

**ARTICLES OF INCORPORATION  
OF THE  
HAWAIIAN OCEAN VIEW ESTATES  
ROAD MAINTENANCE CORPORATON**

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

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

WHEREAS, JOHN WALKER, LORAIN BARTHOLOMEW and ANNE SHILZONY, a majority of whom are residents of the State of Hawaii, have filed with me as Director of the Department of Commerce and Consumer Affairs a verified petition to grant to them and their associates a charter of incorporation as a nonprofit corporation, in accordance with the provisions of Section 416-20, Hawaii Revised Statutes, and

WHEREAS, the directors and members of said corporation have elected to amend the Articles of Incorporation in accordance with Hawaii Revised Statutes 415(b)-37 in the form hereinafter set forth,

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

**ARTICLE I**

The name of the corporation shall be: H.O.V.E. ROAD MAINTENANCE CORPORATION

**ARTICLE II**

The location of the principal office of the corporation shall be in the District of Ka'u, County and State of Hawaii, and the address of its initial office shall be located in the Hawaiian Ocean View Estates Subdivision, District of Ka'u, County and State of Hawaii, with its mailing address as S.R. Box 6227, Captain Cook, Hawaii 96704 (due to its geographically rural location a more definite address is unavailable).

**ARTICLE III**

The Purposes of the corporation are:

(a) To maintain, repair, restore or cause to be maintained, repaired and restored, roads within the Hawaiian Ocean View Estates subdivision located in the District of Ka'u, County and State of Hawaii. The corporation may make improvements to the roadways within said subdivision which by their nature tend to reduce expenses to maintain and/or promote safety.

(b) The corporation shall assume and perform the obligations and duties of the "Sub Divider" under that certain road maintenance escrow agreement dated December 12, 1962 by and between Hawaiian Ocean View Estates, a Nevada corporation as subdivider, and the First Trust Company of Hilo, Limited, as depository, as amended, as it may be amended from time to time.

(c) The corporation shall receive the property and funds set forth in that certain "Settlement Agreement, Release and Covenant Not to Sue" dated August 3, 1983, pertaining to that certain class action suit in the Circuit Court of the Third Circuit, State of Hawaii, being Civil No. 4102, Hawaiian Ocean View Estates Community Association, et al, vs. Exeter Equities, et al, and shall perform the obligations required of it as set forth in said settlement agreement.

**ARTICLE IV**

The duration of the corporation shall be perpetual.

**ARTICLE V**

The officers shall consist of a President; Vice President; Secretary and Treasurer.

**ARTICLE VI**

There shall be a board of directors consisting of not less than three (3) members. The following persons shall be the initial officers and directors, and shall hold office for the first year or until their successors are duly elected pursuant to the bylaws of the corporation:

Director DON SWANGEL  
SR Box 6037 Capt. Cook, HI 96704

Director LUCIEN R. HOWSLEY  
SR Box 6114 Capt. Cook, HI 96704

President JOHN WALKER  
SR Box 6008 Capt. Cook, HI 96704

V.P. ELINOR MCKINNEY  
SR Box 6225 Capt. Cook, HI 96704

Secretary ANNE SHILZONY  
SR Box 6029 Capt. Cook, HI 96704

Treasurer LORAIN BARTHOLOMEW  
SR Box 6020 Capt. Cook, HI 96704

Due to our geographically rural location, residence addresses are unavailable.

**ARTICLE VII**

The corporation shall have the following powers:

(1) To receive, retain, invest and reinvest all funds and property in income-producing investments in a manner that preserves principal as a perpetual, non-diminishing fund, and produces income commensurate with such a fund.

(2) To take title to Lots 16, 18, 20 and 22 of Block 47 of the subdivision; and to sell, lease or otherwise convert such lots to income-producing funds.

(3) To take title to Lots 3 and 4, Block 279 of the subdivision (the cinder cone lots) and to hold, manage and use the cinders thereon or income therefrom for the purposes for which the Corporation is organized.

(4) To pay out such sums as are available from earnings on the Corporation's assets to individuals, persons, firms or corporations to:

(a) Maintain and repair the roads within the subdivision, including, without limiting the generality of the foregoing, improvements which by their nature tend to reduce expenses of maintenance and/or promote safety, including comprehensive general liability insurance for the Corporation which names Exeter Equities, Inc., as additional insured.

(b) Protect, preserve and manage the Corporation and the assets of the Corporation.

(c) Pay reasonable costs and fees in connection with the management, investment and distribution of the Corporation's principal and income.

(d) Maintain road equipment and machinery and hire and employ maintenance workers and award contracts for maintenance and repairs to the roadways.

(5) To use principal to the extent necessary to purchase road equipment and machinery and make emergency repairs or restoration or resurfacing of roads within and appurtenant to the subdivision when such repairs are made necessary by extraordinary circumstances, provided, however, that the amount of principal used in any one year shall not exceed five percent (5%) of the principal value of the Corporation's assets as of the first day of each calendar year. Assets shall include funds held in escrow accounts pursuant to said Road Maintenance Escrow Agreement.

(6) To use principal and income to pay any taxes, penalties or interest as may now or hereafter be determined to be due on account of the operation of the corporation and the funds held in trust under the Road Maintenance Agreement.

(7) To amend, from time to time, the Road Maintenance Escrow Agreement, including provisions changing the depository or responsibility for investment management of funds held by the depository are used, to invade principal, or to divert funds for any purpose not presently authorized under the Road Maintenance Escrow Agreement shall not be valid without approval of a court having jurisdiction in an action to which all owners are parties or are duly represented.

(8) To have and exercise solely in furtherance of, but not in addition to the purpose set forth herein, all powers granted to non-profit corporations in Chapter 416, Hawaii Revised Statutes (1968) as now or hereafter amended.

#### **Powers Created by Further Court Order:**

In addition to the powers and purposes set forth above, the Corporation may exercise all of the powers and privileges and perform all the duties and obligations of the Corporation as set forth in court orders in the case filed in the Circuit Court of the Third Circuit known as H.O.V.E. Road Maintenance Corporation, a Hawaii non-profit corporation v. Ann D. Pettingill, et al., Civil No. 89-232, and which are related to the use, operation, safety, upkeep, maintenance, repair and improvement of the H.O.V.E. road system, including without limitation: 1) the power to implement and enforce assessments, as provided in the Amended Bylaws and the Court Order, to generate income to satisfy the purpose and obligations of the Corporation under the Articles of Incorporation and the Bylaws; 2) to make improvements to promote safety of the H.O.V.E. road system, including the installation of traffic signs and other necessary road markings; 3) the authority to control through tariff, charges or other means, the use of heavy and/or commercial vessels on the H.O.V.E. road system; and 4) to levy fines and other sanctions against those who abuse and damage the road system.

The Corporation shall utilize the assessments as follows:

(1) To repave, repair, maintain, upkeep and improve the H.O.V.E. road system (such repaving, repair, maintenance, upkeep and improvement will hereinafter be referred to as "road maintenance") or to provide for the road maintenance by agreements with independent contractors;

(2) To make improvements to promote the safety of the H.O.V.E. road system, including without limitation, the installation of traffic signs, signals, and other necessary road markings;

(3) To control through tariff, charges or other means the use of heavy and/or commercial vessels on the H.O.V.E. road system;

(4) To levy fines or other sanctions against those who abuse and damage the road system;

(5) To perform any of the other acts, duties and obligations required and permitted under these Articles of Incorporation and the amended Bylaws;

(6) To provide for the care, operation, management, maintenance, repair and replacement of its property. Without limiting the generality of the foregoing, said obligation shall include keeping the property in good, clean, attractive and sanitary condition, order and repair; repairing wind and other damage caused by the elements;

(7) To pay for the services of any person to manage its affairs or any part thereof, to the extent it deems advisable, as well as the services of such other personnel, including independent contractors, as the corporation shall determine to be necessary or desirable for the proper operation of its property and performance of its duties, whether such personnel are furnished or employed directly by the Corporation or by any person with whom or which it contracts;

(8) To undertake or contract for any lawful activity, function or service for the benefit of its members, provided that such activity, function or service is within the scope of the purposes of the Corporation as set forth in these Articles and amended Bylaws. The Corporation shall obtain from any governmental authority any licenses necessary or appropriate to carry out its functions hereunder. The activities, functions, or services undertaken or contracted for by the Corporation shall include, without limitation, the providing of legal and accounting services necessary or desirable in connection with the enforcement of the Bylaws; the granting or conveying of easements or rights of way over, across, along or under any real property of the Corporation; and the enforcement of all rights granted to the Corporation in any lease, sublease, easement or other instrument;

(9) To acquire and hold tangible and intangible personal property and to dispose of the same by sale or otherwise;

(10) To acquire fee simple title or leasehold or subleasehold interest in, or any easement or right of use in, real property reasonably necessary for the corporation's use in carrying out its purposes and powers set forth herein.

#### **ARTICLE VIII**

##### **Membership:**

All owners of lots within the Hawaiian Ocean View Estates subdivision shall be entitled to be members upon payment of such reasonable dues, or none, as set by the Board of Directors from time to time.

#### **ARTICLE IX:**

These articles may be amended by a vote of not less than 75% of those members of the Corporation who vote by ballot, proxy or in person at a meeting duly called and held for that purpose.

(1) No shares of stock shall be issued and no dividends shall be paid and no part of the net earnings of the Corporation shall ensure to the benefit of, or be distributed to any member, director, or officer of the Corporation, or any private individual.

(2) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publication or distribution of statements)

any political campaign on behalf of any candidate for public office.

(3) The Corporation shall not make any loans to its officers or directors. Any directors who vote for or assent to the making of a loan to a director or officer of the Corporation, and any officers participating in the making of such a loan shall be jointly and severally liable to the Corporation of the amount of the loan until repayment.

(4) No compensation shall be paid to members of the Board of Directors, for serving as directors, but this provision shall not prevent the Corporation from reimbursing directors for actual expenses incurred while attending meetings and performing duties assigned to individual directors.

## ARTICLE X

The Corporation may be dissolved in the event the roads within the subdivision shall be dedicated to or maintained by the County of Hawaii.

## ARTICLE XI

The Corporation is not organized for profit, it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the Corporation and except upon liquidation of its property in case of corporate dissolution.

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## BYLAWS OF THE

## HAWAIIAN OCEAN VIEW ESTATES ROAD MAINTENANCE CORPORATON

### ARTICLE I. DEFINITIONS

**1.1 “Corporation property”** means any real or personal property interest owned, leased, licensed, or otherwise held by the Corporation.

**1.2 “H.O.V.E. Lots”** means all of the land described as the Hawaiian Ocean View Estates designated and shown on the map of the Hawaiian Ocean View Estates, duly recorded in the Bureau of Conveyances of the State of Hawaii as File Plan Nos. 692, 738, 787, and 1011 in Liber 4255, Pages 474-476.

**1.3 “Lot”** means each of the subdivided lots designated and shown on the map of the Hawaiian Ocean View Estates, duly recorded in the Bureau of Conveyances of the State of Hawaii as File Plan Nos. 692, 738, 787, and 1011 in Liber 4255, Pages 474-476, except that contiguous lots that have been consolidated as one tax map key number shall be considered one lot.

**1.4 “Owner”** means any person who is the recorded owner of a fee simple interest in any lot; provided, however, that the lessee (or if there is a sublease, then the sublessee), under a recorded lease or sublease of any lot for an original term of more than thirty (30) years, and the purchaser under a recorded agreement of sale for any lot shall be deemed to be the owner of such lot, to the extent provided in such lease or agreement of sale. In the event of a dispute or conflict between the fee simple owner and any such lessee, sublessee, or purchaser (under a recorded document), as to who shall be the owner for purposes of these Bylaws, then such lessee, sublessee or purchaser under a recorded document shall be deemed to be

the owner until such dispute or conflict is resolved. Any person who holds any interest in a lot merely as security for the performance of any obligation shall not be deemed an owner. A trustee, personal representative, or receiver shall be deemed an owner of lots held or administered in that capacity.

**1.5 “Person”** means a natural individual, corporation, partnership, or any other legal entity.

**1.6 “H.O.V.E. road system”** means those certain roadways designated and shown on the map of the Hawaiian Ocean View Estates, duly recorded in the Bureau of Conveyances of the State of Hawaii as File Plan Nos. 692, 738, 787, and 1011 in Liber 4255, Pages 474-476, and shall be all roadways located within the above-mentioned subdivision; provided, however, that any portion or portions of the roadways which may be dedicated or conveyed to the County of Hawaii, State of Hawaii, or other governmental authority shall cease to be part of the H.O.V.E. road system immediately upon such dedication or conveyance and the acceptance thereof by said governmental authority.

**1.7 “Primary Road System”** means the road system defined as the main thoroughfares running east and west and north and south in the H.O.V.E. road system and includes the roads as designated on Exhibit A attached hereto.

**1.8 “Corporation Board”** means the Board of Directors of the Corporation. (“Corporation officers” means the officers created under these Bylaws being president, vice-president, secretary and treasurer.)

**1.9 “Majority of members”** means the members owning in the aggregate more than fifty percent (50%) of the lots in the subdivision. Any specified percentage of the members means members owning the specified percentage of lots of the subdivision.

**1.10 “Fiscal year”** shall be the calendar year commencing January 1st of each and every year.

**1.11 “Master”** means an individual or mediation service, appointed by the Circuit Court for the Third Circuit, Island of Hawaii, to settle possible issues of the proposed budget as set forth in section 6.3.

**1.12 “Send Notice”** means to send by first class mail or any form of electronic transmission, if a member elects to receive such electronic transmissions.

### ARTICLE II. MEMBERSHIP

**2.1 Membership.** Each owner of a lot within the H.O.V.E. Subdivision, by virtue of being such an owner, and for so long as he is an owner, shall be a member of the Corporation.

**2.2 Transfer of Membership.** Membership in the Corporation is appurtenant to the ownership of an interest in a lot and cannot be granted separately from ownership of a lot. Any attempted assignment, pledge, mortgage, conveyance, or other transferred disposition of membership separately from the interest in a lot shall be void. The transfer of title to a lot shall simultaneously transfer the membership appurtenant to the lot to the grantee, whether or not such transfer is mentioned in the deed. The lot owner and any purchaser shall do all things necessary to inform and provide evidence to the Road Maintenance Corporation immediately of the change of ownership with the name and address of the new owner.

**2.3 Proof of Status.** Upon challenge by the Corporation, 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 of a lot. Such proof may consist of

a copy of a duly executed, acknowledged and recorded deed, an agreement of sale, or a lease for an original term of not less than thirty (30) years, or a title insurance policy, or certificate of title from a licensed abstractor, or as shown by county records, showing the person to be the owner of a lot. Any such deed, agreement, lease, policy, or certificate shall be deemed conclusive in the absence of a conflicting claim based upon a later deed, agreement of sale, lease, policy, or certificate. In the event of a dispute as to ownership, the Corporation shall treat the previously recognized owner as the owner entitled to exercise the rights of membership in the Corporation and all owners shall indemnify and hold the Corporation harmless from any such dispute.

**2.4 Record Date.** The Board of Directors may fix a time as a record date for the determination of members entitled to notice of any meeting of the members. The record date so fixed shall not be more than sixty (60) days prior to the date of the meeting. When a record date is so fixed, only members of record on that date shall be entitled to notice of the meeting. Proof of ownership of a lot for voting purposes may be made at any time up to and including the time of any vote of the members and proof of ownership as set forth in these Bylaws may be attached to any ballot or proxy assigned for the purposes of a vote.

**2.5 Membership Records.** The Board of Directors shall do all things necessary to maintain a reasonably up-to-date membership list. Such membership list should accurately reflect changes of ownership within ninety (90) days of any actual change of ownership. All ballots, notices of meetings and assessment notices shall contain a change of ownership form and language notifying the recipient that if the recipient is no longer the owner of a H.O.V.E. lot, he should so notify the Corporation Board and such recipient should forward the notice and agenda to the new owner if known. The Board may adopt such other procedures in its discretion necessary to maintain this updated membership list.

**2.6 Voting Rights; Ballots; Proxies.** At annual or special meetings of the members of the Corporation, each member shall be entitled to one vote for each lot owned. Votes may be cast in person, by ballot or by proxy. If more than one person holds ownership interest in any lot, the vote for such lot may be exercised by any one of them present at any meeting in the absence of protest by the other co-owner or co-owners, and in case of protest, each co-owner shall be entitled to only a share of such vote in proportion to its share of ownership in such lot. Cumulative voting is permitted as provided in Section 416-74 Hawaii Revised Statutes, as the same now exist or is hereafter amended. A majority of the votes cast at any meeting in person, by ballot, or by proxy shall determine all issues to be voted on by the membership; except as specified in section 4.1.

**2.7 Ballots.** Each member entitled to vote in accordance with the terms and provisions of these Bylaws may vote by written ballots. Votes shall be placed in an envelope plainly marked "ballot" and returned to the Corporation office on or before the meeting date. Ballots received after the meeting will not be counted. The Board shall enclose with the notice of the annual meeting or any special meeting a ballot to be used for voting on all of the issues on the agenda for such annual meeting or special meeting. Such issues shall include, without limitation, the paving plan, budget, election of directors and officers, and other matters to be voted on by the membership. In addition, the Board will cause to be sent to any owner a ballot upon request by that owner. All ballots, proxies, etc. will be sent to, and counted by, the League of Women Voters or

other independent, impartial organization.

**2.8 Proxies.** 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, on or before the date of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. A proxy shall be deemed revoked when the secretary shall receive actual notice of cancellation of the proxy from the member or upon the death or judicially declared incompetence of the member, or upon termination of the member's status as an owner, or upon the appearance at the meeting of the member giving the proxy.

**2.9 Annual Meeting.** There shall be an annual meeting of the members held on the second Saturday in October of each year. This date is subject to change by the Board in the event of a natural disaster.

**2.10 Special Meetings.** Special meetings of the members of the Corporation may be held at such time and at such place as may be designated by the Board of Directors 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 request for a special meeting filed in writing with the secretary, signed by the president, or by a majority of the directors, or by petition by 100 members.

**2.11 Notice of Meetings.** Except as otherwise required by law, notice of each meeting of the members of the Corporation, specifying the day, time and place of 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 the direction of the secretary to each member of the Corporation by newsletter at least thirty (30) days before the date fixed for such meeting. Such notice shall be in writing and shall be sent to the owner at his residence address or his usual place of business, as it appears on the books of the Corporation, by mail, first class, postage prepaid, addressed to him at such address, or by electronic transmission if elected by the member. If notice is given pursuant to the provisions of these Bylaws, non-receipt of the actual notice of any meeting by any member of the Corporation shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting. Any legal requirement of a quorum shall be deemed to have been met if notice is given pursuant to the provisions of these Bylaws to at least two thirds (2/3) of the membership. Any member of the Corporation may waive notice of any meeting either prior to or after the meeting, with the same effect as though notice of the meeting had been given 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. Along with the notice of the meeting the Board shall cause to be sent to each Owner an agenda of the issues to be decided at such meeting and a ballot providing a space for the owner to vote on all such issues as are set forth in the agenda. No issues or votes which are not described in the agenda may be voted on at any membership meeting. In addition to the right of the Board to set the agenda or place items on the ballot, issues shall be added to the agenda or ballot in the following manner: a signed petition of at least 100 lot owners delivered to the Corporation office or any Director at least twenty five (25) days prior to the notice of any annual or special meeting called pursuant to paragraph 2.10 for that purpose shall cause that issue to be added to the agenda or ballot.

**2.12 Annual Report.** An annual report shall be sent to the members thirty (30) days prior to the annual meeting. This annual report shall include statements of the income and expenses of the budget for the previous year, the current year covering the period January

1 to June 30, and next year's proposed budget.

## ARTICLE III. BOARD OF DIRECTORS

**3.1 Number of Directors.** There shall be a Board of Directors of the Corporation of not less than three (3) nor more than eleven (11) members. Subject to the foregoing limitations, the number of directors shall be not less than the number of members of the Corporation willing to so serve. One third (1/3) of the directors shall be elected each year by the members of the Corporation at their annual meeting to hold office until their successors shall have been elected, provided that the number of directors may be decreased or increased subject to the foregoing limitations, and if increased, the additional directors may be elected by the members at any special meeting called for such purpose to hold office until their successors have been elected. All members of the Board of Directors must be members of the Corporation in good standing and current with their dues and assessments.

**3.2 Nomination of Directors.** Any group of members representing ownership of ten (10) lots may nominate another member to be on the Board of Directors. Such nomination shall be accomplished by the lot owner submitting the nomination in writing, signed by the nominating members, to the Board of Directors at least thirty (30) days prior to the date for notice of the annual meeting. Any such person so nominated shall be placed on the ballot for election of directors, to be mailed with the notice of meeting to all members.

**3.3 Election and Tenure.** Directors shall be elected to serve a term of three (3) years beginning when installed at the annual meeting in October. Each director shall continue to exercise the powers and duties of the office until his successor shall have been installed by the Corporation. Any director elected before the adoption of these Bylaws shall continue to serve until his term expires.

**3.4 Removal of Directors.** The entire Board of Directors or any individual director may be removed from office without cause by vote of a majority of members voting by proxy, ballot or in person at any annual or special membership meeting. Any director may be subject to removal if a petition signed by 100 or more lot owners is delivered to the Corporation or any Director at least twenty five (25) days prior to the notice of annual or any special meeting called pursuant to paragraph 2.10 for that purpose.

**3.5 Vacancies.** Vacancies on the Board of Directors may be filled by the vote of a majority of the remaining directors though less than a quorum, or by the sole remaining director, and each director so elected shall hold office for the unexpired term of the Director he replaces subject to the ratification by the members at the next annual meeting.

**3.6 Compensation.** No director shall receive compensation for the services he may render to the Corporation, either during his tenure, or for one year following the termination of his term. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**3.7 Meetings, Notice, Quorum.** An open annual meeting of the Board of Directors shall be held each year immediately after the adjournment of the annual meeting of the members of the Corporation and at the place of such annual meeting, without call or formal notice for the purpose of electing officers of the Corporation for the following year. Newly elected board members shall be able to run and vote for officers of the Corporation. Special meetings may be called by the president of the Corporation or by any two (2) members of the Board of Directors, and any such meeting shall be held

on such day, at such time and such place in the community as shall be specified by the person or persons calling the meeting. The Board shall meet regularly once a month on a regular schedule as determined by the Corporation Board. Interim Board meetings may be by telephone, however, such telephonic Board meetings shall comply with the requirements for a quorum present at one time. Board business shall not be conducted by telephonic means unless a quorum of the directors are present on the telephone at the same time. Interim Board of Directors meetings may be called at any time by the President or Vice President to deal with financial matters requiring immediate attention (matters that must be acted upon in a time that does not permit notice of a regular board meeting), so long as the action does not alter the Corporation's approved budget or paving plan, without fulfilling the notice requirements set forth in paragraph 3.8 below.

**3.8 Notices.** Notice of each regular meeting of the Corporation Board specifying the day, time and place of the meeting and the proposed agenda shall be given at least seven (7) days prior to the meeting or under the direction of the secretary, or by a person calling the meeting, to each member of the Board of Directors, by advising him in writing of the meeting, or by leaving written notice of the meeting at his residence or usual place of business as shown on the Corporation's books, or by mailing written notice of the meeting, postage prepaid, addressed to him at such residence or usual place of business or by telephone communication. Non-receipt of written notice actually mailed of any meeting by any member of the Board of Directors shall not invalidate the meeting or any proceedings taken or any business done at the meeting. Any member of the Board of Directors may waive notice of any meeting either prior to or after the meeting, with the same effect as though notice of the meeting had been given him. The presence of any member of the Board of Directors at a meeting shall be the equivalent of a waiver by him of notice of the meeting.

**3.9 Agenda for Regular Board Meetings.** The notice required for the regular meetings of the Board of Directors shall include an agenda of the matters to be decided upon at such meeting. No matter not on the agenda shall be decided at that meeting except as to financial matters requiring immediate attention (matters that must be acted upon in a time that does not permit notice or agenda to be published), so long as the action does not alter the Corporation's approved budget or paving plan.

**3.10 Quorum.** A majority of the members of the Corporation Board shall constitute a quorum for the conduct of business and any decision of a majority if such quorum within the scope of the authority of the Corporation Board shall be valid and binding on the Corporation unless a greater number is required by law.

**3.11 Notice of Board of Directors' Meetings to Membership.** In addition to the notice required above, at least seven (7) days before any regular Corporation Board meeting, the notice of such meeting and the agenda shall be posted at the H.O.V.E. Community Center, the Corporation offices, on bulletin boards that are conspicuous in the H.O.V.E. community and as determined by the Board and the Board shall cause the notice and agenda to be published in at least two (2) newspapers or aired on any radio station, that do not charge for such publication or airing.

**3.12 Attendance by Members.** Any member may attend any meeting of the Corporation Board, save that the Board, in its discretion, may declare an executive session to discuss and make decisions concerning the following issues provided that such resolved decisions are announced to the next membership meeting:

- (a) labor contracts;
- (b) litigation involving the Corporation
- (c) the hiring, firing and disciplinary action concerning employees.

**3.13 Officers and Agents; Designation of Duties.** 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 installed and qualified. The Corporation may have such other officers, agents, and factors as may be deemed necessary, who shall be appointed in such a manner and hold their offices for such terms and have such authority and duties as may be determined by the Board of Directors. As far as is permitted by law, directors may be appointed officers. In addition to the duties and powers set forth herein, each officer shall have such duties and powers as are commonly instant to his office and 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 Bylaws, or by the Board of Directors, such officer, agent or employee shall obey the orders and instruction of the president.

**3.14 President.** Subject to the control of the Board of Directors, the president shall be the chief executive office of the Corporation and shall exercise general supervision and direction over the management and conduct of affairs and business of the Corporation. Unless the Board of Directors otherwise directs, he shall preside at all meetings of the members and of the Board of Directors at which he is present.

**3.15 Vice-President.** The vice-president, or if more than one shall have been appointed the vice-president 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 vacated. Each vice-president shall have such other powers and duties as may be given to him by law or in these Bylaws or as may be assigned to him from time to time by the Board of Directors or by the president.

**3.16 Secretary.** The secretary shall be responsible for the membership records, all documents pertaining to the title of 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 these Bylaws. The secretary shall cause to be recorded all proceedings of the meetings of the members and directors in a book which shall be the property of the Corporation, with the original or duplicate copy to be kept for that purpose at the office of the Corporation in Hawaii and perform such other duties as shall be assigned to him.

**3.17 Treasurer.** Subject to the direction and under the supervision of the Board of Directors and the provision of these Bylaws, the treasurer shall oversee the care and custody of the funds and valuable papers of the Corporation, shall have 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 reports of the same on a cash basis as often as required by the Board of Directors.

**3.18 Removals, Resignations, Vacancies.** The Board of Directors may, at any meeting called for the purpose by a vote of the majority of their entire number, remove from office any officer of the Corporation for or without cause. The Board of Directors, at any meeting by vote of a majority of the directors present at such meet-

ing, may accept the resignation of any officer or director of the Corporation, or remove or accept the resignation of any agent 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 or agent of the Corporation. Any vacancy occurring in the office of president, vice-president, secretary or 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. A Director shall be removed for absence of more than three (3) consecutive regular Board meetings unless the absence is waived by the Board.

**3.19 Bonding.** All officers and directors with the authority to handle funds of the Corporation shall be adequately bonded by standard fidelity bonds, provided, however, that in all cases the president, treasurer, and office manager shall be bonded. Adequate bonding as required hereunder shall mean a bond of sufficient size to adequately protect the Corporation from any acts of malfeasance or misfeasance of corporate personnel commensurate with the amount of money being handled by such person or persons.

#### ARTICLE IV. AMENDMENTS

**4.1** These Bylaws may be altered, amended, added to or repealed by an affirmative vote of two thirds (2/3) of the members voting by ballot, proxy or in person at any annual or special meeting called for that purpose. Notice of the proposed amendments shall have been given in the notice of annual or special meeting and such proposed amendments included on the ballot sent with the notice to the members. However, such amendments shall not change or alter the powers and purposes as set forth in the Articles of Incorporation and these Bylaws. Sections 5.8, 5.9, 5.10, 6.1, 6.2, 6.3 and 6.4 can only be changed by a vote of two thirds (2/3) of all members of the Corporation.

#### ARTICLE V. ASSESSMENTS

**5.1 Definition of Road Maintenance Expenses.** Road maintenance expenses means all costs and expenses of operating and administering the Corporation during a fiscal year. Road maintenance expenses shall include, without limiting the generality of the foregoing, all costs and expenses of repairing, maintaining and improving the H.O.V.E. road system, all expenses for salaries, taxes, assessments, utilities, equipment purchases, operating expenses, insurance and bond premiums, accounting and legal fees, management fees, deficits and income from prior years, the establishment of operating and other reserves, and all other charges and outgoings of every description to which the Corporation or its property may be assessed or become liable.

**5.2 Purpose.** It is the intent of these Bylaws that each owner of a H.O.V.E. lot will be responsible for and pay a proportionate share of the road maintenance expenses. Each lot owner's share of such road maintenance expenses shall be due and payable in annual, semi-annual, quarterly or monthly installments, as determined by the Board and shall be due within sixty (60) days after mailing notice of assessment by the Corporation. The Board may determine that semi-annual, quarterly or monthly installments may be assessed interest as set forth in Paragraph 5.9.

**5.3 Assessment for Road Maintenance Expenses.** Each owner of a H.O.V.E. lot, or in the event of multiple owners, such multiple

owners jointly and severally, shall be responsible for and shall pay to the Corporation a proportionate share of the annual road maintenance expenses by way of assessment as set out in these Bylaws.

**5.4 Apportionment of Road Maintenance Assessments and Supplemental Assessments.** The assessment payable by each H.O.V.E. lot owner shall be equal to a fraction of such total expenses, the numerator of which fraction shall be the total number of H.O.V.E. lots owned by such owner, and the denominator of which shall be the total number of all the H.O.V.E. lots.

**5.5 Determination of Assessment.** Subject to the provisions of these Bylaws and the Articles of Incorporation, the Corporation Board shall have the power and authority to determine all matters in connection with the respective assessments payable to it, including, without limitation, power and authority to determine where, when, and how such assessments shall be paid and, and each owner shall comply with all such determinations.

**5.6 Supplemental Assessments.** Subject to the provisions of these Bylaws and the Articles of Incorporation, in addition to the road maintenance assessments, the Corporation Board may levy supplemental assessments as a result of natural disasters, payable over such period as the Corporation may determine for the purpose of defraying any expense incurred as a direct result of actual material or labor cost increases from those set forth in the approved budget. Such increase must be approved by a majority of those members voting by ballot, proxy or in person at an annual or special membership meeting.

**5.7 Special Assessments.** In addition to road maintenance assessments and supplemental assessments, the Corporation may levy special assessments against individual lot owners for expenses which are incurred or to be incurred by the Corporation as provided in these Bylaws, as a result of any owner's act or failure or refusal to act or otherwise comply with the provisions of these Bylaws or regulations adopted thereto. Specific actions which may call for a special assessment are: 1) Damage by construction equipment, 2) Damage by delivery vehicles, 3) Misuse of vehicles entering or leaving a driveway, 4) Any misuse of roads which causes damage to them resulting in expenses to the Corporation, 5) Driveways built in such a way that they cause rocks to enter the right of way.

**5.8 Lien for Assessments and Other Amounts.** All road maintenance assessments, supplemental assessments, and special assessments, together with late charges, interest, cost and reasonable attorneys' fees, shall be a charge on the land and the Corporation shall have a continuing lien against the owner's interest in such lot to secure payment of any assessments, charges or other amount due and owing to the Corporation, plus late charges and interest as provided in paragraph 5.9, from the date due and payable until paid, plus all cost and expenses of collecting the unpaid amount, including attorneys fees.

**5.9 Effect of Nonpayment of Assessment; Remedies of Corporation.** Any assessment which is not paid within sixty (60) days of its due date shall be delinquent. In the event that an assessment becomes delinquent, the Corporation, in its sole discretion, may take any or all of the following actions:

- a) Assess a late charge of \$10.00 per delinquency;
- b) Assess interest thereon in the amount of 12% per annum;
- c) Bring an action at law against any owner personally obligated to pay assessments;
- d) File a Notice of Delinquency and Statement of Lien with respect to the lot, and foreclose on the lien as more fully set forth in 5.10 hereof. Any such action shall be in addition to any other remedies provided by law for the enforcement of such obligations.

**5.10 Foreclosure of Lien.** In the event that any assessment is delinquent, the Corporation may file a Notice of Delinquency and Statement of Lien by recording in the Bureau of Conveyances of the State of Hawaii a written statement with respect to the lot, setting forth the name of the lot owner, the legal description of the lot, the name of the Corporation and the amount of delinquent assessment then owing, which statement shall be duly signed and acknowledged by an officer, director or legal agent of the Corporation. A copy of such statement shall be mailed by certified mail, return receipt requested, to the owner at the address of the lot or at such other address as the Corporation may have in its records for such owner. If no return receipt or other proof of acceptance results from such mailing, then the notice of default shall be posted on the property and published in the West Hawaii Today and the Hilo Tribune newspapers. At any time after one year after the mailing of such notice, or publication and posting, the Corporation may proceed to foreclose the lien in the manner for foreclosure of mortgages in the State of Hawaii. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such obligations.

**5.11 Foreclosure Restrictions.** The Corporation or board members may not purchase any property foreclosed by the Corporation. Former board members may not purchase said properties for a period of three years after leaving the board.

## **ARTICLE VI. BUDGET AND ROAD MAINTENANCE PLAN**

**6.1 Determination of Budget for Road Maintenance Assessments.** The fiscal year of the Corporation shall be the calendar year. Prior to sending the notice of the annual membership meeting, as set forth on Paragraph 2.11, the Corporation Board shall determine the total amount to be raised by road maintenance assessments during that fiscal year and prepare a proposed budget as set forth below. The amount to be raised by the assessments for any fiscal year shall be determined in the following manner. The Corporation shall prepare, or cause to be prepared, and approve a budget for the fiscal year showing, in reasonable detail, the estimated road maintenance expenses which will be payable in that fiscal year to fulfill the regular operating functions and obligations of the Corporation in that fiscal year, including amounts necessary to cover obligations made in connection with, or contemplated under, any previously approved budgets, plus an amount sufficient to provide a reasonable carry over reserve for the next fiscal year (the "operating budget") including any amounts necessary to pay for improvements of the H.O.V.E. road system. The Corporation Board shall subtract from the operating budget the amount equal to the anticipated surplus attributed to Corporate income received and assessments collected but not disbursed in the fiscal year immediately preceding the fiscal year for which the operating budget has been prepared. If the Corporation Board fails to determine or cause to be determined the total amount to be raised by its assessments in any fiscal year, and/or fails to notify the owners of the amount of such assessments for any fiscal year, then the amounts of assessments shall be deemed to be either the amount assessed in the previous fiscal year or a maximum of \$60.00 per lot, whichever is lower.

**6.2 Determination for Road Maintenance Plan.** Prior to giving notice of the annual meeting, as set forth in Paragraph 2.11, the Corporation Board shall determine a plan for maintenance, repair, and improvement to the H.O.V.E. road system to be completed for

that fiscal year. The road maintenance plan will specifically identify an estimated schedule for completion, and the nature of the maintenance, repair, and/or improvement of the various roads and their costs. In developing the road maintenance plan, the Corporation Board shall endeavor to utilize equitable principles in allocating the resources fairly among lot owners, with priority given to the primary road system.

**6.3 Approval of Budget and Road Maintenance Plan at Annual Meeting.** At each annual meeting of the members, the proposed budget and road maintenance plan will be submitted to the membership for voting. The proposed budget and paving plan and ballot for approval or disapproval shall be submitted to the membership with the notice of annual meeting and agenda to least thirty (30) days prior to the annual meeting. The budget and road maintenance plan must be approved by a majority of the lot owners voting in person, by ballot, or by proxy at the annual membership meeting. In the event that a majority of the voting members do not approve either the budget or the road maintenance plan, a budget and/or road maintenance plan, proposed by the Corporation Board shall be submitted to the Circuit Court for the Third Circuit, Island of Hawaii, for approval. Any such proposed budget and paving plan submitted to the Circuit Court for approval hereunder, may not exceed the previous year's budget or paving plan by ten percent (10%). The Circuit Court and/or a master appointed by the Circuit Court, which master may be a mediation service, will review the proposed budget and/or proposed road maintenance plan, provide an opportunity for comment and input on such plan by the membership, and then, prior to the beginning of the next fiscal year, adopt a budget and/or road maintenance plan for that fiscal year as such Court and/or master deems equitable. All costs of such procedure shall be paid by the Corporation.

**6.4 Designation of Road Building and Survey Officer.** On a yearly basis for a period of no more than seven years, or until the master road program is finished, whichever is the lesser, there shall be appointed a Committee of Three, one member by the Board of Directors, one member by HOVECA Board of Directors and one member by the League of Women Voters, if available (or, if not, then by a willing similar community-minded, non-profit organization). Said Committee of Three will annually select an independent road engineer or specialist who will have, and apply, in addition to other types of road construction, knowledge of the specific terrain conditions of H.O.V.E. and, for the immediate past year, make a survey of the H.O.V.E. roads which will reveal the substance and quality of road construction by the Road Maintenance Corporation over the previous year and who will give opinions and recommendations regarding the subsequent year. Such survey or essence thereof, shall be reported to the Board of Directors, published and delivered to all property owners in the next occurring newsletter. The expense of said survey will be borne by the Road Maintenance Corporation. In making its selection of an independent road engineer or specialist, the Committee of Three will keep in mind the wider availability and technical knowledge of a prospective appointee from the mainland United States.

## **ARTICLE VII. USE OF H.O.V.E. ROAD SYSTEM**

**7.1 Use by Owners.** All owners of H.O.V.E. lots shall utilize the H.O.V.E. road system in a reasonable manner.

**7.2 Road Use Regulations.** The Corporation Board may adopt reasonable regulations controlling the use of the H.O.V.E. road sys-

tem, including without limitation, speed limits, placement of stop signs and other road signs, and use of and parking on road rights of way. Such regulations may require permits for vehicles in excess of certain weights or reasonable charges for special road usage as determined by the Corporation Board. No track vehicles shall be allowed on the H.O.V.E. road system.

## **ARTICLE VIII. CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**8.1 Contracts.** All notes, acceptances, conveyances, contracts, and other instruments shall be signed by the president and vice-president or the president or vice-president and the treasurer or secretary on behalf of the Corporation, only after resolution by the Board of Directors.

**8.2 Loans.** No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless specifically authorized by a resolution of the Board of Directors. General authority will not be permitted. Such loans shall be executed by the president and vice-president or the president or vice-president and treasurer or secretary pursuant to such resolution.

**8.3 Checks, Drafts, Etc.** All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation under the amount of \$1,000.00 shall be signed by such officer or officers, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness in excess of \$1,000.00 shall only be executed upon specific resolution by the Board of Directors and executed by the president and vice-president or the president or vice-president and the secretary or treasurer.

The Board may authorize in advance, by resolution, the payment of certain items that are over \$1,000. These are:

- 1: Purchase of oil or blue chip.
- 2: Two week salary checks.
- 3: Payments of Social Security, SUTA, FUTA & FICA.
- 4: Major equipment repair up to a limit of \$3,000.
- 5: Medical insurance payments.
- 6: Regular insurance payments, (workers compensation, liability, equipment insurance, etc.), provided that these payments are no more than 10% above the previous year's payments.
- 7: Postage and printing for one newsletter as called for in the Bylaws. Items 2 through 7 may be authorized in a general resolution of the Board at the beginning of each fiscal year. Item 1 will be authorized when each contract or purchase order for oil or chip is passed by the Board.

**8.4 Deposits.** All funds of the Corporation, not otherwise employed, shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories in the State of Hawaii, the deposits of which are insured by an agency of the United States government for the full amount of the balance of the account as the Board of Directors may select. The Corporation Board in its discretion subject to the advice and counsel of the Corporation accountant may deposit a portion of corporate funds in non-insured investments and accounts for purposes of obtaining higher interest on investments. However, such investments shall be conservative and prudent.

**ARTICLE IX. GENERAL PROVISIONS**

**9.1 Inspection of Records.** The membership register or duplicate membership register, the books of account, and the original or duplicate minutes of proceedings of the members, the Board of Directors, and the Executive Committee, if any, shall be open to inspection at the Corporation office upon the written demand at any reasonable time.

**9.2 Indemnification.** The corporation shall indemnify every director and officer and his personal representative against all expenses actually and reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of being or having been an agent of the Corporation if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and with respect to any criminal proceedings, had no reasonable cause to believe his action was unlawful. No indemnification shall be made in relation to matters as to which a party claiming indemnification shall be adjudged to be liable for negligence or misconduct in the performance of his duties to the Corporation, unless a court shall determine that despite the adjudication of liability but in view of the circumstances, such person is entitled to indemnity for such expenses as the court determines are proper. Any indemnification shall be made by the Corporation in compliance with Section 416-35 Hawaii Revised Statutes (Supp. 1984). The foregoing right of indemnification shall not be exclusive of any other rights to which such person may be entitled.

**9.3 Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions hereof.

**9.4 Annual Accounting.** An annual audit report and account, including statements of income and disbursements on an accrual basis, shall be available for inspection by members at the Corporation office not later than 220 days after the close of the Corporation's fiscal year or sent to any member for a fee of four dollars (\$4.00).

**9.5 Inspection of Bylaws.** The Corporation shall keep in its principal office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the members at all reasonable times.

**9.6 Gender.** The use of a pronoun of any gender in these Bylaws shall be deemed to include the other gender and the use of the singular shall be deemed to include the plural.

**9.7 Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**9.8 Severability.** The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision.

**9.9 Dedication.** In the event that the H.O.V.E. road system is dedicated to the County, or the County accepts maintenance of such road system pursuant to any agreement or otherwise, the Corporation shall dissolve and the assets of the Corporation will be liquidated and distributed to the membership unless a majority of the members vote otherwise.

**9.10 Parliamentary Authority.** The rules contained in the cur-

rent edition of *Robert's Rules of Order Newly Revised* shall govern officers and directors in all cases to which they are not inconsistent with these Bylaws.

**ADOPTION OF BYLAWS**

The membership voted to approve the *Amended and Restated Articles of Incorporation and Bylaws* of the H.O.V.E. Road Maintenance Corporation on the 7th day of March 1992.

I HEREBY CERTIFY THAT I HAVE READ THE ABOVE AMENDED AND RESTATED ARTICLES OF INCORPORATION AND BYLAWS AND I CERTIFY THAT THEY ARE TRUE AND ACCURATE AS OF

2-22-08  
date

Mary Kastle  
MARY KASTLE - Secretary  
H.O.V.E. ROAD MAINTENANCE CORPORATION