

**AINALOA, HAWAII**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS**

**INCLUDING**  
**CHARTER OF INCORPORATION**  
**AND**  
**BY-LAWS**  
**OF**  
**AINALOA COMMUNITY ASSOCIATION**

**AS RECORDED IN THE OFFICE OF THE ASSISTANT REGISTRAR OF THE  
LAND COURT OF THE STATE OF HAWAII, MAY 3, 1966, BEING DOCUMENT NO.  
389882. INCLUDING REVISIONS OF 1-25-82 and 3-4-85.**

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

GOLDEN STATE HAWAIIAN CORPORATION, a California corporation duly authorized and qualified to do business in the State of Hawaii, having its principal business address at 10249 Paramount Boulevard, Downey, California, and its post office address at P.O. Box 1012, Downey, California, and JOSEPH LEWIS GREENE as Trustee under Trust Agreement dated June 15, 1960, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 262956, as supplemented by Document No. 263703, hereinafter called "Owners", are the Owners of those certain parcels of land situate at Keaau, District of Puna, County and State of Hawaii, described in Exhibit "A", attached hereto and incorporated herein by reference.

Owners desire to establish covenants, conditions and restrictions, relative to the use of said land described in Exhibit "A" in order to create a proper subdivision.

THEREFORE, Owners hereby declare that each of said lots shall be subject to the following covenants, conditions and restrictions.

1. No permanent building or mobile home which shall cost or be reasonable worth less than \$5,000.00 be erected or placed on any lot. No building erected or placed on any lot shall be located nearer than 25 feet to the front line or 15 feet to any side street line or 5 feet to any other line.

2. No temporary structure (including construction shack, tent, etc.) shall be permitted to remain on any lot for more than 120 days. In the event of a violation of this condition, Owners may in addition to any other rights conferred by law, remove the same without any liability therefore.

3. No old building shall be moved onto any lot from elsewhere, and any building or improvement erected, placed or maintained on any lot shall be from, with and of new material.

4. All bathroom and toilet conveniences shall be within the walls of the house, building or mobile home unit and connected with underground drainage, which shall consist of a cesspool constructed to standards prescribed by the Department of Health; provided that whenever a sewer line is constructed within eighty feet of any portion of the front line of said property, said bathroom and toilet conveniences shall be connected with said sewer line, if it is possible, to connect therewith. Nothing herein contained shall be construed as requiring the Owners to construct such or any sewer line.

5. No offensive signs, placards, sign boards or bill boards of any

character, or any nuisance, or any building or structure, as herein permitted, shall be erected, placed or permitted or maintained on any part of any lot; and in the event of the violation of any of these conditions, Owners may, in addition to any other rights conferred by law, remove or abate the same without any liability therefor.

6. All water or sewer mains, conduits and other utilities installed in or upon said property by Owners, shall be and remain the property of Owners, or any other person, firm or corporation so installing or acquiring same.

7. No automobile, truck, trailer or vehicle of any kind or nature shall be allowed to remain on any lot, within the public view, if the same is in such bad condition and repair as to make it unsightly and such that it unreasonably detracts from the neat appearance of any lot.

8. The purchaser of each of the above described lots is required to become a member of the AINALOA COMMUNITY ASSOCIATION, a Hawaii non-profit corporation. The purchaser accepts and agrees to abide and be bound by the terms and provisions of the Charter and By-Laws of the Association, copies of which are attached hereto as Exhibits "B" and "C", respectively, and are herein incorporated by reference. Any assessment imposed against any purchaser as provided in the By-Laws of Association shall constitute a lien upon each such lot in favor of the Association and such lien may be enforced by suit for money judgment or may be foreclosed by the Association in the same manner as a real estate mortgage may be foreclosed, as set forth in Chapter 336 and Section 342-62, Revised Laws of Hawaii 1955, as the same is now or may hereafter be amended; provided that no action shall be brought to foreclose such lien unless ninety (90) day's written notice thereof shall be mailed to the delinquent member of the Association. The Golden State Hawaiian Corporation, or its successors in interest, shall be responsible for the payment of assessments on lots which have not been sold, or which are not under contract of sale, by them to third parties.

9. In addition to the terms of paragraphs 1 through 8, hereof, the following lots shall also be subject to these covenants, conditions and restrictions:

(a) Each lot in GROUP I shall be used only for single dwelling purposes and no structure thereon shall exceed one story in height.

(b) Each lot in GROUP II shall be used for multiple or single dwelling purposes and no structure thereon shall exceed two stories in height.

(c) Each lot in GROUP III may be used for business or dwelling purposes but no structure thereon shall exceed two stories in height.



(d) Each lot in GROUP IV may be used for business or dwelling purposes and the only height limitation on any structure shall be prescribed by the County of Hawaii or such other agency of the State of Hawaii having jurisdiction over the same.

10. Nothing contained in this Declaration shall restrict or abridge the right of the owner of any said lots to use such lot for any reasonable recreational purposes.

11. All the foregoing covenants, conditions and restrictions shall run with the land, except the provisions of paragraph 9 shall, to the extent not otherwise governed by law, only be binding and remain in force and effect until midnight, December 31, 1981.

12. For any violation or threatened violation of any of the foregoing covenants, conditions or restrictions, the Owners or any purchaser of any of the above described lots shall have a remedy against the offending party by action for damages, suit for injunction, mandatory or restraining, or any other remedy, without prejudice to the right of the Owners or any purchaser to adopt or pursue the same or other remedy thereafter for the same breach or failure or for any subsequent breach or failure. The term "purchaser" shall mean fee owner (other than the Golden State Hawaiian Corporation or the Trustee) of a lot and shall include a vendee under a valid contract of sale for any of the aforesaid lots and shall mean the singular or plural.

13. The breach of any of the foregoing covenants, conditions or restrictions shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value, as to any of said lots or any part thereof, or improvements thereon.

14. The invalidation of any one of the above covenants, conditions or restrictions by judgment or court order shall in no way effect any of the other covenants, conditions and restrictions which shall remain in full force and effect.

IN WITNESS WHEREOF, Owners have executed these presents as of this 29th day of April, 1966.

GOLDEN STATE HAWAIIAN CORPORATION

By HARRY E. BEDDOE  
Its President

JOSEPH LEWIS GREENE  
Trustee

EXHIBIT "A"

All those certain parcels of land situate at Keaau, District of Puna, County and State of Hawaii, described as follows:

**GROUP I**

| <u>Transfer Certificate<br/>of Title</u> | <u>Block</u> | <u>Lots</u>                                                                                                                             |
|------------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 81302                                    | 12           | 1 to 41 inclusive, 43 and 44                                                                                                            |
| "                                        | 13           | 1 to 18 inclusive, 20 to 31<br>inclusive, 33 to 88 inclusive                                                                            |
| "                                        | 14           | 1 to 7 inclusive, 9 to 14<br>inclusive, 16 to 88 inclusive                                                                              |
| "                                        | 15           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 16           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 17           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 18           | 1 to 27 inclusive, 29, 51 to<br>88 inclusive                                                                                            |
| "                                        | 19           | 1 to 30 inclusive, 32, 34, 36,<br>38, 40, 42, 44, 46, 48, 50,<br>51 to 88 inclusive                                                     |
| "                                        | 20           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 21           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 22           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 23           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 24           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 25           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 26           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 27           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 28           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 29           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 30           | 1 to 30 inclusive, 51 to 88<br>inclusive                                                                                                |
| "                                        | 31           | 1 to 30 inclusive, 32, 34, 36,<br>38, 40, 42, 44, 46, 48, 50,<br>51 to 88 inclusive                                                     |
| "                                        | 32           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 33           | 1 to 87 inclusive                                                                                                                       |
| "                                        | 34           | 1 to 88 inclusive                                                                                                                       |
| "                                        | 35           | 1 to 90 inclusive                                                                                                                       |
| "                                        | 41           | 2, 4, 6, 8, 10, 16, 18, 20,<br>22, 24, 26, 28, 30, 32, 34,<br>36, 38, 44, 46, 48, 52, 54,<br>64, 66, 68, 70, 72, 74, 76                 |
| 81303                                    | 42           | 5, 7, 11, 17 to 21 inclusive<br>24, 26 to 30 inclusive, 32,<br>34 to 41 inclusive, 43, 44,<br>45, 52, 53, 56, 57, 59, 61,<br>63, 64, 65 |
| 81302                                    | 42           | 66, 67, 68, 70, 71                                                                                                                      |

# GROUP I continued

|       |    |                                                                                                                                                                                |
|-------|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 81303 | 43 | 2, 5 to 11 inclusive, 14 to 19 inclusive, 22, 24 to 31 inclusive, 33 to 38 inclusive, 41 to 48 inclusive, 50, 52, to 62 inclusive, 66 to 69 inclusive                          |
| "     | 44 | 1, 2, 4, 6, 10, 12 to 14 inclusive, 16, 19 to 21 inclusive, 23, 25 to 28 inclusive, 30, 32, 34 to 36 inclusive, 38, 40, 42, 44, 46 to 49 inclusive, 51 to 63 inclusive, 65, 67 |
| "     | 45 | 2, 3, 7, 13, 15, 17, 26, 29 to 37 inclusive, 42 to 47 inclusive, 49, 51, 52, 53, 55, 62, 63                                                                                    |
| "     | 46 | 2, 3, 5, 7, 9 to 12 inclusive, 14, 18 to 20 inclusive, 25, 27, 29, 31, 36, 38, 40, 44, 46 to 50 inclusive, 52 to 56 inclusive, 58 to 60 inclusive                              |
| "     | 47 | 2, 7 to 11 inclusive, 13 to 27 inclusive, 29, 31, 35, 37, 39 to 45 inclusive, 47, 49, 51, 56                                                                                   |
| "     | 48 | 1, 5, 7, 9, 10, 12, 14, 16, 17, 19, 21 to 26 inclusive, 28, 29, 31, 32, 33, 35, 36, 38 to 52 inclusive, 54                                                                     |
| "     | 49 | 21 to 28 inclusive, 30, 32 to 37 inclusive, 39, 41 to 52 inclusive                                                                                                             |
| "     | 50 | 6, 16, 18, 20, 22 to 38 inclusive, 40, 42 to 45 inclusive, 49                                                                                                                  |
| "     | 51 | 1 to 18 inclusive, 20, 21, 22, 24, 26, 33, 34, 37, 39, 41, 42, 44, 45                                                                                                          |
| "     | 52 | 1, 2, 3, 6, 8 to 13 inclusive, 15, 17, 19, 20, 21, 23 to 33 inclusive, 35 to 41 inclusive                                                                                      |
| "     | 53 | 1, 3, 11, 12, 15, 17 to 20 inclusive, 24, 26, 27, 29, 31, 32, 33, 35, 37                                                                                                       |
| 81302 | 53 | 40, 41, 42                                                                                                                                                                     |
| "     | 54 | 1, 2, 4 to 34 inclusive, 39, 40                                                                                                                                                |
| "     | 55 | 1 to 36 inclusive, 38                                                                                                                                                          |
| "     | 56 | 1 to 36 inclusive                                                                                                                                                              |
| "     | 57 | 1 to 34 inclusive                                                                                                                                                              |
| "     | 58 | 1 to 31 inclusive                                                                                                                                                              |

**GROUP I continued**

|       |    |                             |
|-------|----|-----------------------------|
| 81302 | 59 | 1 to 29 inclusive           |
| "     | 60 | 1 and 2                     |
| "     | 61 | 1 to 42 inclusive           |
| "     | 62 | 1 to 55 inclusive           |
| "     | 63 | 18, 21, 22, 23, 24,         |
| 81303 | 63 | 26, 28, 29, 30, 39 to       |
| "     |    | 46 inclusive, 50, 52        |
| 81302 | 64 | 1, 3, 7                     |
|       | 64 | 14, 15, 16, 19, 20, 21, 25, |
|       |    | 27, 28, 31 to 59 inclusive  |

**GROUP II**Transfer Certificate  
of TitleBlockLots

|       |    |                             |
|-------|----|-----------------------------|
| 81302 | 36 | 1 to 91 inclusive           |
| "     | 41 | 1, 3, 5, 7, 9, 11, 13, 15,  |
|       |    | 17, 19, 21, 23, 25, 31, 33, |
|       |    | 35, 37, 39, 41, 47, 51, 57, |
|       |    | 59, 61, 63, 65, 67, 71, 73, |
|       |    | 75                          |
| "     | 62 | 56 to 64 inclusive          |
| "     | 63 | 1 to 16 inclusive           |

**GROUP III**

|   |    |                              |
|---|----|------------------------------|
| " | 37 | 1 to 3 inclusive, 5 to 89    |
|   |    | inclusive                    |
| " | 38 | 1 to 19 inclusive            |
| " | 39 | 8 to 47 inclusive            |
| " | 40 | 1 to 4 inclusive, 6 to       |
|   |    | 18 inclusive, 20 to 42       |
|   |    | inclusive 44, 46, 50, 51, 53 |
|   |    | to 74 inclusive              |

**GROUP IV**

|   |    |                            |
|---|----|----------------------------|
| " | 39 | 1 to 7 inclusive           |
| " | 65 | 1 to 55 inclusive, 57, 60, |
|   |    | 61, 62                     |

all of which lots are shown on Map 70, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053, and being portions of the land described in Transfer Certificates of Title Nos. 81302 and 81303.



CHARTER OF INCORPORATION  
OF THE  
AINALOA COMMUNITY ASSOCIATION

ARTICLE I  
NAME OF THE CORPORATION

The name of the corporation shall be AINALOA COMMUNITY ASSOCIATION, INC. (the "Association").

ARTICLE II  
LOCATION OF THE PRINCIPAL OFFICE

The location of the principal office of the Association shall be at such place in the County and State of Hawaii as its board of directors may from time to time determine.

ARTICLE III  
PURPOSES OF THE ASSOCIATION

The objects and purposes of the Association are as follows:

- (a) To protect and promote the best interest of the property owners in the subdivision known as Ainaloa, in the Puna District, Count and State of Hawaii, which property comprising said subdivision is more particularly shown on Map 70 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with the Land Court Application No. 1053;
- (b) To construct, maintain, repair, improve and mange roadways, utilities and all common and community facilities within Ainaloa;
- (c) To establish an assessment program to ensure the adequate and continued maintenance, repair, improvement and management of roadways, utilities and all common and community facilities within Ainaloa;
- (d) To promote and encourage a better community and civic spirit among and to foster goodwill and friendship between, all property owners of Ainaloa; and
- (e) To cooperate with civic and public organizations for the general welfare of the people of the Island of Hawaii and the State of Hawaii.

ARTICLE IV  
POWERS OF THE ASSOCIATION

The Association shall have and possess all the powers permitted to nonprofit corporation under the laws of the State of Hawaii in all events and under all circumstances, including but not limited to reorganization, dissolution, or amendment of the Charter of Incorporation of the Association.



(a) To enter into, make, perform and carry out contracts of every kind for any corporate purpose, without limit as to amount, with any person, firm, association or corporation or other group or organization, including particularly contracts for the borrowing of money and for the employment of administrators and investment or other counsel as the board of directors may deem necessary; to draw, make, accept, endorse, discount, execute and issue promissory notes, bonds, debentures, or other obligations for any of the objects of purpose of the Association; and to secure the same by mortgages, pledges, deeds of trust or otherwise; and

(b) to have succession by its corporate name in perpetuity; to sue and be sued in any court; to make and use common seal, and alter the same at its pleasure; to hold, purchase and convey such property as the purposes of the Association shall require, without limit as to amount, and to mortgage, pledge and hypothecate the same to secure any debt of the Association; to appoint such subordinate officers and agents as the business of the Association shall require; and to make by-laws not in conflict with the law or this Charter of Incorporation; and

(c) the Association shall never be operated for the primary purpose of carrying on any trade or business for profit; and neither the whole nor any part or portion of the assets, income or earnings of the Association shall be used, nor shall the Association ever be organized or operated, for objects or purposes which are not exclusively for the promotion of social welfare under the laws of the United States and the State of Hawaii; and

(d) the Association shall not engage in any activities which are unlawful under the laws of the United States or the State of Hawaii, nor shall it engage in any transaction defined at the time as 'prohibited' under the Internal Revenue Laws of the United States; nor shall amounts be accumulated out of income of the Association in amount or duration, or be used or invested in such manner for such purposes or functions such that the same would constitute grounds for denial of income tax exemption under the Internal Revenue Laws of the United States;

(e) neither the whole nor any part or portion of the assets, income or earnings, current or accumulated, of the Association shall ever be used for dividends or be otherwise withdrawn or distributed to or divided among any members, trustees or officers of the Association or any donor, whether upon liquidation or dissolution of the Association or otherwise, provided, further, that neither the whole nor any part or portion of such assets, income or earnings shall ever be used for, accrue to, or inure to the benefit of any private individual within the meaning of the tax exemption requirements of the laws both of the United States and of the State of Hawaii.

#### ARTICLE V

#### ORGANIZATION OF THE ASSOCIATION

Notwithstanding any other provision of this Charter, or

its By-Laws, the Association shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c) (4) of the Internal Revenue Code of 1954 (or any future corresponding provision.)

The Association shall be a membership association. The Association is not organized for profit and will not issue any stock and no part of it is assets, income or earnings shall be used for dividends, or otherwise withdrawn or distributed to any of its members, trustees or officers.

#### ARTICLE VI BOARD OF DIRECTORS

There shall be a board of directors of the Association of not fewer than (3) directors nor more than such number as may from time to time be fixed by the By-Laws. The members of the board of directors shall be elected and shall hold office and may be removed as may be prescribed by the By-Laws. Each member of the board of directors must be a member in good standing of the Association. All of the powers and authority of the Association shall be vested in and be exercised by the board of directors except as limited by law, the Charter or the By-Laws, and in the furtherance and not in limitation of said general powers, the board of directors shall have power to acquire and dispose of property, to appoint officers, agents or employees of the Association as in its judgment the best interest of the Association may require and to confer upon and to delegate to them by power of attorney or otherwise such power and authority as it shall determine; to fix the salaries or compensation of any and all of the agents and employees of the Association, and in its full discretion require security of any of them for the faithful performance of any of their duties, to make rules and regulations not inconsistent with law or the Charter or By-Laws; to create such committees of the board of directors and to designate as members of such committees such persons as it shall determine and to confer upon such committees such powers and authority as may be resolution be set forth for the carrying on or exercising of the powers of the Association; to remove or suspend any officers and generally to do any and every lawful act necessary or proper to carry into effect the powers, purposes and objects of the Association.

#### ARTICLE VII OFFICERS OF THE ASSOCIATION

The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer. The Association may have such additional officers as shall be determined in accordance with the By-Laws. The officers shall have the powers, perform the duties and be appointed in the manner set forth in the By-Laws. No director may hold more than one office of the Association. Every officer must be a member in good standing.

#### ARTICLE VIII MEMBERSHIP OF THE ASSOCIATION

The membership of the Association shall consist of such members as shall be admitted to membership in a manner prescribed



in the By-Laws. Every owner of a lot within said Ainaloa subdivision shall be a member of the Association and no such owner shall for any reason be denied membership in the Association. No membership shall be terminated or forfeited nor member be expelled, except upon sale of any lot in said subdivision; provided, however, that upon execution and delivery of a valid contract of sale of any lot, the vendor's membership, including voting rights adhering thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed in compliance with said contract or agreement of sale or revesting in the vendor in the event of termination of said contract of sale. No member may withdraw, nor shall any member transfer or otherwise assign or dispose of his membership, except upon lawful conveyance (including any contract or agreement of sale as aforesaid) of his lot, and subject to such reasonable conditions as may be prescribed by the by-laws. The term "owner" as used in this Charter shall include a vendee and shall mean the singular or plural number, individuals, trustees or corporations, and each of their respective successors, executors, administrators and permitted assigns. The owner of a lot within said subdivision, whether one or more individuals, trustees or corporations, shall be entitled to one (1) membership and one (1) vote per such lot.

#### ARTICLE IX - By-Laws (as amended)

The By-Laws of the Association may only be amended or repealed by the vote of not less than a majority (more than 50%) of the members present, whether present in person or by proxy and/or mail ballot at any meeting of the members duly called and held, the notice of which shall have stated that the purpose of the meeting was to consider the amendment or repeal of the By-Laws.

#### ARTICLE X DEBTS AND LIABILITIES

The property of the Association shall alone be liable for the payment of the debts and liabilities of the Association and the private property of the members, directors and officers shall not be subject to the payment of the Association's debts or liabilities to any extent whatever.

#### ARTICLE XI DISSOLUTION OF THE ASSOCIATION

If the Association shall cease to exist or shall be dissolved, all property and assets of the Association of every kind, after payment of its just debts, shall be distributed only to one or more public agencies, organizations, corporations, trusts or foundations having the like purposes and organized and operated exclusively as a tax-exempt organization under Section 501 (c) (4) of the Internal Revenue Code of 1954 (or any future corresponding provision) with purposes similar or related to those of the Association, as the board of directors shall determine. In no way shall any of the assets or property of this Association, or the proceeds of the assets



or property, in the event of dissolution, go or be distributed to members, either for the reimbursement of any sums subscribed, donated, or contributed by such members, or for any other such purpose, it being the intent in the event of the dissolutions of this Association, or upon its ceasing to carry out the object and purposed herein set forth, that the property and assets then owned by the Association shall be devoted only to non-profit charitable purposes.

## ARTICLE XII LIABILITY TO ASSOCIATION AND INDEMNITY

No director or officer of the Association shall be liable to the Association for any loss or damage suffered by it on account of an action or omission by such person as a director or officer if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of this Association, unless respect to any action or suit by or in the right of the Association to procure a judgment in its favor such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to this Association.

The Association shall indemnify any 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 Association) by reason of the fact that he is or was a director or officer of the Association against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, or with respect to any criminal action or proceeding, had not reasonable cause to believe his conduct 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, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of this Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

To the extent that a director or officer has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under this section (unless ordered by a court) shall be made by the Association only if authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct. Such determination may be made:

(a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceedings; or

(b) if such quorum is not obtainable, or, even if obtainable and a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Association; or

(c) If a quorum of disinterested directors so direct, by a majority vote of the members.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association 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 or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

The Association 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 Association or is or was serving at the request of the Association as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of this Article.

#### **ARTICLE XIII** **NON-PROFIT**

The Association is not organized for profit and it will not issue stock. The members and directors of the Association shall have no interest, present, prospective or contingent of any kind in and shall not receive distributions from, the property, assets, income or earnings of the Association except for services actually rendered to the Association and such rights, powers and privileges as shall be determined by the By-Laws.

#### **ARTICLE XIV** **CHARTER OF INCORPORATION**

This Charter may be amended by the vote of not less than two-thirds (2/3) of the members present at a meeting duly called and held for the purpose. No amendment shall be effective unless there is filed in the office of the Director of Regulatory Agencies a verified certificate, signed by any two authorized officers of the Association, setting forth the amendment by stating that the articles of the association or charter has been amended to read as set forth in the certificate in full or by stating that any provision of the articles of association or charter, which shall be identified by the numerical or other designation thereof in the articles of association or charter or by stating the wording thereof, has been amended to read as set forth in the certificate, and certifying that the amendment was adopted by the required vote as aforesaid at a meeting duly called and held for the purpose. Any amendment so adopted shall become effective and the articles of the association or charter shall be amended on the date of filing of the certificate of amendment or on such later date specified in the certificate of amendment.



BY-LAWS  
OF THE  
AINALOA COMMUNITY ASSOCIATION, INC.

ARTICLE I

OFFICES, MEETINGS, SEAL AND FISCAL YEAR

Section 1. Principal Office. The principal office of the Association shall be at such place in the County and State of Hawaii as the board of directors shall from time to time determine.

Section 2. Other Offices. The Association 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 Association or at such other place as is stated in the call for the meeting.

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

Section 5. Fiscal Year. The fiscal year of the Association will be from July 1st of one year to June 30th of the next year.

ARTICLE II  
MEMBERS

Section 1. Eligibility, admission, effective date. Every owner of a lot within the subdivision known as Ainaloa in the District of Puna, County and State of Hawaii, which property comprising said subdivision is more particularly shown on Map 70 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053, shall be a member of the Association. No such owner shall for any reason be denied membership in the Association. The term "owner" as used in these By-Laws shall include a vendee under a valid contract or agreement of sale and shall mean the singular or plural member, individuals, trustees or corporations, and each of their respective successors, executors, administrators and permitted assigns. No such owner, whether one or more individuals, trustees or corporations shall be eligible for more than one (1) membership per each such lot. If there is more than one owner of a lot, they may designate in whose name the membership will be held, but upon their failure to do so, any one of them may be designated as the member. Each such owner shall be admitted to membership by the entry of his name upon the membership roll of the Association and no other or further formality shall be required to consider any such owner a member of the Association. The effective date of membership for Golden State Hawaiian Corporation and for each vendee under a contract of purchase from Golden State Hawaiian Corporation antedating the effective date of the Charter of the



Association shall be the effective date of the Charter. The effective date of membership for each owner of a lot who has been issued a deed by Golden State Hawaiian Corporation prior to the effective date of the Charter shall be the date of the separate membership agreement executed by each such owner. The effective date of each and every other owner shall be the date of the instrument, act or occurrence by which such person becomes an owner of a lot.

Section 2. Expulsion, withdrawal, transfer. No membership shall be terminated or forfeited nor member be expelled, except upon sale of his lot; provided, however, that upon execution and delivery of a valid contract or agreement of sale for any lot, the vendor's membership, including voting rights adhering thereto, shall be considered as having been temporarily transferred to the vendee, such transfer becoming permanent upon subsequent delivery of a deed in compliance with said contract or agreement of sale or revesting in the vendor in the event of termination of said contract or agreement of sale. No member may withdraw, nor shall any member transfer or otherwise dispose of his membership, except upon lawful conveyance (including contract or agreement of sale as aforesaid) of his lot.

### ARTICLE III MEETINGS

Section 1. Annual Meeting. The annual meeting of the members of the Association shall be on the first Monday of March each year, or as the board of directors may from time to time select. At the annual meeting the President, the Treasurer, and Standing Committee Chairmen shall make their annual reports to the members; the members shall elect the members of the board of directors, may transact any general business which may be brought before the meeting and may take any action

Section 2. Special Meetings. Special meeting of the members of the Association may be held at any time upon the call of the President, or upon the call of a majority of the board of directors, or upon a petition of any thirty-five (35) members in good standing who present to the President or the board of directors a request for such meeting, giving the necessity or specific reason for calling a meeting. No business other than that for which the special meeting is called shall be transacted at such meeting.

Section 3. Notice of Meetings. A written or printed notice of every meeting of the members, stating whether it is an annual, regular or special meeting. The authority for the call of the meeting, the place, day and hour, thereof and the purpose therefor shall be given by the Secretary or by the person or persons calling the meeting, at least ten (10) but not more than sixty (60) days before the day set for such meeting. Such notice may be given to each member in any of the following ways: (A) By leaving the same with him personally, or (B) By leaving the same at the residence or usual place of business of such member, (C) By mailing it, postage prepaid, addressed to such member at his address as it appears on the membership roll of the Association, or (D) By telephone, telegraph, or in person. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of meeting shall in no way invalidate the meeting or any proceedings thereat.



Section 4. Notice Unnecessary. The presence of all of the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall at the opening of said meeting object to the holding of the same for non-compliance with the provisions of Section 3, immediately above. Any meeting so held without objection shall, notwithstanding the fact that no notice of meeting was given or that the notice given was improper, be valid for all purposes and at such meeting any general business may be transacted and any action may be taken.

Section 5. Quorum. At any meeting of the members of which proper notice has been given, twenty-five percent (25%) or more of the members of the Association, present in person or by proxy, shall constitute a quorum, and the concurring vote of a majority of the members constituting the quorum shall be valid and binding upon the Association, except as otherwise provided by law or by these By-Laws or by the Charter of the Association.

Section 6. Voting. At every meeting of the members of the Association, each member in good standing shall be entitled to vote in person or by proxy (appointed by instrument in writing, executed by such member or his authorized attorney-in-fact and filed with the secretary) and/or mail ballot. Each member shall be entitled to one vote per lot. Any member who is in default in the payment of a lot assessment shall not be a member in good standing for that lot only, he shall not be entitled to vote the defaulted lot. Provided, however, that each member in default shall be so notified in writing at the time and in the same manner notice of meetings are given pursuant to Article III, Section 3, hereof. If within 10 days of such notice of default, the member shall fully pay his delinquency, he shall be considered to be in good standing and be entitled to vote at the meeting. Or, if within 10 days of such notice of default the member requests a hearing of the board of directors, which the board shall promptly act upon his request and determine his eligibility to vote. Any member, whether or not in good standing, may attend any meeting of the members.

Section 7. Proxies. Unless otherwise limited to a shorter period by its terms, a proxy shall be valid for a period of not more than ninety (90) days and shall not transfer the right to vote at more than one meeting of the members, provided, however that said person shall have the right to exercise his voting rights under said proxy at any adjourned meeting if the same is held within ninety (90) days of the date of the proxy. Cumulative voting in accordance with Hawaii Revised Statutes, Section 416-74, as the same now exists or is hereafter amended, is permitted.

Section 8. Adjournment. Any meeting of the members, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the members present, but in the absence of a quorum no other business may be transacted at any such meeting. When any members' meeting, either annual or special, is adjourned for sixty (60) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any notice of an adjourned meeting other than by announcement at the meeting at which such adjournment is taken.



ARTICLE IV  
BOARD OF DIRECTORS

Section 1. Number. There shall be a board of directors of the Association of not fewer than three (3) nor more than seven (7) members, as may from time to time be determined by the members of the Association. Until the members of the Association shall otherwise determine, the board of directors shall consist of seven (7) members. Each member of the board of directors must be a member in good standing of the Association.

Section 2. Election and Term. The directors shall be elected at annual meetings of the members of the Association, and shall, unless sooner removed by the members of the Association, as provided in these By-Laws, hold office until their successors shall be duly elected. The directors will serve on a staggered basis with one-third (1/3) of the directors to be elected for a three-year term; one-third (1/3) of the directors to be elected for a two-year term; one-third (1/3) of the directors to be elected for a one-year term; with one-third (1/3) of the board of directors to be elected annually thereafter for a three-year term. Any member in good standing may make nominations for the directors to be elected by writing to the Secretary of the board of directors on or before thirty (30) days of the election day, nominating his desired candidate. Nominations may be made from the floor at the election meeting by any member in good standing. A Nominating Committee may also be appointed by the board of directors.

Section 3. Annual Meeting. The annual meeting of the board of directors of the Association shall be held at the place of each annual meeting of the members and immediately following each such meeting. At the annual meeting the board of directors shall appoint the officers of the Association and determine the amount of the annual assessment for the following year; and may transact any business which may be brought before the meeting and take any action.

Section 4. Regular Meetings. The board of directors may establish regular meetings to be held at such places and at such times as it may from time to time by vote determine, and when any such meeting or meetings shall be so determined no further notice thereof shall be required.

Section 5. Special Meetings. Special meetings of the board of directors may be called at any time by the President or by any two (2) directors.

Section 6. Notice. The Secretary 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 the directors is present. Notice need not be given to any director who shall either; A) before or after the meeting submit a signed waiver of notice or B) attend such meeting without protesting the lack of notice to him prior to or at the



commencement 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.

Section 7. Quorum. The majority of the directors shall constitute a quorum. No action taken, other than the appointment of directors to fill temporary vacancies, shall bind the Association unless it shall receive the concurring vote of a majority of the quorum of all the directors. In the absence of a quorum, the presiding officer or a majority of the directors present may adjourn the meeting from time to time without further notice until a quorum is present.

Section 8. Actions Authorized Without Meeting. Any action which the board of directors may lawfully take at any meeting properly called and held may also be taken by action of all of the individual directors by their written assent thereto. Any action so taken shall be valid and effective from and after the filing with the Secretary or with an Assistant Secretary of a written minute, or other instrument, signed by all of the directors, evidencing the action.

Section 9. Presumption of Assent. A director of the Association who is present at a meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the dissent or refusal to vote is entered in the minutes of the meeting or unless the director either files a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof and forward such dissent by certified mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 10. Powers. Subject to any limitations which may be set forth in the Charter of Incorporation or in these By-Laws the board of directors shall have full power to control and direct the business and affairs of the Association and to do and provide for any and every lawful act, whether in the ordinary course of the business of the Association or otherwise.

Section 11. Removal. Subject to the limitations of Hawaii Revised Statutes, Section 416-74, any director may be removed from office by the concurring vote of three-fourths (3/4) of the members of the Association present at any meeting duly called and held for such purpose.

Section 12. Vacancies. If any vacancy occurs in the board of directors, the remaining members of the board by an affirmative vote of a majority of them may elect a successor to serve until the next annual meeting of the members of the Association and thereafter until a successor shall be duly elected.

Section 13. Compensation of the Officers and Directors. Members of the board of directors shall receive no compensation for their services as officers and directors, but they may be reimbursed

for actual expenses incurred. The vote of not less than a majority vote of the directors shall be required in order to reimburse officers and directors for their expenses.

Section 14. Limitations on Disbursements. The board of directors shall not make any disbursements or contributions of the funds or assets of the Association to or for the benefit, directly or indirectly, of any member, director or officer of the Association except for the reasonable payments for services actually rendered to the Association by such member, director or officer as an employee of the Association

Section 15. Proxies. At all meetings of the board of directors, voting by proxy shall not be allowed.

Section 16. Rules of Order. The rules contained in Robert's Rules of Order Seventy-fifth Edition, or as thereafter revised, shall govern the board of directors in all cases to which they are applicable, and in which they are not inconsistent with the By-Laws or the Charter of Incorporation.

Section 17. Committees. The board of directors, or the President, may create and appoint such general or special committees of any kind as the business of the Association may require and define the authority and duties of such committees, except that such committees shall not have any powers as may be reserved to the board of directors by statute or otherwise.

Section 18. Ex-officio Member. The board of directors may from time to time appoint an immediate past President to serve as an ex-officio member on the board of directors. The ex-officio member cannot be counted in the quorum or have the right to vote at the meetings of the board of directors, but can serve in the capacity of parliamentarian, advisory officer, and have other duties that may be assigned by the board of directors.

## ARTICLE V OFFICERS

Section 1. Appointment and Term. The officers of the Association shall be a President, one or more vice presidents, a Treasurer and a Secretary. Each of the Officers shall be appointed by the board of directors and shall hold office until the next annual meeting or until a successor shall be duly appointed and qualified. No director may hold more than one office and each officer must be a member of the Association in good standing. If a vacancy occurs in any office, the board of directors may appoint a successor to fill such vacancy for the remainder of the term.

Section 2. Subordinate Officers and Agents. The board of directors may appoint or employ such subordinate officers, including Assistant Treasures and Assistant Secretaries, agents and employees as may be deemed proper, who shall hold their positions at the pleasure of the board of directors and who shall have such powers and duties as may be assigned to them by the board of directors. The authority to employ agents and employees and fix their



powers and duties may be delegated by the board of directors. Any member of the Association may be a subordinate officer, agent or employee.

Section 3. Salaries. The salaries and compensation, if any of all subordinate officers, agents and employees shall be determined by the board of directors. The authority to fix the salary and compensation of agents and employees may not be delegated.

Section 4. Bonds. A blanket surety bond, payable by the Association, will be required for the faithful discharge of the duties of all directors, officers, agents and employees. Such bond shall specifically cover those persons dealing with the Association's money for the largest amount it is anticipated that such persons will handle during the term of the bond. The bond may cover named individuals or named positions with the Association.

## ARTICLE VI

### PRESIDENT

Section 1. Powers and Duties. The President, when present, shall preside at all meetings of the members of the Association. Subject to the control of the board of directors he shall be the chief executive officer of the Association, shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association and shall have the right to inspect at all times any and all of the records, accounts and property of the Association. He shall also have such other powers and duties as are given to him elsewhere by law or in these By-Laws as may be assigned to him from time to time by the board of directors.

## ARTICLE VII

### VICE PRESIDENTS

Section 1. Powers and Duties. The Vice President (or Vice Presidents, in order of priority of appointment) shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. Each Vice President shall have such other powers and duties as may be assigned to him from time to time by the board of directors.

## ARTICLE VIII

### TEASURER

Section 1. Powers and Duties. The Treasurer shall be responsible for all moneys belonging to the Association and shall deposit the same in a federally insured depository. He shall pay out money only as approved by the President or as directed by the board of directors. He shall account for all funds and disbursements at the monthly meetings of the board of directors, or at such time and in such manner as the board of directors may specify, and shall render a report of all receipts and disbursements at annual meetings of the members. He shall also have the powers and perform the duties customarily incidental to the office and such other powers and duties as may be given elsewhere in these By-Laws or as may be assigned from time to time by the board of directors.

ARTICLE IX  
SECRETARY

Section 1. Powers and Duties. The Secretary shall attend and keep the minutes of all meetings of the members of the Association and of the board of directors in books provided for that purpose. He shall give all notices provided by these By-Laws and shall have such other powers and duties as may be incidental to the office of Secretary or elsewhere 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.

Section 2. Secretary Pro Tem. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a Secretary pro tempore. He shall keep the minutes of such meeting and record them in the books provided for that purpose.

ARTICLE X  
AUDITOR

Section 1. Election. The members of the Association may at any meeting, by majority vote, appoint some person, firm or corporation engaged in the business of auditing to act as Auditor of the Association.

Section 2. Disqualification. No director, officer or member shall be eligible to serve as Auditor of the Association.

Section 3. Duties. The Auditor shall, as often as is required by the directors, examine the books and papers of the Association and compare the statements of the Treasurer with the books and vouchers of the Association, and otherwise make a complete audit of the books of the Association, and thereafter make appropriate reports to the directors, who shall within thirty (30) days of the completion of such audit make a copy thereof available to each member.

ARTICLE XI  
REMOVALS, VACANCIES AND ABSENCES

Section 1. Removals. The board of directors may at any time remove from office or discharge from employment any officer, subordinate officer, agent or employee appointed by it or by any person under authority delegated by it, except so far as such removal would be contrary to law.

Section 2. Vacancies. If the office of any officer, shall become vacant by reason of death, resignation, removal, disqualification or otherwise, the board of directors may appoint a successor who shall hold office for the unexpired term and thereafter until his successor is appointed.

Section 3. Absence of Treasurer or Secretary. In the absence of the Treasurer or in his inability to act, or if that office is vacant, the duties thereof shall be performed by such Assistant Treasurer as may have been designated by the board of directors. In the absence of the Secretary or in his inability to act, or if that office is vacant, the duties thereof shall be



performed by such Assistant Secretary as may have been designated by the board of directors.

## ARTICLE XII

### EXECUTION OF INSTRUMENTS

Section 1. Authorized Signatures. All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other instruments shall be signed 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 applicable to any such instrument, then such instrument shall be signed by the President and by the Treasurer or by the President and by the Secretary.

## ARTICLE XIII

### RULES AND REGULATIONS

Section 1. Adoption. The board of directors may from time to time make such rules and regulations concerning the use of the facilities of the Association as it deems necessary or advisable, including the matter of the use of such facilities by guests of members or of the Association.

Section 2. Promulgation. The Secretary shall post a true and correct copy of all rules and regulations at each of the Associations facilities, including amendments thereto, and shall make such rules and regulations available to any member upon request.

## ARTICLE XIV

### ASSESSMENTS AND CHARGES

Section 1. Regular Annual Assessments. One of the primary purposes and objects of the Association shall be to establish a suitable and equitable assessment program to ensure the adequate and continued maintenance of community facilities, including roadways, within the Ainaloa subdivision. In furtherance of such purposes, a scale of assessments shall be fixed by the board of directors on a budgetary basis so that sufficient revenue shall be derived therefrom to enable the Association to accomplish its general purposes and to enable it to maintain all roadways within the subdivision in good condition and repair and in accordance with those reasonable standards as may be lawfully required by the Planning Commission of the County of Hawaii, State of Hawaii or such other governmental body empowered by law to establish any such lawful requirements.

The amount of any annual assessment shall be determined by the board of directors immediately after the annual meeting of the members, and each member of the Association shall be notified of the amount and effective date of such assessment.

Section 2. Special Assessments. If at any time the board of directors shall find or anticipate that the funds of the Association are or will be insufficient to reasonably enable the Association to accomplish its purpose and objectives, the board may at any regular or special meeting thereof, levy other and further assessments against the members of the Association as it determines are

necessary or desirable. Upon the determination of any such special assessment, the Secretary shall notify each member of the Association as to the amount of the assessment and its effective date.

Section 3. Reserve Fund. In determining the amount of any annual or special assessment, the board of directors shall consider the necessity and advisability of establishing a reserve fund for emergency or extraordinary expenses or for the eventful construction and maintenance of the roadways to such a standard and condition that they may be dedicated to the County or State of Hawaii, which ever is legally appropriate, and the board shall have the power to reasonably and equitably establish such a reserve fund.

Section 4. Veto of Assessments. If at any time the board of directors either (a) increases the last prior regular annual assessment by more than twenty percent (20%); or (b) declares any special assessment, the members, by and affirmative vote of a majority of the entire membership of the Association may veto such increase or special assessment at a special meeting duly called for that purpose. Unless such meeting is called within sixty (60) days of the notice of assessment, the assessment as declared by the board shall be effective as of the date originally announced.

Section 5. Payment of Assessments, Delinquency. Every assessment, whether annual or special shall be borne by the members pro-rata; that is, each member will be required to pay the amount that is equal to the quotient of the total amount of the assessment as determined by the board divided by the total number of lots within Ainaloa subdivision as of the effective date of such assessment. Each annual assessment shall be due and payable on or before July 31st of each year. Each special assessment shall be due and payable not later than thirty (30) days after its effective date.

Section 6. Lien. Each assessment shall constitute a lien upon each lot against which it is imposed and such lien may be foreclosed by the Association in the same manner as a real estate mortgage may be foreclosed, as set forth in Chapter 667, Hawaii Revised Statutes, as amended; provided that no action shall be brought to foreclose such lien unless ninety (90) days written notice thereof shall be mailed to the delinquent member. Such lien shall be prior to all other liens, except (a) liens for taxes and assessments lawfully imposed by governmental authority against such lot and (b) all sums unpaid on mortgages of record. Notwithstanding the foregoing right of the Association to foreclose on any such lien, the Association may, at its sole option, elect to sue to recover money judgment for any unpaid assessments and such suit may be maintained without foreclosing or waiving the lien. If suit is brought, whether for foreclosure or money judgment, the member shall be responsible for all costs thereof, including reasonable attorneys' fees.



ARTICLE XV  
INSPECTION OF RECORDS

Section 1. Inspection of Corporate Records. The books of account and the minutes of the proceedings of the membership and directors shall be open to inspection upon written demand of any member in good standing, at any reasonable time, and for a purpose reasonably related to his interest as a member. Demand of inspection other than at a meeting shall be made in writing to the President, the Secretary, or any other officer designated by the board of directors.

Section 2. Inspection of Charter of Incorporation and By-Laws. The association shall keep in its principal office for the transaction of business a copy of the Charter of Incorporation and By-Laws of the Association as amended or otherwise altered to date, which shall be open to inspection by the members at all reasonable times during office hours.

ARTICLE XVI  
AMMENDMENT TO BY-LAWS

The By-Laws of the Association may from time to time be amended, altered, repealed, and new or additional By-Laws may be adopted by an affirmative vote of not less than a majority (more than 50%) of the members present in person or by proxy and/or mail ballot at any meeting of the members duly called and held. The notice of which shall have stated that the purpose of the meeting was to consider the amendment or repeal of the By-Laws.