply to any proceeding against any trustee, 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 such a trustee, investment manager or other fiduciary may be entitled by contract or otherwise.

XIV.
DISSOLUTION

Upon the dissolution or winding up of the Corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable, educational, religious and/or scientific purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986.

XV.
BYLAWS

The initial Bylaws of the Corporation shall be adopted by the Board of Directors. The Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, by the Board of Directors as prescribed in the Bylaws.

XVI.
CORPORATE LIABILITIES

All of the property of the Corporation shall be liable for the debts of the Corporation. The Directors, Officers and employees of the Corporation shall not be liable for the Corporation's obligations.

XVII.
DEFINITIONS

The word "person" or any pronoun used in place thereof, where the context so requires or admits, shall include and mean individuals, firms, corporations, partnerships and associations. The singular shall include and mean the plural, or vice versa. Masculine, feminine and neuter genders shall include or interchange each of the other genders as the context shall imply.