

ARTICLES OF INCORPORATION

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

**KONA VIEW ESTATES COMMUNITY
ASSOCIATION**

HRS § 414D-32

ARTICLES OF INCORPORATION

-OF-

KONA VIEW ESTATES COMMUNITY ASSOCIATION

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Attorney for KONA VIEW ESTATES
HOMEOWNERS ASSOCIATION, INC.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

**KONA VIEW ESTATES COMMUNITY
ASSOCIATION**

HRS § 414D-32

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THE KONA VIEW ESTATES COMMUNITY ASSOCIATION

The undersigned, desiring to form a nonprofit corporation in accordance with the laws of the State of Hawaii and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, does hereby execute the following Articles of Incorporation.

**I.
NAME**

The name of the Association shall be The KONA VIEW ESTATES COMMUNITY ASSOCIATION.

**II.
MAILING ADDRESS**

The mailing address of the Association shall be 4054 McKinney Avenue, Suite 310, Dallas, Texas 75204.

**III.
INITIAL REGISTERED OFFICE; INITIAL REGISTERED AGENT**

The name of the Association's initial registered agent in the State of Hawaii is Robert D. Triantos, Esq. The street address of the Association's initial registered office is 75-1000 Henry Street, Suite 209, Kailua-Kona, Hawaii 96740.

**IV.
INCORPORATOR**

The name and address of the incorporator is:

Name	Address
Robert D. Triantos, Esq.	75-1000 Henry Street, Suite 209 Kailua-Kona, HI 96740

**V.
PERIOD OF DURATION**

The period of the Association's duration is perpetual.

**VI.
DEFINITIONS**

All capitalized terms used herein which are not defined shall have the same meaning as set forth in the recorded KONA VIEW ESTATES Declaration of Covenants, Conditions and Restrictions as may be amended from time to time (the "Declaration").

**VII.
PURPOSES**

This Association shall be a nonprofit corporation within the meaning of Chapter 414D of the Hawaii Revised Statutes. The Association is and is intended to be a homeowner's association as that term is defined in Internal Revenue Service Code 528 and the corresponding provisions of any subsequent tax laws.

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

To be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law;

To provide an entity for the furtherance of the interests of the Owners of real property subject to the Declaration; and

To have and exercise all of the powers conferred by law on nonprofit corporations.

**VIII.
POWERS**

The powers of the Association shall include and be governed by the following provisions:

(a) The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Hawaii law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration, including, without limitation, the power:

(i) to fix, collect, and enforce payment, by any lawful means, of assessments and other charges to be levied against the Lots;

(ii) to manage, control, operate, maintain, repair, and improve the property subject to the Declaration and any other property for which the Association, pursuant to the Declaration, other covenants, easements or contracts, has a right or duty to provide such services;

(iii) to make rules and regulations and to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or Bylaws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of Owners of Lots subject to the Declaration;

(v) to buy or otherwise acquire, sell, dedicate for public use, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, own, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, subject to such limitations as may be set forth in the Declaration or Bylaws;

(vi) to borrow money for any purpose, subject to such limitations as may be contained in the Declaration or Bylaws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(ix) to adopt, alter, and amend or repeal the Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;

(x) to provide any and all supplemental municipal services to the real property subject to the Declaration as the Board of Directors may determine necessary or proper; and

(xi) to sue and be sued.

(b) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other rights and powers which may now or hereafter be permitted by law; the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph of this Article.

(c) The Association shall make no distribution of income to its Members, directors, or officers.

**IX.
MEMBERS**

The Association shall have Members. The authorized number and qualifications of Members of the Association, the different classes of membership, if any, the property, voting and other rights and privileges of the Members, and their liabilities to dues and assessments and the method of collection thereof, shall be as set forth in the Declaration and Bylaws.

**X.
BOARD OF DIRECTORS**

The business and affairs of the Association shall be managed by the Board of Directors, which shall consist of not less than three (3) members and may be increased in accordance with the Bylaws. 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.

**XI.
APPOINTMENT OF DIRECTORS**

The number of Directors constituting the initial Board of Directors shall be three (3).

The following Persons shall act as the initial Directors of the Association until their successors are duly elected or appointed as provided for in the Bylaws:

Name	Address
Thomas Smith	4054 McKinney Avenue Suite 310 Dallas, Texas 75204
Arturo Litwak	256 26 th Street, Suite 200 Santa Monica, California 90402
Jose Sigal	256 26 th Street, Suite 200 Santa Monica, California 90402

The method of election, removal, and filling of vacancies on the Board and the terms of office of Directors shall be as set forth in the Bylaws.

Subject to the terms of the Bylaws, the Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

**XII.
DIRECTOR CONFLICT OF INTEREST**

No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable because of the relationship or interest or because the Director or Directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies the contract or transaction or because the vote of the interested Director or Directors are counted for that purpose, if:

- (a) The material facts of the transaction and the Director's relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of the interested Director or Directors; or
- (b) The material facts of the transaction and the Director's relationship or interest is disclosed or known to the Members and they authorize, approve or ratify the contract or transaction by vote or written consent; or
- (c) The contract or transaction is fair and reasonable to the Association at the time it is entered into.
- (d) If a majority of the Directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present.

**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 Association, or is or was serving at the request of the Association as a director, officer, partner, trustee, employee or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Association 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 Association 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 Association or where the Person was found liable on the basis of his or her improper receipt of a personal benefit) by reason of the fact that the Person is or was an agent of the Association against expenses (including reasonable attorneys' fees and expenses), 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 (1) in or not opposed to the best interests of the Association if the Person was acting in an official capacity; or (2) in all other cases, at a minimum, did not oppose the Association's best interests; and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the Person was unlawful. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subparagraph (2) hereof. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative of the Person's failure to meet the standard of conduct described herein.

(c) The Association 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 Association to procure a judgment in its favor by reason of the fact that the Person is or was an agent of the Association against expenses (including reasonable attorneys' fees and expenses) 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 Association. 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 Association 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 a 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 Association against expenses (including reasonable attorneys' fees and expenses) 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 Association 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 by (1) the Board of Directors by a majority vote of a quorum consisting of Directors who were not at the time parties to the proceeding; or (2) majority vote of a committee duly designated by the Board consisting of two or more Directors not at the time parties of the proceeding, if a quorum is not obtainable; or (3) independent legal counsel selected by (1) or (2); or (4) the full Board of Directors if a quorum cannot be obtained under (1) or a committee appointed under (2); or (5) the Members; or (6) the court in which the proceeding is or was pending upon application made by the agent.

(f) Expenses incurred in defending any proceeding may be paid by the Association in advance of the final disposition of the proceeding upon (1) receipt of a written affirmation of the Person's good faith belief that he, she or it has met the applicable standard of conduct under subsection (b) or (c) of this Article; (2) receipt of a written undertaking by or on behalf of the Person to repay such amount if it shall ultimately be determined that the Person did not meet the applicable standard of conduct; and (3) the Association making a determination that the facts then known would not preclude indemnification.

(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 the Members or 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 Association shall have the power to purchase and maintain insurance on behalf of any agent of the Association 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 Association 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 Association shall have any equity or other interest through stock ownership or otherwise.

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

XIV. DISSOLUTION

In the event that the Association as a corporate entity is dissolved, then unless otherwise provided for by the Association, a nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The affairs of such unincorporated Association shall be governed by the laws of the State of Hawaii and, to the extent not inconsistent therewith, by the Declaration and the Articles and Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

XV. BYLAWS

The initial Bylaws of the Association shall be adopted by the Board of Directors. The Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, in the manner provided for in the Bylaws.

I certify, under the penalties of Section 414D-12 of the Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.

Witness my hand this _____ day of _____, 2006.

Robert D. Triantos

Incorporator