

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

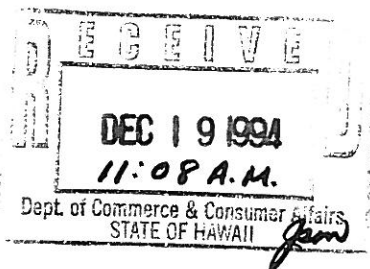
EXPEDITED
REVIEW

BUSINESS REGISTRATION DIVISION

In the Matter of the Incorporation)
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 of)
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 KGE SERVICE CORPORATION)
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ARTICLES OF INCORPORATION

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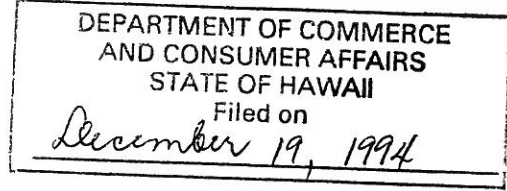
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1311360

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

In the Matter of the Incorporation)
)
 of)
)
 KGE SERVICE CORPORATION)
)
 _____)



ARTICLES OF INCORPORATION

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii certify as follows:

ARTICLE I
CORPORATE NAME

The name of the corporation shall be KGE SERVICE CORPORATION.

ARTICLE II
LOCATION OF INITIAL OFFICE

The address of the corporation's initial office is in Kailua-Kona, Hawaii. There is no specific street address for the corporation's office. The post office address for the corporation's initial office is P.O. Box 9346, Rancho Sante Fe, California 92067.

ARTICLE III
DURATION

The corporation shall have perpetual duration.

ARTICLE IV
CORPORATE PURPOSES AND POWERS

Section 4.1 Corporate Purposes. The corporation is organized to provide for, in the manner consistent with these Articles, the By-laws and the "general plan restrictions" recorded in the Bureau of Conveyances of the State of Hawaii on May 14, 1976, in Liber 11406, Page 32, and any renewal thereof, the development, maintenance, repair, beautification, preservation and management of common properties and facilities within those certain lands situated at Kahuku, Kau, County and State of Hawaii, hereinafter referred to as "Kona Garden Estates", which common properties and

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facilities shall be for the common use, benefit and enjoyment of the members of the corporation, who are owners of or holders of interests in land in Kona Garden Estates as follows:

(A) To plan, own, acquire, lease, develop, construct, reconstruct and provide roadways, parkways, footpaths, rights-of-way, drain facilities, lighting facilities, sewer, water and electrical systems, recreational areas and facilities and such other common properties, improvements, facilities and services as are consonant with the purposes of the corporation in all or any part of Kona Garden Estates, upon the following terms and conditions:

(1) That no expenditure by the corporation in the exercise of such powers shall be made unless authorized pursuant to a General Plan for same, which plan and that estimated cost thereof shall have been approved by a vote or written consent of members entitled to a majority of the votes of the membership.

(2) That the construction and acquisition of improvements and facilities and the providing of services in accordance with a General Plan for same may be accomplished in increments provided that adequate provision is made for accomplishment of the General Plan as a whole;

(B) To maintain, repair and beautify the roadways, parkways, footpaths, rights of way and recreational areas in Kona Garden Estates;

(C) To pay all expenses incident to the conduct of the business of the corporation;

(D) To enforce any and all covenants, restrictions and agreements applicable to the lands in Kona Garden Estates generally pursuant to the General Plan including such or otherwise;

(E) Insofar as permitted by law, to do any other thing that, in the opinion of the Board of Directors, will promote the common benefit and enjoyment of the residents of Kona Garden Estates, including the adoption and publication of rules and regulations governing the use of common properties, improvements and facilities in Kona Garden Estates and the personal conduct of any person thereon and the establishment of penalties for infractions thereof;

(F) In connection with the exercise of any powers conferred upon the corporation, to levy regular assessments upon its members in proportion to their respective interests in Kona Garden Estates, which assessments shall constitute liens upon the lands assessed subject to the enforcement provisions hereinafter provided, and which assessments shall not exceed the equivalent of Two Dollars (\$2.00) per acre per month; except that no assessments shall be made against land in Kona Garden Estates owned by Kona Hawaiian Investment Corporation or the File Plan Roads (the term "File Plan Roads" as used herein shall mean the roads shown on File Plans 1047 and 1372 and the roads shown on any other File Plan of lands in Kona Garden Estates.);

(G) In connection with the exercise of any powers conferred under Section 4.1(A) of this Article, and subject to written approval of the members entitled to a majority of the votes of the membership, to issue bonds or other instruments of indebtedness and to secure same by specially assessing its members in proportion to their respective interests in Kona Garden Estates, the resulting

assessments to constitute liens upon the lands assessed, subject to the enforcement provisions hereinafter provided, and the rights to which liens may be pledged, hypothecated or transferred as may be required;

(H) To collect and enforce payment by any lawful means, of all charges and assessments provided for herein or in the By-laws, including the sale of land subject to any assessment lien at public or private sale on such reasonable terms and conditions as the directors of this corporation shall determine, the proceeds of any such sale to be applied first to the payment of the corporation's costs, including legal expenses, of the sale proceeds, next to the payment of the delinquent amount secured by the lien and the balance, if any, to the owners of the land as their interests may appear;

(I) To sue or be sued in any court;

(J) To make and use a common seal and to alter the same at its pleasure;

(K) To acquire (by gift, purchase, lease or otherwise), own, hold, improve, build upon, operate, maintain, rent, lease, assign, sell, transfer, convey, donate, dedicate for public use or dispose of such property, real, personal and mixed, as the purposes of the corporation shall require or appear to be served, without limit as to amount, and to borrow money, to mortgage, pledge and hypothecate the same to secure any debt of the corporation;

(L) To draw, make, accept, endorse, assign, discount, execute and issue promissory notes, bills of exchange, bills of lading, drafts, obligations, certificates, dock and other warrants, and other instruments to be assignable, negotiable or transferable by delivery or to order, or otherwise, as the purposes of the corporation shall require;

(M) To enter into and perform contracts, undertakings, and obligations of every kind and character consonant with the purposes of the corporation and subject to the limitations hereinabove set forth.

(N) To appoint such subordinate officers and agents as the activities of the corporation may require; and

(O) To make By-Laws not inconsistent or in conflict with the laws of this Articles;

(P) And generally to possess and to exercise any and all rights, privileges, powers and immunities which are now or may hereafter be secured by law to chartered benevolent and charitable corporations and which are reasonably incidental to the fulfillment of the objects and purposes hereinabove set forth and to the exercise of any powers possessed by or granted to this corporation.

Section 4.2 Corporate Powers. The corporation shall have all powers, rights, privileges and immunities, and shall be subject to all of the liabilities conferred or imposed by law upon nonprofit

corporations, and shall be subject and have all the benefits of all general laws with respect to corporations.

ARTICLE V
DIRECTORS AND OFFICERS

(A) The officers of the corporation shall be a President, a Vice-President, a Secretary and a Treasurer. The corporation may have such additional officers as may be determined in accordance with the By-Laws from time to time. The officers shall have the powers, perform the duties and be appointed as may be determined in accordance with the By-Laws. Any person may hold two offices of said corporation if so provided in the By-Laws.

(B) The Board of Directors of the corporation shall consist of not less than three (3) nor more than twenty-five (25) persons. The directors (and alternate directors and/or substitute directors, if any) shall be elected or appointed in the manner provided in the By-Laws of the corporation and may be removed from office in the manner provided in the By-Laws and all vacancies in the office of the director or of any officer shall be filled in the manner provided in the By-Laws; provided, however, that the By-Laws shall specify that the regular election of directors and officers and the filing of vacancies in the office of directors or of any officer shall be accomplished during the annual meetings of the corporation which shall be held on the third Tuesday of January each year commencing in 1995.

The initial officers and directors of the corporation, who shall serve until their successors are duly elected and qualified, along with the residence address of each, are as follows:

<u>Name</u>	<u>Position</u>	<u>Residence Address</u>
Arnold R. Dahlberg	President, Treasurer/ Director	P.O. Box 9346 Rancho Santa Fe, CA 92067
David M. Dahlberg	Secretary/ Vice-President	P.O. Box 9341 Rancho Santa Fe, CA 92067
Wilfred M. Oostendorp	Director	P.O. Box 6616 Captain Cook, HI 96704
Miriam Baker	Director	P.O. Box 6383 Captain Cook, Hawaii 96704

(C) The affairs of the corporation shall be conducted by the Board of Directors and all the powers and authority of the corporation shall be vested in and may be exercised by the Board of Directors except as otherwise provided by law, this Articles of Incorporation or the By-Laws of the corporation, to determine from time to time the number of directors within the limitations hereinabove stated, and to make and adopt proper rules and regulations for the conduct of the affairs of the corporation.

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ARTICLE VI
MEMBERSHIP

Each person, corporation or other legal entity who is, or such persons, corporations or other legal entities who are collectively, the "Owner" of any Lot within the subdivision known as Kona Garden Estates shall be a member of the corporation. The term "Lot" as used herein shall mean each separately numbered parcel within Kona Garden Estates situate in Kahuku, Kau, County and State of Hawaii, being all of the property described in that certain deed dated July 25, 1966, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5404, Page 40, including as a portion thereof all of the real property shown on File Plans 1047 and 1372 filed in the Bureau of Conveyances of the State of Hawaii. Proof of status as an "Owner" of any such Lot for purposes of establishing membership in the corporation shall be furnished in accordance with the provisions pertaining thereto set forth in the By-Laws. Membership shall be appurtenant to and may not be separated from the ownership of any such Lot, and such ownership shall be the sole qualification for membership in the corporation.

The rights of membership are subject to the payment of regular and special assessments levied by the corporation, the obligation of which assessments is imposed against each owner of and become a lien upon the owner's interest in the property against which such assessments are made as provided in this Article, from ownership of a fee simple or leasehold interest in any land in Kona Garden Estate

ARTICLE VII
VOTING RIGHTS

Members of the corporation shall be entitled to one (1) vote for each acre of land for which his interest therein entitles him to membership in the corporation. When more than one person, corporation or other legal entity owns a single Lot, there shall be one "Voting Owner" for each such Lot. The "Voting Owner" for each Lot shall be designated in accordance with the manner provided by the By-Laws. For the purposes of determining the number of votes to which a member is entitled, fractional holdings shall be rounded off to the nearest acre; provided that any member who holds less than one (1) acre of land in Kona Garden Estates shall be entitled to one (1) vote.

Notwithstanding anything to the contrary contained herein, the rights of members of the corporation to voting shall be subject to the voting requirements of Chapter 415B, Hawaii Revised Statutes, for purposes of voting on matters specified in Chapter 415B.

ARTICLE VIII
NONPROFIT NATURE

The corporation is nonprofit in nature, and shall not authorize or issue shares of stock. No dividends shall be paid and no part of the income or profit of the corporation shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation; provided, however, that the corporation shall be empowered to make payments and distributions in furtherance of the purposes for which it is organized and operated.

ARTICLE IX
LIABILITY AND INDEMNIFICATION OF
OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 9.1 No Liability to Corporation. No director, officer, employee or other agent of the corporation and no person serving at the request of the corporation as a trustee, director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise and no heir or personal representative of any such person shall be liable to the corporation for any loss or damage suffered by it on account of an action or omission by such person as a trustee, director, officer, employee or other agent if such person acted in good faith and in a manner reasonably believed to be in the or not opposed to the best interests of this corporation, unless with respect to an action or suit by or in the right of the corporation 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 or her duty to this corporation.

Section 9.2 Indemnity.

(1) The corporation shall indemnify each 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 corporation) by reason of the fact that the person is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of the person 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, of itself shall not create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that the person's conduct was unlawful.

(2) The corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought or in any other court having

jurisdiction in the premises shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(3) To the extent that a director, officer, employee or other agent of the corporation or a person serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (1) or (2) of this Section 9.2, or in defense of any claim, issue, or matter therein, the person shall be indemnified by the corporation against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection therewith.

(4) Any indemnification under paragraph (1) or paragraph (2) of this Section 9.2 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or other agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in paragraph (1) or (2). Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; or (b) if a quorum is not obtainable, by independent legal counsel in a written opinion to the corporation; or (c) by the members; or (d) by the court in which the action, suit or proceeding was pending upon application made by the corporation or the director, officer, employee or other agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the director, officer, employee, agent, attorney or other person is opposed by the corporation.

(5) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation 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, officer, employee or other agent to repay such amount unless it shall ultimately be determined that the person is entitled to be indemnified by the corporation as authorized in this Section 9.2.

(6) Any indemnification pursuant to this Section 9.2 is not exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of the members, or disinterested director, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs and personal representatives of such a person.

(7) The corporation 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 corporation, or is or was serving at the request of the corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under this Section 9.2.

ARTICLE X
CORPORATE LIABILITY

The property of the corporation shall alone be liable in law for the debts and liabilities of the corporation. The members, officers and directors of the corporation shall incur no personal liability for said debts and liabilities by reason of membership or position, except that every member of the corporation shall be subject to assessment for and on account of debts, expenses and obligations of the corporation as herein provided.

ARTICLE XI
DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon the dissolution or winding up of the affairs of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed only to one or more public agencies, organizations, corporations or trusts or foundations having like purposes to the corporation or to a non-profit, unincorporated association to be formed to succeed to all the rights and duties of the corporation.

ARTICLE XII
BY-LAWS

Section 12.1 Adoption. The By-Laws shall be adopted by the Board of Directors of the corporation.

Section 12.2 Amendment. The By-Laws of the corporation may be altered, amended or repealed by the Board of Directors of the corporation.

ARTICLE XIII
AMENDMENT

These Articles may be subject to amendment from time to time in the manner provided by law.

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I certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.

WITNESSED this 29th day of November, 1994.

Arnold R. Dahlberg
ARNOLD R. DAHLBERG

Wilfred M. Oostendorp
WILFRED M. OOSTENDORP

Miriam Baker
MIRIAM BAKER

Incorporators

STATE OF ²⁴CALIFORNIA ARIZONA)
) SS.
COUNTY OF Maricopa)

On this 23rd day of November, 1994, before me personally appeared ARNOLD R. DAHLBERG, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Julu Shekera
Notary Public, State of ~~California~~ Arizona
My commission expires: _____
My Commission Expires Nov. 03, 1997

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 29th day of November, 1994, before me personally appeared WILFRED M. OOSTENDORP, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Jean Redman
Notary Public, State of Hawaii
My commission expires: 2/19/96

SS

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 29th day of November, 1994, before me personally appeared MIRIAM BAKER, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Jean Redman
Notary Public, State of Hawaii
My commission expires: 2/19/96

SS