

IN THE DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

In the Matter of the Petition        )  
  )  
  )  
  )  
KAWELA PLANTATION HOMEOWNERS'        )  
ASSOCIATION                                )  
For a Charter of Incorporation        )  
\_\_\_\_\_                                  )

BY-LAWS OF KAWELA PLANTATION HOMEOWNERS' ASSOCIATION

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BY-LAWS OF KAWELA PLANTATION HOMEOWNERS' ASSOCIATION

ARTICLE I

OFFICES, MEETINGS, SEAL AND FISCAL YEAR

Section 1. Principal Office. The principal office of the corporation shall be at such place in the State of Hawaii; as the Board of Directors shall from time to time shall determine.

Section 2. Other Offices. The corporation may have such other offices within the State of Hawaii as the Board of Directors may designate.

Section 3. Place of Meetings. All meetings of the members and of the Board of Directors shall be held at the principal office of the corporation or at such other place as is stated in the call for the meeting.

Section 4. Seal. The corporation may, but need not, have a common seal. The seal of the corporation shall be in such form and shall bear the name of the corporation and such other words, devices and inscriptions as the Board of Directors from time to time shall prescribe.

Section 5. Fiscal Year. The fiscal year of the corporation shall be such as may from time to time be established by the Board of Directors.

ARTICLE II

MEMBERS OF THE CORPORATION

Section 1. Qualification; Proof of Status; Certificates.

a. Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are, an "Owner" of any lot within Kawela Plantation as defined in the Declaration of Covenants and Restrictions, as the same may be amended from time to time (herein called the "Declaration"), shall be a member of the corporation, and no person other than such an Owner may be a member of the corporation.

b. 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. Such proof may consist of a copy of a duly executed, acknowledged and recorded deed, lease or title insurance policy, or a Certificate of Title, showing said person to be the Owner of a lot (within Kawela Plantation) as defined in the Declaration. Any such deed, lease or policy shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, lease or policy, or a Certificate or Transfer Certificate of Title. The lessee of a lot shall be deemed the Owner thereof to the extent and for such purposes, including voting, as shall be provided by a recorded lease of any lot and filed with the corporation.

c. The Board of Directors of the corporation may provide for the issuance of certificates evidencing membership in the corporation which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation maintained by its secretary. If any certificate shall become lost, mutilated or destroyed a new certificate may be issued therefor upon such terms and conditions as the Board may direct.

d. Upon the acquisition of any ownership interest in Kawela Plantation, each Owner shall promptly furnish to the secretary of the corporation an address ("record address") to which the corporation may mail or deliver any and all notices, demands or documents required or permitted to be mailed or delivered by these By-Laws, by law or otherwise. Failure to furnish such record address shall constitute a waiver by such Owner of the right to receive any such notice, demand or document.

## Section 2. Voting Rights; Proxies.

a. At any meeting of the members of the corporation, each member shall be entitled to cast one (1) vote for each lot owned by such member pursuant to the provisions set forth in Section 5.03 of the Declaration.

b. Any member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the member and filed with the secretary of the corporation. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. It shall be deemed revoked when the secretary shall receive actual notice of the death or judicially declared incompetence of such member, or upon termination of such

member's status as an Owner. Where two or more persons or entities own a lot, any one of said persons or entities may exercise, in person or by proxy, the vote allocated to the lot on behalf of all owners of the lot unless the corporation is notified in writing that the Owners of the lot disagree as to how the vote should be cast, in which event the vote for the lot shall not be counted unless the owners unanimously agree.

c. The rights of membership are subject to the payment of assessments levied by the corporation, the obligation of which assessments is imposed against each Owner of and becomes a lien upon the lot against which such assessments are made as provided in the Declaration.

d. The membership rights of any person may be suspended by action of the Board of Directors during the period when the Owner shall be in default in the payment of any assessments levied by the corporation; but, upon payment of such assessments, his rights and privileges shall be automatically restored. Also, such rights of membership may be suspended, after notice and hearing, for violation of any Association Rules, and such suspension shall continue until such violation ceases.

e. No membership shall be terminated or forfeited and no Owner shall be expelled, except upon sale or assignment of a lease of a lot, provided, however, that upon execution and delivery of a valid agreement of sale of any lot, the vendor's membership, including voting rights adhering thereto, unless otherwise provided, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of deed or assignment of lease in compliance with the terms of said agreement of sale.

#### Section 5. Meetings; Notice; Quorum.

a. An annual meeting of the members of the corporation shall be held each year on such date and at such time in the months of March, April or May, and at such place in the State of Hawaii, as may be designated in the notice of annual meeting, for the purpose of electing directors and for the transaction of such other business as may be brought before the meeting.

b. Special meetings of the members of the corporation may be held at such time and at such place in the State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board of Directors or by a writing filed with the secretary signed

by the president, or by a majority of the directors, or by ten percent in voting interest of the entire membership of the corporation.

c. Except where and to the extent otherwise required by law, the Charter of Incorporation or the Declaration, notice of each meeting of the members of the corporation, specifying the day and time and place of the meeting and the purposes for which the meeting is called, and specifying whether it is an annual or special meeting, shall be given by or under direction of the secretary to each member of the corporation at least thirty (30) but not more than sixty (60) days before the date fixed for such meeting, by advising him of such meeting in any of the following ways: (a) by leaving written notice of such meeting with him personally or at his record address or usual place of business, (b) by mailing such notice, postage prepaid, to such member at his record address or usual place of business, or (c) by informing such member of such meeting by telephone, telegraph or in person. In case of the death, absence, incapacity or refusal of the secretary, such notice may be given by a person designated either by the secretary or by the person or persons calling the meeting or by the Board of Directors. If notice is given pursuant to the provisions of these By-Laws, non-receipt of actual notice of any meeting by any member of the corporation shall in no way invalidate the meeting or any business done at the meeting. Any member of the corporation may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting had been given to him. The presence of any member of the corporation at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

d. At any meeting of the members of the corporation, the presence in person or by proxy of members having a majority of the total votes of all members of the corporation shall constitute a quorum, but whether a quorum be present or not, a majority vote of the members present may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, the concurring vote of members having a majority of the votes of the members constituting a quorum shall be valid and binding upon the corporation except as otherwise provided by law, the Charter of Incorporation, the Declaration or these By-Laws.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 1. Number; Election; Tenure; Removal;  
Vacancies.

a. There shall be a Board of Directors of the corporation of not less than three nor more than nine members (but always of an odd number), and until the members of the corporation shall otherwise determine, the Board of Directors shall consist of five members. Subject to the foregoing limitations, the number of directors shall be fixed each year by the members of the corporation at their annual meeting, provided that the number of directors shall be decreased or increased in the manner set forth below. No member of the Board of Directors need be a member of the corporation.

b. The directors shall be classified by dividing them into three classes, presently including the following: first class, \_\_\_\_\_; second class, \_\_\_\_\_ and \_\_\_\_\_; and third class, \_\_\_\_\_ and \_\_\_\_\_.

The directors of the first class shall hold office until the first annual meeting of the members of the corporation, at which time the successors of the first class of directors shall be elected for a term of three years. The directors of the second class shall hold office until the second annual meeting of the members of the corporation; and the director of the third class shall hold office until the third annual meeting of the members of the corporation. At each annual election of directors, the successors to the class of directors whose terms shall expire in that year shall be elected directors for a term of three years, and each director so elected shall hold office until his successor shall have been elected, or until his death, or until he shall resign or shall have been removed in the manner herein provided. Except with respect to their respective terms of office, all directors shall equal powers. In case of any increase in the number of directors, each class shall be respectively increased so that after any such increase, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors. In case of any decrease in the number of directors, each class shall be decreased so that after any such decrease, each class shall consist as nearly as possible of one-third of the members of the whole Board of Directors.

c. Subject to the limitations of Section 416-74, Hawaii Revised Statutes, as amended, any director may, at any meeting duly called and held for such purpose, be removed from office (i) with or without cause by a two-thirds (2/3) vote of the membership of the corporation, or (ii) with or without cause by a majority vote of the Board of Directors.

d. Vacancies on the Board may be filled by a majority of the remaining directors though less than a quorum,

and each director so elected shall hold office until the next annual meeting of the members of the corporation and thereafter until a successor shall be duly elected. Any director elected by the members of the corporation in the foregoing manner shall serve for the remaining unexpired term in respect of which the vacancy occurred.

Section 2. Meetings; Notice; Quorum.

a. An annual meeting of the Board of Directors shall be held each year immediately after the annual meeting of the members of the corporation and at the place of such annual meeting, without call or formal notice. Regular meetings of the Board of Directors, other than annual meetings, shall be held on such day or days and at such time or times and at such place or places in the State of Hawaii, as shall be determined from time to time by the Board of Directors, and when any such meeting or meetings shall be so determined no further notice thereof shall be required. Special meetings of the Board of Directors may be called by the president of the corporation or by any three members of the Board of Directors, and any such meeting shall be held on such day, at such time and at such place in the State of Hawaii, as shall be specified by the person or persons calling the meeting.

b. The secretary of the corporation shall give notice of each meeting of the Board of Directors in writing by mailing the same not less than three (3) days before the meeting or by giving notice personally, by telephone or by telegraph not less than one (1) day before the meeting, or as otherwise prescribed by the Board. The failure by the secretary to give such notice or by any director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of directors is present. Notice need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice, and the presence of any director at a meeting shall be the equivalent of a waiver by him of notice of the meeting. Except as otherwise provided by law, the Charter of Incorporation or by these By-Laws, a notice or waiver of notice need not state the purposes of such meeting.

c. A majority of the members of the Board of Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the corporation. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted

at the meeting which may be set forth in the call or notice thereof.

*Section 3*  
Section 3. Compensation of Directors. Members of the Board of Directors shall receive no compensation for their services as directors but they may be reimbursed for actual expenses incurred. The vote of not less than seventy-five percent (75%) of the directors shall be required in order to reimburse directors for their expenses.

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Section 4. General Powers. The property, business and affairs of the corporation shall be managed and controlled by the Board of Directors, which shall have and may exercise all of the powers of the corporation, including, without limitation, all of the powers of the corporation as set forth in the Declaration, except such as are expressly reserved to or may from time to time be conferred upon the members by law, by the Charter of Incorporation, by the Declaration or by these By-Laws. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, create and appoint one or more committees, each committee to consist of one or more of the directors of the corporation which, to the extent provided in said resolution or resolutions or in other provisions of these By-Laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The Board of Directors shall, at such time as it has the authority pursuant to Article IV of the Declaration, appoint and remove the members of the Design Committee by resolutions passed by a majority of the whole Board.

#### ARTICLE IV

#### OFFICERS AND AGENTS

##### Section 1. Designation; Duties.

a. The officers of the corporation shall be a president, one or more vice presidents, a secretary and a treasurer, who shall be appointed by the Board of Directors and who shall hold office until their successors are appointed and qualified. The corporation may have such other subordinate officers, agents and employees as may be deemed necessary, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors. So far as is

permitted by law, any two offices may be held by the same person. In addition to the duties and powers herein set forth, each officer shall have such duties and powers as the Board of Directors 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 of Directors, such officer, agent or employee shall obey the orders and instructions of the president.

b. 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 the affairs and business of the corporation. Unless the Board of Directors otherwise directs, he shall preside at all meetings of the members of the corporation. CEO

c. Vice President. The vice president, or if more than one shall have been appointed, the vice presidents in order of priority of appointment, shall assume and perform the duties of the president whenever the office of president is vacant. Each vice president shall have such other powers and duties as may be given to him by law or in these By-Laws and as may be assigned to him from time to time by the Board of Directors or by the president.

d. 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 the Declaration, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination of every member at the principal office or place of business of the corporation of such other location as may be required by the Board of Directors. The secretary shall record all proceedings of the meetings of the members and directors in a book which shall be the property of the corporation, to be kept for that purpose at the principal office of the corporation and shall perform such other duties as shall be assigned to him. In the absence of the secretary from any such meeting, a temporary secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book.

e. Treasurer. Subject to the direction and under the supervision of the Board of Directors, and the provisions of the foregoing paragraph, the treasurer shall have the care and custody of the funds and valuable papers of the corporation, shall have the 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 statements of the same in such form and as often as required by the Board of Directors.

Section 2. Removals; Resignations; Vacancies  
The Board of Directors may at any meeting called for the purpose, by vote of a majority of their entire number, remove from office any officer of the corporation, for or without cause. The Board of Directors may any any meeting, by vote of a majority of the directors present at such meeting, accept the resignation of any officer or director of the corporation, or remove or accept the resignation of any agent or employee or any member of any committee appointed by the Board of Directors or by any committee appointed by the Board of Directors, or by any officer, agent or employee of the corporation. Any vacancy occurring in the office of president, vice president, secretary, treasurer or any other office shall be filled by the Board of Directors, and the officers so chosen shall hold office for the unexpired term in respect of which the vacancy occurred and until their successors shall be duly elected and qualified.

#### ARTICLE V

##### EXECUTION OF INSTRUMENTS

Section 1. Persons Authorized. Except in the case of a contract for compensation of the president or the treasurer, in which case the Board of Directors may authorize one or more of its number or one or more officers or subordinate officers to execute the same, all checks, notes, bonds, deeds, leases, contracts and other instruments shall be executed by such person or persons as shall be provided by general or special resolution of the Board of Directors, and in the absence of any such general or special resolution of the Board of Directors, then such instrument or instruments shall be executed by any two of the following officers: the president, a vice president, the treasurer or the secretary.

#### ARTICLE VI

##### AMENDMENT; RECONCILIATION OF CONFLICTS

Section 1. Amendment. The power to alter, amend or repeal these By-Laws, subject to repeal or change by action of

not less than seventy-five percent (75%) in voting interest of the members at a meeting of the members of the corporation duly called and held, shall be vested in the Board of Directors.

Section 2. Reconciliation of Conflicts. In the case of any conflict between the Charter of Incorporation and these By-Laws, the Charter of Incorporation shall control; in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control; and in the case of any conflict between the Declaration and the Charter, the Declaration shall control; PROVIDED, HOWEVER, that in each such instance the laws, ordinances, rules and regulations of any governmental authority having jurisdiction over Kawela Plantation shall prevail over any provision of the Declaration, Charter and By-Laws in conflict therewith. If any provision of these By-Laws is held to be invalid or unenforceable, such will not affect the validity or enforceability of the other provisions of these By-Laws.

The undersigned, being all of the signers of the Petition for Charter of Incorporation of KAWELA PLANTATION HOMEOWNERS' ASSOCIATION do hereby adopt the foregoing By-Laws as the By-Laws of the corporation, and hereby certify that said By-Laws were duly so adopted.

DATED at Honolulu, Hawaii, this \_\_\_\_ day of \_\_\_\_\_,  
1980.