

Villages of Kapolei Association

Amended and Fourth Restated Declaration of Covenants, Conditions & Restrictions

(Recorded July 26, 2016)

VILLAGES OF KAPOLEI

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS VILLAGES OF KAPOLEI, is made by HOUSING FINANCE AND DEVELOPMENT CORPORATION, a body corporate and politic of the State of Hawai'i (hereinafter called "Declarant"), whose principal place of business is Seven Waterfront Plaza, Suite 300, 500 Ala Moana Boulevard, Honolulu, Hawai'i 96813, and whose post office address is P. O. Box 29360, Honolulu, Hawai'i 96820-1760.

I. RECITALS

1.01 The Property.

Declarant is the owner in fee simple of that certain real property located in the District of Ewa, City and County of Honolulu, State of Hawai'i, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the "Property").

1.02 The Community Area.

Declarant intends to develop or convey to Developers who will in turn develop portions of the Property (such portion to be developed hereinafter referred to as the "Community Area") with Residences, Commercial Lots, community facilities, employment centers, parks, open space areas and such other related and complimentary uses pursuant to the plan for a community development to be collectively named Villages of Kapolei (hereinafter referred to as "Villages of Kapolei"). The initial Community Area, an area being developed as a portion of "Village I," is more particularly described in Exhibit B attached hereto and incorporated herein. Other portions of the Property will be annexed to the Community Area pursuant to Article IV of this Declaration. The initial plan for Villages of Kapolei is more particularly described in Exhibit C attached hereto and incorporated herein.

1.03 Villages of Kapolei.

Villages of Kapolei will combine practical usefulness and economic benefit with aesthetic enjoyment in a complete town setting that will grow and intensify in its uses, densities and activities, year by year, resulting in the establishment of an urban community, specifically distinct from a uniform, detached suburban development.

1.04 Covenants, Conditions and Restrictions.

In order to enhance the orderly and proper development and use of the Property and the Community Area pursuant to the plan for Villages of Kapolei, to protect the value, desirability and attractiveness of Villages of Kapolei and to promote the quality of improvement and use of the Property and the Community Area as a whole, Declarant deems it necessary and appropriate to subject all of the Property and the Community Area to certain mutual covenants, conditions, and restrictions which will inure to the benefit of all present and future owners of the Property and the Community Area.

II. DECLARATION

2.01 Declaration.

Declarant hereby declares that portions of the Property which comprise or have become annexed to the Community Area shall be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the covenants, conditions and restrictions (hereinafter defined as the "Restrictions"), set forth in this Declaration, all of which are established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community Area. These covenants, conditions and restrictions shall create mutual equitable servitudes upon each Lot within the Community Area in favor of every other Lot (as hereinafter defined) within the Community Area and shall create reciprocal rights and obligations in, between and among all persons and/or entities having any right, title or interest in and to any Lot within the Property and the Community Area or any part thereof. In addition, said covenants, conditions and restrictions shall run with such portions of the Property comprising the Community Area and any Lot therein and shall be binding upon all parties having or acquired any right, title or interest in and to the Community Area or any Lot therein, and shall inure to the benefit of Declarant, the Association, each Owner (as hereinafter defined) and each successor in interest of such Owner.

III. DEFINITIONS

3.01 Defined Terms.

Unless the context in the Restrictions otherwise specifies or requires, the terms defined in this Article III shall for all purposes of the Restrictions, have the meanings herein specified:

Annexing Declaration: This Declaration with respect to the Community Area described in Exhibit B, any Supplemental Declaration of Covenants, Conditions and Restrictions to this Declaration formally annexing additional Property or additional Community Area to the Property and Community Area subject to this Declaration, and any other document, however denominated, that meets the requirements of Article IV, Section 4.02 of this Declaration.

Apartment: An Apartment, as defined in Chapter 514A, Hawai'i Revised Statutes, intended to be used for residential purposes.

Apartment Building. A multifamily residential rental building situated on any Lot in the Private Area developed as such by Declarant or a Developer, including, but not limited to, the apartment building complexes located on Lots 8651 and 8653 in Village IV known as Kekuilani Gardens and the Courts, respectively. Each Rental Unit in an Apartment Building shall be deemed a separate Lot for purposes of the payment of assessments as provided in Article VIII. The voting rights of the owner of a Lot upon which an Apartment Building is situated shall be governed by Article VII herein. No Apartment Buildings shall be permitted on the Property, except those developed by Declarant or a Developer with the permission of Declarant. Any Apartment Building developed after the effective date of an amendment of this DCC&R incorporating this definition shall be defined as such in a Recorded Supplemental Declaration and/or Annexing Declaration and the number of Rental Units in each Apartment Building shall be expressly stated in said Recorded Supplemental

Declaration and/or Annexing Declaration. No Apartment Building shall be constructed on more than one Lot, but more than one Apartment Building may be constructed on any single Lot.

Apartment Owner: The Owner of an Apartment.

Architect: A person registered to practice architecture, professional engineering or landscape architecture in the State of Hawai'i pursuant to Chapter 464, Hawai'i Revised Statutes, as amended, or pursuant to the laws of the state of his principal place of business.

Articles of Incorporation: The Articles of Incorporation of the Association duly filed with the Department of Commerce and Consumer Affairs of the State of Hawai'i, as the same may be amended from time to time.

Association: Villages of Kapolei Association, a Hawai'i nonprofit corporation to be organized pursuant to Article VII, and its successors and assigns.

Association Member: The meaning as defined in Section 7.02.

Board: The Board of Directors of the Association.

Bureau of Conveyances: The Bureau of Conveyances of the State of Hawai'i and the Office of the Assistant Registrar of the Land Court of the State of Hawai'i, as appropriate.

By-Laws: The By-Laws of the Association which By-Laws have been or shall be duly adopted by the Association, as the same may be amended from time to time.

Commercial Area: The portions of the Property which are planned for commercial use, or have been developed into Commercial Lots and which are or may be classified as such in an Annexing Declaration.

Commercial Lot: Each Lot created and improved in a Commercial Area; provided that if Declarant or a Developer is the developer and lessor or sublessor of Commercial Area, upon which Commercial Area a shopping center is constructed and commercial space is leased to multiple tenants, the entire Commercial Area including parking lots and exterior areas shall be a single Commercial Lot.

Common Area: The portions of the Community Area (including easements, drainage and flowage areas and open space areas) owned in fee or leasehold by the Association for the common use and for the benefit of the Owners, together with all of the Improvements constructed thereon from time to time, which Common Area shall not be considered a Lot.

Community Area: The portion of the Property described in Exhibit B together with and other portions of the Property which are to be or have been developed by Declarant or a Developer and are to be or have been annexed to the Community Area from time to time pursuant to Article IV (less any Property de-annexed therefrom), consisting of Private Areas, Commercial Areas, Common Areas and any other special use areas described in Exhibit C attached hereto or in an Annexing Declaration.

Condominium: A Condominium Property Regime as defined in Chapter 514A, Hawai'i Revised Statutes, as amended.

Cotenancy Area: Any portion of Private Area or a Commercial Area owned by more than one Owner or a Sub-Association to be used and maintained for multiple Owners, and any common area or limited common area as defined in a Sub-Declaration by such Owners or the members of the Sub-Association, including, without limitation, Roads, driveways, parks, open spaces and any common area or limited common area as defined in a Sub-Declaration. A Cotenancy Area shall not be deemed a Lot. The interest of an Owner in a Cotenancy Area shall be deemed appurtenant to the Lot or Apartment owned by such Owner.

Declarant: Housing Finance and Development Corporation, a body corporate and politic of the State of Hawai'i, and its successors and assigns.

Declaration: This Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei.

Design Review Committee: The Design Review Committee created pursuant to Article VI of this Declaration.

Design Review Committee Rules: The rules adopted by the Design Review Committee pursuant to Section 6.03, which rules are subject to the Design Guidelines.

Design Guidelines: Those certain Design Guidelines set forth in Exhibit D attached hereto and incorporated herein, as amended by Declarant from time to time.

Developer: A Developer designated by Declarant to develop any Private Area or Commercial Area within the Community Area into Residences, Lots or Commercial Lots. There may be more than one Developer, and Declarant may act as a Developer. For purposes of the Community Area comprising Village I, the Developer shall be Oceanic Properties, Inc., a Hawai'i corporation.

Excavation: Any disturbance of the surface of land (except temporarily for planting) which results in removal of earth or rock for a depth of more than eighteen inches.

Family: (a) A husband and wife, together with his or her or their parents and children, all of whom shall be related by blood, marriage, or legal adoption, and domestic servants, maintaining a common household within a Residence; (b) one (1) or two (2) individuals, together with his or her or their respective parents, and children, all of which shall be related to such individuals by blood, marriage or legal adoption, and domestic servants, maintaining a common household within a Residence; or (c) a group of not more than four (4) individuals not constituting a Family as provided in (a) or (b) above, maintaining a common household within a Residence.

Fill: Any addition of rock or earth materials to the surface of the land which increases the previous elevation of such surface by more than eighteen inches.

Fiscal Year: The Fiscal year of the Association presently ending December 31 of each year.

Garage: A garage for a motor vehicle, including a carport or similar outbuilding appurtenant to a Residence, whether or not connected to the Residence.

Governmental Agency: Any department, division or agency of any federal, state or municipal governmental, except for Declarant, and any public or private utility.

HUD: The Federal Housing Administration of the U.S. Department of Housing and Urban Development, and any successor agency authorized by the federal government to insure loans secured by mortgages of residential real property.

Improvement: All buildings, outbuildings, grading, roads, drainage facilities, driveways, parking areas, loading areas, screening walls and barriers, fences, retaining walls, poles, signs, water lines, sewer facilities and pump stations, electrical and gas transmission and distribution facilities, irrigation facilities, hedges, windbreaks, plantings, planted trees and shrubs, ponds, exterior illumination, and all other structures, installations and landscaping of any type or kind, whether on, above or below the surface of the land.

Initiation Assessment: The fee assessed to each new Association Member pursuant to Section 8.02.

Insured Mortgage: A mortgage of a Lot securing a loan insured by HUD.

Lot: Any residential Lot within the Private Area designated for residential use on a subdivision map; any Apartment in a Condominium within the Private Area; or a Commercial Lot within the Commercial Area. Upon the subdivision or consolidation of any Lots pursuant to Section 9.04, a Lot shall include each Lot, parcel, Apartment or Commercial Lot into which such Lots have been so subdivided or consolidated. With regard to any Apartment Building, the residential Lot upon which the Apartment Building is situated shall be considered a Lot. For purposes of the payment of assessments under Article VIII and voting under Article VII, each Rental Unit shall be considered a separate Lot.

Main Collector Street: Kumuiki Street in Village I and any other street identified as a Main Collector Street in an Annexing Declaration.

Maintenance Assessment: Any monthly or periodic fee assessed to an Association Member pursuant to Section 8.03.

Manager: The person or corporation appointed to manage the Community Area, pursuant to Section 7.05.

Member: A Member of the Design Review Committee appointed pursuant to Section 6.01. The term "Member" shall include the Architect Member and the non-architect members of the Design Review Committee.

"Nehoa Landscape Easements" and "Nehoa Landscape Easement Areas": "Nehoa Landscape Easements" shall mean the landscape easements identified in Exhibit "1" attached hereto and all walls, fences, hedges, landscaping, and other Improvements from time to time placed thereon. "Nehoa Landscape Easement Areas" shall mean those particular portions of the Nehoa Landscape Easements held by the Association located on the particular Lots identified in Exhibit "1" and all walls, fences, hedges, landscaping, and other Improvements from time to time placed thereon. Said Nehoa Landscape Easement Areas are more particularly described in Exhibit "1."

Nehoa Roadway Areas: "Nehoa Roadway Areas" shall mean the roadway lots and/or easements owned or held by the Association for roadway and/or utility purposes identified in Exhibit "1" attached hereto and all Improvements from time to time placed thereon. Said Nehoa Roadway Areas shall be Common Areas of the Association, subject to limited use as provided in Article X, Section 10.3 herein. Said Nehoa Roadway Areas shall not be considered "Lots" as that term is defined herein.

Notice: A notice delivered pursuant to Section 9.09.

Operating Fund: The fund created pursuant to Section 8.01.

Owner: A person, corporation, partnership or other legal entity who is the beneficial owner of the fee simple or leasehold interest in any Lot or Commercial Lot, including the purchaser of a Lot under an agreement of sale; provided however, that:

- (a) for the purposes of limitations and restrictions set forth in Article V., Owner shall not include Declarant or any Developer with respect to any Lot or Commercial Lot owned by the Declarant or owned by any Developer;
- (b) Owner shall include for the purposes of Article V., unless the context requires otherwise, the Family and lessees of any Owner;
- (c) a commercial tenant of space on or in Improvements on a Commercial Lot shall be subject to the limitations and restrictions set forth in Article V, but shall not be considered a member and shall enjoy no rights of membership.

Private Area: The portions of the Community Area which are planned for single family and multi-family residential use and related community facilities, or have been developed into Residences and related community facilities and which are or may be classified as such in an Annexing Declaration.

Property: The real property, more particularly described in Exhibit A, together with such other real property annexed thereto from time to time pursuant to Section 4.06.

Record: With respect to any document or subdivision map, to record or file such document or subdivision map in the Bureau of Conveyances.

Recreational Facility: Any improvement used for or in connection with any recreational purpose or activity, including without limitation, park and playground facilities, riding stables and trails, tennis courts, community gathering halls and auditoriums, hobby centers, arts and craft centers and swimming pools.

Rental Unit: The term "Rental Unit" shall mean each unit in an Apartment Building that is or could be subject to a separate rental agreement or that is suitable for separate occupancy by any person or persons. Except for Kekuilani Gardens and the Courts, which were constructed before the effective date of this provision, the number of Rental Units in an Apartment Building shall be expressly stated in a Recorded Supplemental Declaration and/or Annexing Declaration and may not be changed without the prior written consent of the Board of Directors. Kekuilani Gardens has 56 Rental Units and the Courts has 80 Rental Units. The number of Rental Units in Kekuilani Gardens and/or the Courts may not be changed without the prior written consent of the Board of Directors.

Residence: An Apartment or a single-family dwelling building on a Lot within the Private Area used for residential purposes, together with a Garage.

Restrictions: The covenants, conditions and restrictions contained in this Declaration, Conditions and Restrictions, as amended from time to time.

Road: Any paved vehicular way constructed within or upon any portion of the Common Area or the Cotenancy Area, excluding any apron or other paved area constructed for the purpose of providing paved access from such way to any Private Area, Commercial Area, or within any Cotenancy Area.

Rules: The rules to be adopted pursuant to Section 7.06, as amended from time to time.

Special Assessment: Any assessment levied by the Association pursuant to Section 8.04.

Sub-Association: An association of Apartment Owners or Lot Owners of portions of the Community Area.

Subdivision: The division of any Lot into two or more Lots.

Subdivision Map: Any map showing a Subdivision Recorded in the Bureau of Conveyances in the Land Court of the State of Hawai'i.

Village: Each separate phase of the development of Villages of Kapolei, to be developed by a single Developer.

Village I: The first Village to be developed by Oceanic Properties, Inc., consisting of the Community Area described in Exhibit B and residential lots within Lot 5542, as shown on Map 507 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i with Land Court Application No. 1069, and such other portions of the Community Area as may be designated by Declarant in an Annexing Declaration as comprising Village I.

Villages of Kapolei: The planned urban community to be developed on the Property as described in Sections 1.02 and 1.03.

Visible from a Neighboring Lot: With respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point six feet above any adjoining Lot, excluding contiguous Lots owned by the Owner of the Lot involved, but including Common Areas, Cotenancy Areas and Roads, assuming that such adjoining Lot has an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the Lot upon which such object or activity is located, whichever elevation is lower.

IV. PROPERTY SUBJECT TO RESTRICTIONS

4.01 Villages of Kapolei: Initial Development.

- (a) The real property initially subject to the Restrictions shall be the portion of the Property described in Exhibit B comprising the Community Area, as the same shall be held, sold, conveyed, encumbered, leased, occupied and improved. The initial Community Area, together with such other real property as from time to time may be annexed to comprise the Community Area shall be subject to the Restrictions. The remaining portions of the Property may from time to time be annexed to the Community Area pursuant to Sections 4.02, 4.03 and 4.07. A general plan of Villages of Kapolei which shows the proposed size, location and land use of various developments to be developed as Community Area on the Property is attached hereto as Exhibit C. The general plan also shows the proposed size and location of proposed Common Areas to be made a part of the Community Area, which Common Areas are generally planned to serve the purposes of providing drainage and flowage areas, buffer zones, vehicular routes, rest areas and landscaped open spaces.
- (b) The initial Community Area shall be classified as Private Area, with the exception of the Lots described in Exhibit E attached hereto and incorporated herein, which Lots shall be classified as Common Area.

4.02 Annexation of Property to the Community Area.

Declarant may annex portions of the Property not in the initial Community Area, without the consent of the Owners, upon satisfaction of the following requirements:

- (a) Declarant or a Developer is the owner in fee simple of the Property to be annexed;
- (b) Declarant and the applicable Developer, if any, shall Record an Annexing Declaration, which may consist of one or more documents which, among other things, either:
 - (1) describes the portions of the Property which are to become a part of the Community Area;
 - (2) sets forth or refers to the Restrictions and to such other further limitations, restrictions, covenants and conditions which are to be applicable to such portions of the Property;
 - (3) declares that such portions of the Property are to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Restrictions;
 - (4) classifies such portions of the Property as Private Area, Commercial Area, Common Area or other special use areas pursuant to Section 5.01; and
 - (5) identifies the Developer of such portions of the Property, or
 - (6) the following shall apply in lieu of the subsections (b)(1) - (b)(5) above. A declaration of condominium property regime that (i) refers to the

Restrictions; (ii) declares that the portion of the Property that is subject to the declaration of condominium property regime (hereinafter the "Condominium Property") is to be held, conveyed, encumbered, leased, occupied, and improved subject to the Restrictions; (iii) describes the land and Apartments in said condominium property regime; and (iv) identifies the Developer of the condominium property regime, shall satisfy the requirements of this Section 4.02(b) and shall be deemed to be an Annexing Declaration where no prior document qualifying as an Annexing Declaration has been recorded annexing the Condominium Property to the Community Area. Where a declaration of condominium property regime serves as an Annexing Declaration, then, unless otherwise designated in said declaration of condominium property regime, the Condominium Property shall be deemed a part of the Private Area and the entire Condominium Property shall be deemed a part of the Community Area. Each Apartment in the Condominium shall be deemed a Lot as provided in Article III, Section 3.01.

- (b.1) Annexation of any portion of the Property not in the initial Community Area shall be effective as of the date an Annexing Declaration is Recorded annexing said portion of the Property to the Community Area, provided the other requirements of this Section 4.02 have also been satisfied.
- (c) Declarant shall Record a Subdivision Map of the portions of the Property being annexed to the Community Area by such Annexing Declaration;
- (d) Declarant may, but shall not be obligated to impose an annexation fee to be paid by a Developer in addition to the Initiation Assessment; and
- (e) All portions of the Property to be annexed to the Community Area must be added by satisfaction of the foregoing requirements by no later than August 2, 2030.
- (f) This Article IV, Section 4.02, as above written, including this subsection and subsections (a) - (e) above, and the definition of an Annexing Declaration found in Article III, Section 3.01 above shall be deemed effective as of August 3, 1990, the date this Declaration was first Recorded.

4.03 Annexation of Real Property to the Property and to the Community Area.

Declarant may annex real property not within Villages of Kapolei to the Property and to the Community Area, thereby subjecting such real property to the Restrictions, without the consent of the Owners, upon satisfaction of the following requirements:

- (a) Declarant is the owner in fee simple of the real property to be annexed;
- (b) Declarant shall Record an Annexing Declaration, which may consist of one or more documents, which, among other things:
 - (1) describes the real property which is to be made a part of the Property and the Community Area subject to the Restrictions;
 - (2) sets forth or refers to such other and further limitations, restrictions, covenants and conditions which are to be applicable to such real property;
 - (3) declares that such real property is to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Restrictions;
 - (4) classifies such real property as Private Area, Common Area, Commercial Area or other special use areas pursuant to Section 5.01; and
 - (5) describes any conditions under which such real property shall become annexed to the Community Area.
- (c) Declarant shall Record a Subdivision Map of the real property being added to the Property in connection with such declaration. Following annexation of any real property to the Property and to the Community Area, Declarant may further subdivide such real property into Lots, Commercial Lots, Common Areas and other special use areas pursuant to a duly recorded Subdivision Map.

4.04 Additional Restrictions Affecting Added Real Property.

Any provision in this Declaration to the contrary notwithstanding, Declarant by Recording a declaration as provided in Sections 4.02 or 4.03 above, may subject the real property added to the Property, or portions of the Property added to the Community Area to such other covenants, conditions and restrictions as Declarant may deem appropriate, including but not limited to:

- (a) The designation of land classifications not provided for in Section 5.01 hereof and such covenants, conditions and restrictions with respect to the use of real property in such land classifications as Declarant may deem appropriate; and
- (b) Such additional covenants, conditions and restrictions with respect to the land classifications provided for in Section 5.01 and to such real property added to the Community Area as Declarant may deem appropriate, provided that additional covenants, conditions and restrictions shall be subject to the Restrictions and shall be exclusively applicable to such real property annexed to the Property and to the Community Area.

4.05 Withdrawal of Property from Community Area.

Declarant may withdraw portions of the Property from the Community Area comprising Villages of Kapolei thereby releasing such portions of the Property from the Restrictions without the consent of the Owners, provided that (a) Declarant or a Developer is the sole owner of the portion of the Property to be withdrawn, (b) such portion of the Property has direct access to a public roadway, and (c) Declarant determines that such portion of the Property is no longer required to comprise a portion of the Community Area for the purposes stated in Section 2.01. Upon such withdrawal such portion of the Property shall no longer comprise a portion of the Community Area. Declarant presently intends to withdraw the portions of the Property designated for golf course development on Exhibit C from the Property. A withdrawal of any portion of the Property from the Community Area shall be effective upon the execution and Recordation of a document which describes such portion of the Property and declares such portions of the Property to be withdrawn from the provisions of this Declaration.

4.06 Property Subject to Community Area Restrictions Limited.

- (a) No real property, except for the Property, the Community Area and the real property specifically annexed to the Property and to the Community Area

pursuant to this Article IV, shall be deemed subject to the Restrictions, whether shown on any Subdivision Map Recorded by Declarant or described or referred to in any document executed or Recorded by Declarant. Nothing contained in this Declaration or in any Annexing Declaration shall be deemed to be a representation or warranty that Declarant will commit or subject to the Restrictions, any real property Declarant now owns or may hereafter acquire, other than the Property; and

- (b) No designation of any Lot or other area as a Private Area, Common Area, Cotenancy Area, Commercial Area, Road, school or park or for any other type of use on any map Recorded by Declarant, shall be deemed a dedication or representation or warranty that such Lot or area is or will be used, or restricted to such use, nor shall any Owner, the public, any public agency or any other person acquire any rights to such Lot or other area by reason of such designation.

4.07 Annexation of Subsequent Developments.

Association may, with the consent of the Owner of the real property to be annexed, pursuant to the provisions of this section, from time to time and in its sole discretion, annex to the Community Area and to Villages of Kapolei all or any part of any real property situate in Ewa (not then constituting a part of Villages of Kapolei) upon approval by an affirmative vote of seventy-five percent (75%) of all Class A Association Members and one hundred percent (100%) of all Class B Association Members, if any, as defined in Section 7.02, and Declarant (if such real property is not owned by Declarant), at a meeting duly called for this purpose, written notice of which meeting shall have been sent to all Association Members not less than 30 days in advance of the meeting, setting forth the purpose of the meeting.

- (a) The annexation of such real property shall become effective and such real property shall become a part of the Community Area and Villages of Kapolei when Declarant or Association and the Owner(s) of the real property to be annexed shall have Recorded:
 - (1) An Annexing Declaration which:
 - (i) describes the real property to be annexed to the Community Area and to Villages of Kapolei;
 - (ii) sets forth or refers to such additional or other covenants, conditions and restrictions applicable to such real property;
 - (iii) declares that such real property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Restrictions;
 - (iv) classifies such real property as Private Area, Commercial Area, or Common Area; and
 - (v) describes any conditions under which such real property shall become annexed to the Community Area.
 - (2) A Subdivision Map, with respect to the real property described in such Annexing Declaration.
- (b) The Annexing Declaration may, with respect to all or any part of the real property described in such Annexing Declaration, provide such new land classifications not then provided for in Section 5.01 and such covenants, conditions and restrictions as the Association may deem to be appropriate for the development and use of such real property;
- (c) This Association may impose an annexation fee to be paid in addition to the initial assessment.

V. LAND CLASSIFICATIONS AND RESTRICTIVE COVENANTS

5.01 Land Classifications.

All the Property within Villages of Kapolei shall be classified into one of the following areas: (a) Private Area; (b) Commercial Area; (c) Common Area; and (d) other special use areas designated in Exhibit C attached hereto or in an Annexing Declaration. Declarant may amend any of the foregoing classifications from time to time pursuant to Sections 9.01 and 9.05.

5.02 Private Area: Uses and Restrictions.

Each Lot in the Private Area shall be for the exclusive use and benefit of its Owner, subject, however, to the following covenants, conditions and restrictions:

- (a) Except as otherwise provided in subsection (a.1) below, only one Family (including domestic servants and transient guests) shall occupy each Lot in the Private Area, and each Owner shall construct only one single-family Residence (which may include a guest room without a kitchen connected to the main dwelling) on any Lot in a Private Area designated for single-family residential purposes. The foregoing provision will not be enforced in any manner that will constitute a violation of any applicable statute, ordinance, rule, or regulation adopted by any governmental authority, including, but not limited to, the provisions of the Fair Housing Amendments Act of 1988 and Chapter 515, Hawai'i Revised Statutes.

The provisions of Article V, Section 5.02(a) requiring Lots in the Private Area to be used for only one Family and the restrictions in Article V, Section 5.02(c) herein against the use of Lots in the Private Area for an apartment house shall not apply to Lots upon which are situated Apartment Buildings as defined herein; provided, however, that only one Family (including domestic servants and transient guests) may occupy each Rental Unit in an Apartment Building.

- (b) No Owner other than Declarant or Developer shall make any improvement or perform other work which alters any Lot in any way from its natural state or improved state existing on the date such Lot was first conveyed in fee by Declarant or Developer to the Owner of such Lot, except in compliance with the provisions of Section 5.03. No Owner of a Lot bordering on a Main Collector Street shall alter any landscaping or fencing visible from such Main Collector Street without first obtaining the approval of the Design Review Committee in accordance with Section 5.03.

- (c) Except as provided in Section 5.02(a) above, each Owner shall use his Lot in the Private Area exclusively for residential purposes, and shall not use any building or structure on a Lot as a tenement house, rooming house or apartment house, and shall not use any Lot or structure on a Lot for or in connection with the conduct of any trade or business; provided, however, that nothing in this paragraph (c) shall be deemed to prevent:
- (1) the use of a Lot for business pursuits, including, but not limited to artists, artisans, or craftsmen, so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming to or visiting the Lot or deliveries made to or picked up from the Lot; (d) the business activity does not involve the sale or offer for sale of any items to the public on the Lot; (e) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (f) the business activity is consistent with the residential character of the Association and does not constitute a nuisance or hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors; or
 - (2) Declarant or any Owner from renting the Residence on any Lot from time to time, subject, however, to the Restrictions.
 - (3) Declarant or a Developer from operating a temporary sales office from any Lot.
 - (4) The use of a Lot for the purpose of providing child care services in a family child care home which is either licensed by the Department of Human Services of the State of Hawai'i or legally exempt from such license requirements (under rules or regulations promulgated by the Department of Human Services).
- (d) Each Owner shall maintain all Improvements erected on his Lot and all landscaping and vegetation planted on such Lot from time to time in good and clean condition and repair and in such manner as not to create a fire, safety, or health hazard to Villages of Kapolei or any part thereof, at such Owner's sole cost and expense. The Owner of any Lot shall maintain in a neat and attractive condition any planting strip or portion thereof lying between the sidewalk and the street bordering such Lot. Each Owner of a Lot bordering on a Main Collector Street shall maintain or cause to be maintained in a neat, clean and healthy condition all landscaping visible from such Main Collector Street.
- (e) Each Owner of a Lot will maintain or cause his Sub-Association, if applicable with respect to areas to be maintained by such Sub-Association, to maintain in good repair any fence or wall along any street boundary of his Lot or within the Cotenancy Area, respectively, which had been erected by Declarant or Developer, and will also maintain any fence or wall erected by Declarant or Developer on his Lot or within two feet of any common boundary between his Lot and his neighbor's Lot. Each Owner with a fence or wall along such a common boundary shall be liable to the Owner of the adjoining Lot for half the cost of maintenance or repair of such fence or wall incurred by such Owner of the adjoining Lot, unless such fence or wall is maintained by a Sub-Association.
- No Owner shall replace any fence or wall without the approval of the Design Review Committee. Existing fences and walls may be replaced with fences and walls of the same or like material or such other materials approved by the Design Review Committee from time to time. The Design Review Committee shall be authorized, but not required, to permit an Owner to replace an existing fence or wall located along a common boundary with a neighboring Lot with a hollow tile fence or wall over objection of the neighboring Lot Owner if the Owner wishing to install the hollow tile fence or wall bears the entire cost of purchasing and installing the hollow tile fence or wall. Once installed, unless otherwise provided herein, the cost of repair and maintenance of the common hollow tile fence or wall shall be borne by the Owners of both Lots as provided in the immediately preceding paragraph, or by a Sub-Association, if applicable.
- (f) No Owner shall subdivide or consolidate and resubdivide a Lot or Lots to create additional residential Lots, except pursuant to the provisions of Section 9.04.
 - (g) No Owner shall place or use exterior speakers, horns, whistles, bells or other sound devices on any Lot, except security devices used exclusively to protect the security of the Lot and Improvements thereon.
 - (h) No Owner shall keep or maintain any animals on any Lot other than a reasonable number of generally recognized household pets for such Owner's personal pleasure and not for sale or other commercial purposes. No Owner shall keep or maintain fowl or birds, other than canaries, parakeets or other songbirds on any Lot. No Owner shall keep or maintain animals or birds which are a nuisance to neighbors. Visually impaired persons may keep guide dogs, hearing impaired persons may keep signal dogs, and physically impaired persons may keep service animals on their Lots. Nothing herein is intended to limit or restrict access to or interfere with the use and enjoyment of the project by handicapped/disabled persons. None of the provisions herein will be enforced in any manner that will constitute a violation of the Fair Housing Amendments Act of 1988 or Chapter 515, Hawai'i Revised Statutes. Any dog, cat, or other generally recognized household pet or any bird authorized by this section causing a nuisance, annoyance, offensive odor, or an unreasonable disturbance shall be permanently removed from the Lot and from the project promptly upon notice given or demand made by or at the direction of the Board of Directors.
 - (i) No Owner shall erect any sign upon any Lot, including without limitation, commercial, political or similar signs, Visible from a Neighboring Lot except:
 - (1) such signs as may be required by legal proceedings;
 - (2) one or more residential identification signs having a maximum combined area of one square foot per Lot;
 - (3) during the construction of any Residence or other improvement, a job identification sign having a maximum area of six (6) square feet and of the type usually displayed by contractors, subcontractors, financial institutions and tradesman;
 - (4) no more than one "For Sale" or "For Rent" sign having a maximum area of three square feet, such sign to refer only to the Lot on which it has been placed;
 - (5) signs warning of hazardous or dangerous conditions and security alarm/system signs which have been approved by the Design Review Committee; and
 - (6) other signs approved by the Design Review Committee from time to time.
 - (j) No Owner shall keep, place or maintain any house trailer, mobile home, permanent tent or similar facility or structure upon any Lot at any time; provided, however, that this paragraph shall not prevent an Owner from maintaining temporary construction shelters for a period not to exceed one year to be used exclusively in connection with the construction of any work or improvement permitted in Section 5.03.
 - (k) No Owner shall keep, place or maintain any truck of more than one ton capacity upon any Lot in such a manner that such truck is Visible from a Neighboring Lot; provided, however, that this paragraph shall not prevent an Owner from maintaining construction equipment for a period not to exceed one year to be used exclusively in connection with the construction of any work or improvement permitted by Section 5.03.
 - (l) No Owner shall construct, place or maintain any accessory structures or buildings upon any Lot prior to the construction of the main structure of the Residence; provided, however, that this paragraph shall not prevent an Owner from maintaining a temporary construction shelter for a period not to exceed one year to be used exclusively in connection with the construction of any work or improvement permitted in Section 5.03.
 - (m) No Owner shall construct, reconstruct or repair any trailer, vehicle or boat upon any Lot in such a manner that such construction, reconstruction or repair is Visible from a Neighboring Lot, nor shall an Owner maintain any vehicle not in good operating condition upon any Lot so as to be Visible from a Neighboring Lot; provided that this paragraph shall not prevent an Owner from performing maintenance work and minor repairs on his own trailer, vehicle or boat in his Garage. Without limiting any other remedy set forth in this Declaration, the Association shall have the right to enter any Lot to remove any trailer, vehicle or boat being constructed, reconstructed or repaired in violation of this Section to a public dump, a repair shop, or a storage yard. The Owner of the Lot shall be responsible for all costs involved (whether or not he is the owner of the removed trailer, vehicle or boat) and shall pay to the Association all costs incurred. Neither the Association nor its agents shall be liable for trespass, for invasion of privacy, or for conversion or any damages for the removal of such trailer, vehicle or boat.
 - (n) No Owner shall keep garbage or trash on any Lot so as to be Visible from a Neighboring Lot, except in closed receptacles screened from view from any adjoining street, and no accumulated waste plant materials will be permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be Visible from a Neighboring Lot.
 - (o) No Owner shall keep outside clothes lines or other outside clothes drying or airing facilities except within a fenced service yard and not Visible from a Neighboring Lot. Except as otherwise provided herein, no Owner shall openly store furniture, fixtures, appliances and other goods and chattels not in active use so as to be Visible from a Neighboring Lot. The Board of Directors may, from time to time, in its reasonable discretion, adopt, amend, and repeal policies permitting Owners to keep on their Lots lawn furniture, play equipment, bicycles, and other items not in active use notwithstanding that said furniture, equipment, and/or other items are Visible from a Neighboring Lot. The Board may take into consideration the differences between the Lots which contain single family dwellings, Lots which are condominium units, and Lots upon which are situated Apartment Buildings in adopting, amending, and/or repealing said policies and may adopt different policies for different types of housing so long as there is a rational and reasonable basis for said policies.
 - (p) No Owner shall permit any exterior fires, except barbecue fires, nor shall any Owner permit any condition on his Lot which creates a fire hazard.
 - (q) No vehicular access is permitted from any Lot to a Road over a boundary which is indicated on the subdivision map covering the Lot to have restricted access, nor over any strip of Common Area lying between the boundary of a Lot and a Road (except where such access over such Common Area is the only access from the Lot to any Road and an easement has been obtained from the Association). No Owner shall cut any curb along any Road adjacent to any boundary which is shown on the subdivision map as having restricted access.
 - (r) No Owner shall park a motor vehicle on any sidewalk area or on any portion of a Lot, except in a Garage or on a paved driveway area. No Owner shall keep any motor vehicle on any Lot unless such motor vehicle is in operating condition, is currently registered with the Department of Motor Vehicles of the City and County of Honolulu and bears a current safety inspection sticker. No Owner shall keep any boat, trailer or truck camper on any Lot except in a Garage. Parking on the Common Area is prohibited where so provided by this Declaration and any applicable Recorded Supplemental Declaration of Covenants, Conditions and Restrictions and/or Annexing Declaration. Where there is no express prohibition herein or in any Supplemental Declaration of Covenants, Conditions and Restrictions or Annexing Declaration against parking on a particular portion of the Common Area, the Board may adopt Association Rules prohibiting, permitting, and/or regulating parking on that portion of the Common Area.

- (s) No Owner shall use a Garage for other than the parking of motor vehicles and boats, unless the Garage is enclosed so as not to be Visible from a Neighboring Lot and normally kept closed. No Owner shall use a Garage as a laundry or for storage purposes unless the Garage is enclosed.
- (t) No Owner shall violate or permit the violation on his Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his Lot.
- (u) No Owner shall undertake an activity upon any Lot or in or about any Lot which would unreasonably disrupt or impair the privacy and quiet enjoyment of any other Lot or Owner thereof and no unlawful activity on any Lot.
- (v) No Owner shall construct any building or structure between the street boundary of the Lot and any applicable building setback line along such boundary; provided, however, that an Owner may construct walks, fences, walls, driveways and garbage receptacle enclosures if not otherwise in violation of any other restriction contained in this Declaration or in the Design Guidelines.
- (w) No Owner shall use any reflective finishes on exterior surfaces (other than non-mirrored glass). Exterior paint shall be either flat or semi-gloss. No gloss or reflective paint will be permitted on any exterior surfaces. The colors of all exterior surfaces shall contain at least seventy-five percent (75%) white pigment except for accent colors which can cover no more than five percent (5%) of any exterior elevation.
- (x) No Owner shall finish any roof with built-up tar and gravel, except that flat roofs may be finished with built-up tar and gravel in colors of dark brown to red-brown and gray to blue-gray.
- (y) No Owner shall construct a metal roof or install metal siding on a Residence, and no Owner may install liquid petroleum gas tanks on any Lot which are Visible from a Neighboring Lot.
- (z) No Owner shall install or maintain permanent exterior electric lighting without the prior approval of the Design Review Committee. No exterior lighting shall be installed that creates an annoyance or nuisance to other Lots. No Owner shall install or maintain any antenna which is Visible from a Neighboring Lot except that an Owner may install an antenna not exceeding ten (10) feet in height above normal grade area if such antenna is not visible from the adjacent street. Notwithstanding the foregoing and subject to any reasonable restrictions adopted by the Design Review Committee, the Design Review Committee may permit antennas that would not otherwise be permitted by this subsection (z) if the Design Review Committee is required to permit said antennas under the provisions of the Telecommunications Act of 1996 and/or regulations adopted by the Federal Communications Commission.
- (aa) All telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground when outside the walls of the Residence.
- (bb) No Owner other than Declarant or a Developer shall remove any tree within 25 feet of the property line of any Lot without the prior approval of the Design Review Committee.
- (cc) No Owner other than Declarant or Developer may plant trees within any setback area established in the Design Guidelines without the prior written approval of the Design Review Committee.
- (dd) No Owner may use second hand or used lumber or other material in any construction on any Lot.
- (ee) If due to the peculiar location, size or topography of a particular Lot, an Owner cannot reasonably build a Residence without violating a specific provision of this Section 5.02, the Board shall have the authority, with the prior written approval of the Design Review Committee, to grant a variance from such specific restriction permitting such Owner to proceed to build and occupy a Residence without regard to the specific restriction.
- (ff) The Association shall have the rights set forth in Section 7.05 with respect to each Lot.
- (gg) During the course of development and construction on any Lot, the terms of this Section 5.02 will be waived for Declarant and Developer to the extent necessary to permit construction of a Residence pursuant to plans approved by Declarant.
- (hh) The Design Review Committee may, in its reasonable discretion, and subject to the approval of the Board, adopt Design Review Committee Rules which take into consideration the differences between the Lots which contain single family dwellings, Lots which are condominium units, and Lots upon which are situated Apartment Buildings. The Design Review Committee may adopt rules that apply only to single family dwellings, to condominium units, and/or to Apartment Buildings or Rental Units so long as there is a rational and reasonable basis for said rules.

5.03 Private Area; Construction and Alteration of Improvements; Excavations.

No Owner may construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any Lot of a Private Area or may make or create any Excavation or Fill thereon, or may make any change in the natural or existing surface drainage thereof, or may install any utility line (wire or conduit) thereon, except in compliance with the Design Review Committee Rules, the Design Guidelines set forth in Exhibit D, and all provisions of this section:

- (a) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such improvement for which the Owner has obtained approval from the Design Review Committee pursuant to this Section 5.03:
 - (1) No Owner shall conduct any Excavation or Fill which would be Visible from a Neighboring Lot; and
 - (2) No Owner shall install a power, telephone or other utility line (wire or conduit) on or under any Lot in a Private Area which would be Visible from a Neighboring Lot. The Association shall, in the event of any violation of the provisions of this subsection, restore such Private Area to its state existing immediately prior to such violation, including the

removal of any unauthorized power, telephone or other utility line. The Owner of the Lot shall reimburse the Association for all expenses incurred by the Association in performing any curative action under this subsection.

- (b) Any Owner proposing to construct, reconstruct, refinish or alter any part of the exterior of any improvement Visible from a Neighboring Lot, or to perform any other work which requires prior written approval of the Design Review Committee, shall apply to the Design Review Committee for approval in the following manner:
 - (1) In the case of Improvements having a cost exceeding \$25,000.00, (as this sum may be increased from time to time by the Design Review Committee, with the approval of the Board):
 - (i) The Owner shall submit to the Design Review Committee prior to construction, preliminary plans for the proposed Improvements, prepared by an Architect showing the Improvements in detail with dimensions. The Design Review Committee shall review and shall either approve or disapprove such preliminary plans in writing within sixty (60) days, after submission unless said time period is extended as hereinafter provided, and in the event of disapproval, shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for its response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove the preliminary plans within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval.
 - (ii) Following approval of the preliminary plans, the Owner shall submit the final plans and specifications for the proposed Improvements to the Design Review Committee in duplicate, including where appropriate, a plot plan showing easements, set back and contour lines, the location of all existing and proposed Improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height in excess of six-feet or a trunk measuring six-inches or more in any diameter at ground level and indicating which trees (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Review Committee for plan review and inspection. The Design Review Committee shall review and shall either approve or disapprove the final plans and specifications in writing within sixty (60) days after submission unless said time period is extended as hereinafter provided, and in the event of disapproval shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the final plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove the final plans within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval. The Design Review Committee shall not disapprove any final plans and specifications on account of any matter previously presented and approved in the preliminary plans.
 - (2) In the case of exterior Improvements having a cost of \$25,000.00 or less (as this sum may be increased from time to time by the Design Review Committee, with the approval of the Board), the Owner shall submit to the Design Review Committee for approval prior to construction final plans and specifications for the proposed Improvements, including where appropriate a plot plan showing easements, set back and contour lines, the location of all existing and proposed Improvements, the proposed drainage plan, the proposed sanitary disposal facilities, the location of all existing trees having a height in excess of six feet or a trunk measuring six inches or more in any diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Review Committee for plan review and inspection. The Design Review Committee shall review and shall either approve or disapprove the final plans and specifications in writing within sixty (60) days after submission unless said time period is extended as hereinafter provided, and in the event of disapproval shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for its response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approval.

- (c) No approval of the Design Review Committee shall be required for any interior Improvements or alterations, nor shall approval of the Design Review Committee be required for reconstruction or refinishing in accordance with the plans for Improvements previously made by Declarant or a Developer or previously approved by the Design Review Committee.
- (d) The Design Review Committee's approval shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced the approved construction, reconstruction, refinishing or alteration within the one (1) year period and shall not thereafter complete the same with reasonable diligence. If the Owner shall not so commence within the one (1) year period, the Owner shall be required to resubmit such final plans and specifications for approval, and the Design Review Committee shall, either approve or disapprove the resubmitted final plans and specifications in writing within sixty (60) days after resubmission unless said time period is extended as hereinafter provided and in the event of disapproval shall state in writing the reasons for disapproval. If the Design Review Committee is unable to act on the final plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its response. The Design Review Committee's failure to approve or disapprove within said sixty (60) day period or ninety (90) day period if the time period is extended shall be deemed approved. The Design Review Committee may require another inspection fee.
- (e) The Owner shall give written notice to the Design Review Committee upon the completion of construction of any Improvements or other work for which plans and specifications were approved by the Design Review Committee pursuant to this Section. The Design Review Committee shall inspect such Improvements or other work within sixty (60) days; provided, however, that if the Design Review Committee is unable to inspect the improvements or other work within sixty (60) days, the Design Review Committee may extend the time for inspection for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Owner of its decision to extend the time for its inspection. If the Design Review Committee finds that such Improvements or other work were not constructed in substantial compliance with the approved plans and specifications, the Design Review Committee shall notify the Owner of such noncompliance and require the Owner to remedy such noncompliance within sixty (60) days from the date of notice. If the Owner shall fail to remedy such noncompliance within said sixty (60) day period, or if a longer time is reasonably required, and the Owner has failed in good faith to commence a remedy within said sixty (60) day period and is not diligently pursuing a remedy, the Design Review Committee shall notify the Association of such failure, and the Association may take any reasonable steps to remedy the noncompliance or to restore the Lot to its pre-existing condition and may assess the Owner for all expenses incurred. The Design Review Committee's failure to notify the Owner of any such noncompliance within sixty (60) days or ninety (90) days if the time period is extended after receipt of such notice of completion shall be deemed approval of completion in accordance with said approved plans.
- (f) The provisions of this Section 5.03 to the contrary notwithstanding, no approval by the Design Review Committee shall be required for any construction done by or for Declarant or any Developer, including without limitation any construction of Residences by Declarant or any Developer and any work done by Declarant or any Developer, their representatives, agents, employees or contractors in connection with the construction of subdivision Improvements required by the State of Hawai'i or the City and County of Honolulu or in connection with the construction of any roadways, signage or landscaping or any electrical, cable television, communication, water, sewer or other utilities.
- (g) The Design Review Committee shall have no power to vary any of the standards and restrictions set forth in the Restrictions, except as may be permitted herein or authorized by the Board. The Association shall have the right to commence and pursue any remedy provided in the Restrictions for any violation by an Owner of the Restrictions, whether or not the Design Review Committee shall have approved plans and specifications.
- (h) In reviewing plans and specifications, the Design Review Committee shall consider whether the proposed improvement complies with the restrictions stated in Section 5.02 and whether the proposed improvement:
 - (1) Is compatible as to the quality, type of materials, workmanship and external design with reference to existing structures and other Improvements in the area, and location of the proposed improvement is compatible with respect to topography and ground elevation;
 - (2) Conforms to the Design Guidelines and general plan of Villages of Kapolei;
 - (3) Constitutes a suitable and adequate development of the Lot;
 - (4) Is, in the case of the Residence, comparable to other Residences in the area in value and design; and
 - (5) Will not, because of its design unreasonably interfere with the light and air to or view from adjoining Lots.

5.04 Common Area: Uses; Restrictions.

Non-exclusive use of the Common Area shall be reserved equally to all Owners, except as specifically provided herein, and every Owner shall have a right and easement in and to the Common Area, which easement shall be appurtenant to every Lot, subject, however, to the following restrictions:

- (a) Use of the Common Area shall be subject to the Rules.
- (b) Use of the Common Area shall be subject to such easements and rights-of-way then existing or reserved by Declarant or a Developer with Declarant's consent, at the time of conveyance to the Association, to such Road and public utility

easements and rights-of-way as may from time to time be taken under the power of eminent domain, and to such other Road and public utility easements as may from time to time be granted or conveyed by Declarant or a Developer, the right to make such grants of easement being expressly reserved to Declarant and to a Developer to whom Declarant has expressly delegated such right, or to the Association pursuant to the provisions of paragraph (c) of Section 7.05.

- (c) No Improvements, Excavation or other work which in any way alters any Common Area from its natural state or existing state on the date when such Common Area was conveyed to the Association, shall be done except in strict compliance with provisions of this Section 5.05.
- (d) Except to the extent otherwise permitted pursuant to the provisions of Section 5.04(b), Section 5.05, Section 7.05(f), Article III, and Article X herein and the applicable subsections thereof, the Common Area shall be devoted to natural recreational uses which do not damage the Common Area or the vegetation therein, increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Private Areas, or in their enjoyment of the Common Areas. Nothing herein is intended to prohibit recreational play (e.g., soccer, baseball, etc.) which would, by the very nature of the play, cause some damage to the vegetation and some increase in the cost of maintenance. The Board of Directors shall have the authority to regulate the type of recreational play permitted on the Common Areas. The following restrictions shall apply:
 - (1) There shall be no camping in Common Areas, except as permitted by the Board by written license.
 - (2) No fires shall be started in Common Areas, except fires started and controlled by the Association incidental to maintenance of the Common Area, and fires in enclosed cooking facilities and campfires in picnic areas within Recreational Facilities developed by the Association.
 - (3) No animals shall be permitted on Common Areas except generally recognized household pets under the control of their owners, livestock owned by the Association, and horses in areas developed or maintained by the Association as bridle paths or equestrian recreational facilities. Pets will not be tied or staked on a leash to any Common Areas at any time. Pet owners shall be responsible for picking/cleaning up after their pets. No person shall permit an animal owned by such person to excrete any solid waste on the Common Areas; provided, however, that no violation shall occur if the owner of the offending animal promptly removes the animal waste. Pet owners are responsible for any damages caused by their pets.
- (e) The right to use and enjoy the Common Areas shall extend to Owners and families of all Owners and invitees.
- (f) Declarant may reserve certain Common Areas within the Community Area for the development and operation of private Recreational Facilities, the use of which require payment of assessments or other fees. Any such private Recreational Facility may be owned, operated or managed by the Association or a private party, including, without limitation, a Sub-Association or other association of apartment owners.
- (g) The Board shall be permitted, in its discretion, to authorize and permit employees of the Association to use the Common Area, including, but not limited to, the Recreational Facilities.

5.05 Common Area: Construction and Alteration of Improvements.

No Improvements, Excavation or other work which alters any Common Area from its natural or improved state on the date when such Common Area was conveyed to the Association shall be done, except in compliance with the following provisions:

- (a) No person other than Declarant, a Developer, the Association or a Governmental Agency, and their respective contractors and employees shall improve, Excavate, construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from or plant any tree, shrub or vegetation upon any Common Area.
- (b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any improvement located or to be located upon any Common Area, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of six feet or a trunk measuring six inches or more in diameter at ground level from any Common Area to the Design Review Committee for approval in such form and containing such information as the Design Review Committee may from time to time require. The Design Review Committee shall approve the plans and specifications upon satisfaction of the following conditions:
 - (1) Any plans to construct any new Improvements, or to alter the exterior appearance of any existing improvement upon any Common Area shall comply with the standards set forth in Section 5.03(h)(1) through (5) inclusive, which standards will also apply to Common Areas, and that the design of such Improvements is in harmony with other Improvements and the overall appearance of Villages of Kapolei.
 - (2) The Design Review Committee shall review and shall either approve or disapprove such plans in writing within sixty (60) days after submission, unless said time period is extended as hereinafter provided and in the event of disapproval shall state in writing the reasons for such disapproval. If the Design Review Committee is unable to act on the plans within sixty (60) days, the Design Review Committee may either deny the application or extend the time for response for a period of an additional thirty (30) days. If the time period is extended, the Design Review Committee shall make a reasonable effort to notify the Association of its decision to extend the time for its response. The Design Review Committee's failure to

approve or disapprove the plans within said sixty (60) day or ninety (90) day period if the time period is extended shall be deemed approval.

- (3) The Association is not required to obtain the approval of Declarant or any Developer.
- (c) The provisions of this Section 5.05 to the contrary notwithstanding, no approval by the Design Review Committee shall be required for any construction done by or for Declarant or any Developer, including without limitation any construction of Recreational Facilities by Declarant or any Developer and any work done by Declarant or any Developer, their representatives, agents, employees or contractors in connection with the construction of subdivision Improvements required by the State of Hawai'i or the City and County of Honolulu or in connection with the construction of any roadways, signage or landscaping or any electrical, cable, television, communication, water, sewer or other utilities.
- (d) The Association may, without approval of the Design Review Committee at any time:
 - (1) Reconstruct, replace, refinish any improvement upon a Common Area in accordance with plans previously approved by the Design Review Committee, or if such improvement existed upon the Common Area when such Common Area was conveyed to the Association, then in accordance with the original design, and the original or a higher standard of construction of such improvement.
 - (2) Construct, reconstruct, replace or refinish any roadway improvement upon any portion of the Common Area designated on a subdivision map as a Road.
 - (3) Replace any destroyed trees or any other vegetation in a Common Area, or plant trees, shrubs and ground cover, and install appropriate irrigation systems.
 - (4) Place and maintain upon any Common Area such signs as the Association may deem necessary for the identification of Villages of Kapolei and of Roads, for the regulation of traffic, parking and use of the Common Area, and for the health, safety and general welfare of Owners and the public, provided that the design of any such signs first shall be approved by the Design Review Committee.

(e) Any Owner may, with the prior written approval of the Design Review Committee and having previously obtained an easement from the Association install and maintain a subsurface utility system within a Common Area.

5.06 Cotenancy Areas: Uses and Restrictions; Construction and Alteration of Improvements.

Each Cotenancy Area shall be for the exclusive use and benefit of its Owners, subject, however, to the following covenants, conditions and restrictions:

- (a) The Association, or its duly authorized agents, shall have the rights set forth in Section 7.05 with respect to each Cotenancy Area.
- (b) No improvement or other work which alters any Cotenancy Area from its natural or improved state existing on the date the first undivided interest in such Cotenancy Area was conveyed by Declarant or a Developer to an Owner or Sub-Association shall be done, except in compliance with the following provisions:
 - (1) No Owner will undertake any such improvement or work without the written consent of the other Owners of the Cotenancy Area, or if applicable, the written consent of the Sub-Association which maintains the Cotenancy Area.
 - (2) Any improvement to or other work to be done on a Cotenancy Area other than construction by Declarant or a Developer shall require approval of the Design Review Committee, the standard for approval being the standard required for any improvement or other work on a Lot to which an undivided interest in a Cotenancy Area is appurtenant.
 - (3) A Sub-Association shall not be required to obtain consent of the Owners prior to making any Improvements in a Cotenancy Area.
- (c) A Cotenancy Area may be used for any purposes for which such Cotenancy Area was expressly created, as described in any declaration or conveyance document. No Owner shall use any Cotenancy Area in which he owns an undivided interest for any use to which he cannot also put his dominant Lot under the provisions of the Restrictions.
- (d) All Owners of undivided interests, and if so provided in an appropriate declaration, a Sub-Association shall be responsible for maintaining their Cotenancy Area and all landscaping planted on such Cotenancy Area in good and clean condition and repair and in such manner as not to create a fire, safety or health hazard to any part of Villages of Kapolei. The Sub-Association may assess each Owner of an interest in a Cotenancy Area his proportionate share of any expenses incurred by such Sub-Association in so maintaining the Cotenancy Area.
- (e) No Owner shall convey an undivided interest in a Cotenancy Area separately from the Lot to which the undivided interest in the Cotenancy Area is appurtenant or convey the Lot to which the undivided interest in the Cotenancy Area is appurtenant without also conveying the undivided interest in the Cotenancy Area; provided, however, that all of the Owners of the Cotenancy Area may jointly grant an easement in favor of a Sub-Association over a Cotenancy Area or dedicate their respective undivided interest in the Cotenancy Area to a Sub-Association, the State of Hawai'i or City and County of Honolulu for public purposes, or to the Association to be held as Common Area if the Association is willing to accept the dedication. Upon acceptance of such conveyance by the State of Hawai'i or City and County of Honolulu, or by the Association, the Cotenancy Area so dedicated shall become Common Area.

5.07 Commercial Area: Uses and Restrictions.

Each Commercial Lot shall be for the exclusive use and benefit of its Owner and such Owner's various commercial tenants, subject, however, to the following covenants, conditions and restrictions:

- (a) The Association, or its duly authorized agents, shall have the rights set forth in Section 7.05 with respect to each Commercial Lot.
- (b) No improvement or other work, other than by Declarant or a Developer, which in any way alters the exterior of any structure erected on any Commercial Lot from its natural or improved state existing on the date the Commercial Lot was first conveyed in leasehold or in fee by Declarant or such Developer to an Owner, shall be made or done except in compliance with provisions of Section 5.08.
- (c) Each Commercial Lot in a Commercial Area shall be used exclusively for commercial purposes as provided by Declarant in any deed or lease of such Commercial Lot or lease of space in Improvements on such Commercial Lot.
- (d) Each Owner shall maintain or cause to be maintained all Improvements erected on his Commercial Lot in good and clean condition and repair in such manner as not to create a fire, safety, or health hazard to Villages of Kapolei or any part thereof, at such Owner's or lessee's sole cost and expense. Each Owner shall maintain or cause to be maintained in a neat and attractive condition any landscaping or planting strip or portion thereof lying between the sidewalk and the Road or the parking lot in front of or bordering his Commercial Lot.
- (e) Each Owner will maintain or cause to be maintained in good repair any fence or wall along any Road boundary of his Commercial Lot which had been erected by Declarant or Developer, and will also maintain or cause to be maintained any fence or wall on his Commercial Lot erected by Declarant or Developer on or within two feet of any common boundary between his Commercial Lot and his neighbor's Commercial Lot. Each Owner with a fence or wall along such a common boundary shall be liable to the Owner of the adjoining Commercial Lot for half the cost of maintenance or repair of such fence or wall incurred by such Owner.
- (f) **[THERE IS NO SUBSECTION (f)].**
- (g) No Owner shall place or use or permit to be placed or used exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Commercial Lot and Improvements thereon.
- (h) No Owner shall erect or permit to be erected any sign upon any Commercial Lot or Improvements on a Commercial Lot, including without limitation, commercial, political or similar signs, which sign does not conform to design standards approved from time to time by Declarant except with the prior written approval of the Design Review Committee.
- (i) No Owner shall place, keep or maintain or permit to be placed, kept or maintained accessory tents, structures or buildings of a permanent nature upon any Commercial Lot.
- (j) Each Owner shall not violate or permit the violation of his Commercial Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his Commercial Lot.
- (k) No activity shall be undertaken upon any Commercial Lot or in or about any Commercial Lot which would unreasonably disrupt or impair the quiet enjoyment of any other Commercial Lot, and no unlawful activity shall be maintained on any Commercial Lot.

5.08 Commercial Area: Construction and Alteration of Improvements.

No Owner other than Declarant or a Developer may construct, reconstruct, refinish, alter or maintain any Improvements upon, under or above any Commercial Lot or may make or create any Excavation or Fill on such Commercial Lot, or may make any change in the natural or existing surface drainage of such Commercial Lot, or may install any utility line (wire or conduit) on such Commercial Lot, except in compliance with the provisions of Section 5.03 (except such provisions which are clearly applicable only to residential Lots) and to the Design Rules and the Design Guidelines set forth in Exhibit C attached hereto.

5.09 [SECTION 5.09 HAS BEEN OMITTED].

5.10 Exempt Areas.

The provisions of Article V to the contrary notwithstanding, the restrictions on Improvements, use and occupancy set forth in Article V shall not apply to any Lot or Commercial Lot so long as such Lot or Commercial Lot is owned by or leased to any Governmental Agency, and used for a nonresidential public, governmental or public utility purposes, to the extent that such restrictions shall prevent reasonable use of such Lot or Commercial Lot for said purposes. All restrictions not preventing reasonable use for nonresidential public, governmental or public utility purposes shall continue to apply as if the Lot is used by a private Owner, including without limitation, all requirements of Design Review Committee approval regarding Improvements to be made by the Governmental Agency. On cessation of such nonresidential public, governmental, or public utility use, the restrictions of this Article V shall become applicable to the Lot. Declarant and the Association shall jointly have the power to release any Lot or other real property, temporarily or forever from any restrictions in this Article V if such waiver shall be necessary or advisable to obtain acceptance of such real property by the Governmental Agency; provided, however, that Declarant and the Association shall have no power to release any restriction in this Article V with respect to any Lot used for residential purposes. All Lots used for residential purposes shall be subject to all of the restrictions set forth in this Article V.

5.11 Presumption of Compliance.

The following Improvements, Excavation, Fill and other work shall for purposes of the Restrictions be conclusively presumed to be in compliance with the provisions of this Article V:

- (a) All Improvements, Excavation, Fill and other work existing or maintained on any Lot within the Community Area at the time such Lot became a part of the Community Area.
- (b) All Improvements, Excavation, Fill and other work existing or maintained on any Private Area at the time such Private Area was first conveyed by Declarant or Developer to an Owner or a Sub-Association.

- (c) All Improvements, Excavation, Fill and other work from time to time constructed, or maintained by Declarant or any Developer upon any Lot or Cotenancy Area in any Private Area, or upon any Common Area, or upon any Commercial Lot or Cotenancy Area in any Commercial Area.

5.12 Agricultural Operations.

The Owner of each Lot and Commercial Lot by acceptance of a deed or lease for such Lot or Commercial Lot, shall be deemed to acknowledge that the Community Area is located near or adjacent to land and easements used for and in connection with the cultivation of sugar cane and diversified agricultural operations, including, but not limited to, open burning, percolating, evaporating, milling, generating power, trucking, plowing, hauling, fertilizing, grading, storage, herbicide, ripener, and pesticide spraying, crop dusting, water diversion, irrigating, and all other activities incidental to the planning, cultivating, harvesting and processing of crops, which may from time to time cause surface water runoff, noise, soot, smoke, dust, light, heat, vapors, odors, chemicals, vibrations, and other substances and phenomena of every description (collectively the "Agricultural Effects") to be discharged, emitted, or transmitted over and upon the Property and the Community Area which may bother or be a nuisance to such Owner and any person occupying or using any Lot or Commercial Lot in the Community Area. Such Owner shall also be deemed to acknowledge that the Hawai'i Right to Farm Act (H.R.S. Chapter 165) and the Hawai'i law limit the circumstances under which farming operations may be deemed to be a nuisance. Such Owner, for itself, its heirs, personal representatives, successors, assigns, and any person using or occupying any Lot or Commercial Lot in the Property and the Community Area shall be deemed by acceptance of such deed or lease to waive, release and agree to indemnify and hold harmless the State of Hawai'i, Declarant, Developers, Oahu Sugar Company, Limited, The Estate of James Campbell, Deceased, and their respective officers, directors, employees, agents, successors and assigns from, any and all actions, claims for damages and costs (whether brought in nuisance, trespass, or any other area of law or equity, but excluding negligence), including attorney's fees, arising directly or indirectly out of or from the Agricultural Effects, and these provisions shall be included in subsequent conveyance of any Lot or Commercial Lot in the Community Area (provided, however, that Declarant as Owner of a Lot or Commercial Lot shall have no obligation to indemnify The Estate of James Campbell, Deceased).

VI. DESIGN REVIEW COMMITTEE

6.01 Design Review Committee: Organization and Powers.

- (a) The Board of Directors shall appoint and maintain a Design Review Committee to review and control the design and development of the Community Area, to adopt the Design Review Committee Rules, and to maintain the Design Guidelines for Villages of Kapolei.
- (b) The number of Members (the "Members") on the Design Review Committee shall be determined by the Board from time to time, provided that the number of Members established for the Design Review Committee shall at all times be not less than three nor more than nine. At least one Member of the Design Review Committee shall at all times be an Architect (the "Architect Member"). The Architect Member need not be an Owner. All other Members shall be Owners.
- (c) The Members shall be appointed by the Board of Directors as herein provided. Except as otherwise provided herein, the Members shall serve two year terms and shall remain in office until a successor has been appointed by the Board. The terms of the Members shall be staggered so that in every consecutive two-year period, one-half (or as close thereto as reasonably possible) of the terms will expire in one year and one-half (or as close thereto as reasonably possible) of the terms will expire in the other year. The Board shall be empowered to modify the length of the term of any Member to be appointed or reappointed under any provision herein, including, but not limited to, Section 6.01(e)(1), Section 6.01(e)(2), Section 6.01(e)(3), and Section 6.01(e)(4) below, as is necessary so as to create said staggered terms.
- (d) The Board shall also designate at least two alternate Architect Members (the "Alternate Architect Members") who do not need to be Owners, to act as the Architect Member in the absence or disability of the Architect Member. The Alternate Architect Members shall serve two year terms. Each Alternate Architect Member must be an Architect.
- (e) The Board of Directors shall have the right from time to time to appoint and remove any or all Members and Alternate Architect Members of the Design Review Committee as follows:
- (1) The Board of Directors, at a duly held Board meeting, may appoint a successor to fill any vacancy created by the natural expiration of the term of any Member or Alternate Architect Member.
 - (2) The death, resignation, or incapacity of a Member or Alternate Architect Member shall cause his position to become vacant. Upon the death, resignation, or incapacity of any Member or Alternate Architect Member, the Board, at a duly held Board meeting, may appoint a successor to serve for the remainder of the term of the Member or Alternate Architect Member whose position became vacant or such modified term as necessary to create staggered terms.
 - (3) The Board of Directors, at any duly held Board meeting, may remove any Member or Alternate Architect Member, with or without cause, and may thereafter at the same or at another duly held meeting, appoint a replacement Member or replacement Alternate Architect Member to serve for the remainder of the term of the Member or the Alternate Architect Member who has been removed or such modified term as necessary to create staggered terms.
 - (4) In the event that the Board of Directors votes to increase the number of Members, the Board, at a duly held meeting, shall appoint persons to fill the positions thus created.
- (f) Any Member of the Design Review Committee may resign at any time upon written notice delivered to the Board.

6.02 Design Review Committee Meetings, Action, Compensation, Expenses.

The Design Review Committee shall meet from time to time as necessary to perform its duties. At all meetings of the Design Review Committee, Members representing a majority of the total number of positions then existing on the Design Review Committee, as established by the Board pursuant to Article VI, Section 6.01(b), shall constitute a quorum and the acts of a majority of the Members present at a meeting at which there is a quorum shall be the acts of the Design Review Committee; provided, however, that the Architect Member or in his absence or disability, an Alternative Architect Member acting in his place, shall have unilateral power to disapprove plans, drawings and specifications submitted to the Design Review Committee for approval pursuant to any section of Article V without the concurrence of any other Member except with respect to approvals required under section 5.05. The Design Review Committee shall keep and maintain a record of all actions taken from time to time. The Architect Member and the Alternate Architect Members shall receive reasonable fees for professional services rendered. The Design Review Committee may charge a reasonable fee for reviewing applications pursuant to the Design Review Committee Rules, except that no fees shall be charged to the Association. Fees charged by the Design Review Committee shall be paid to the Association and deposited into the Association's operating account to be used as determined by the Board from time to time. Unless otherwise authorized by the Board of Directors, the nonarchitect Members of the Design Review Committee shall not receive any compensation for services rendered. Provided the Board has approved the expenses, all Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Review Committee function.

6.03 Design Review Committee Rules and Policies and Procedures.

The Design Review Committee may from time to time, with the written approval of the Board, adopt, amend and repeal rules and regulations comprising the "Design Review Committee Rules" to interpret and implement the provisions of the Design Guidelines and Article V pertaining to the design of Improvements to be approved by the Design Review Committee. The Board of Directors may from time to time suggest and/or recommend modifications to the Design Review Committee Rules for consideration by the Design Review Committee. The Association shall keep a current copy of the Design Review Committee Rules, as amended, available at all times at the office of the Association for inspection by any Owner or Owner's Architect. The Design Review Committee Rules and the Design Guidelines shall establish the standards for the construction of any residential or commercial building to be constructed or developed in the Community Area.

The Board of Directors may from time to time recommend and/or adopt policies and procedures to be followed by the Design Review Committee in carrying out its duties and responsibilities; provided, however, that said policies and procedures shall not be inconsistent with any provision of this Declaration, the Association's Articles of Incorporation or By-Laws, the attached Design Guidelines, or the Design Review Committee Rules.

6.04 Estoppel Certificate.

Any Owner may, upon payment to the Association of a reasonable fee to be determined from time to time by the Association, request that the Design Review Committee deliver to such Owner within thirty (30) days of the request an estoppel certificate executed by any two of its Members in form determined by the Design Review Committee and suitable for Recording, certifying with respect to such Owner's Lot that, as of the date of its execution, either (a) all Improvements and other work done upon such Lot complies with the Restrictions, or (b) such Improvements and work does not so comply, in which event the certificate shall (1) identify the noncomplying Improvements and/or work, and (2) set forth the reason for such noncompliance. Any purchaser or mortgagee of such Owner shall be entitled to rely on the matters therein set forth in such certificate, such matters being conclusive as between the Association, the Owner and such purchaser or mortgagee.

6.05 Liability.

Neither the Design Review Committee nor any Member of the Design Review Committee shall be liable to the Association or to any Owner or to any other person for any damage or loss on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans and specifications, (c) the development of any Lot or of the Community Area, or (d) the execution and filing of an estoppel certificate pursuant to Section 6.04 or the accuracy of any facts stated therein; provided, however, that such Member has, acted in good faith. The Design Review Committee, or any Member may, but is not required to, confer with the Association or any Owner or his Architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Review Committee.

6.06 Non-existence of Design Review Committee.

In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be sufficient Members of the Design Review Committee necessary to act on a particular matter for a period of at least twenty (20) days, then, until there shall again be sufficient Members of the Design Review Committee, the President or any Vice President of the Association, shall act for the Design Review Committee, and such officer's certificate that there had been no Design Review Committee, or that the required Members were not present, and that he was acting pursuant to the authority of this section shall be conclusive between the Association, the Owners, any purchaser, or, mortgagee. The President or a Vice President acting under this Section shall be entitled to employ an Architect (who shall be compensated pursuant to Section 6.02) to render technical advice.

VII. VILLAGES OF KAPOLEI ASSOCIATION

7.01 Organization.

The Association shall be organized as a nonprofit corporation under HRS Chapter 415B. The Association shall have the duties, obligations and powers set forth in this Declaration and in the Association's Articles of Incorporation and By-Laws.

7.02 Association Membership.

- (a) Each Owner of a Lot within the Community Area shall be a member of the Association (hereinafter referred to as an "Association Member", the membership of such Association Member hereinafter referred to as the "Association Membership").

(b) For the purposes of determining Association Membership status, an "Association Member" shall include:

- (1) the Owner of any Lot within the Private Area, excluding Declarant and any Developer. A Governmental Agency that owns a Lot that is exempt from assessments under Article VIII, Section 8.05(d) shall not be included in this Subsection (1) with respect to said Lot. A Governmental Agency shall be considered an Association Member with respect to any Lot owned by it where there is no exemption from the obligation to pay assessments.
 - (2) Declarant or any Developer, so long as Declarant or such Developer is the Owner of any Lot within the Community Area. However, this Subsection (2) shall not include any Lot owned by Declarant or any Developer covered under Subsection (b)(3) or Subsection (b)(4) of this Section 7.02.
 - (3) Declarant, with respect to: i) any Lot owned by Declarant upon which is situated an Apartment Building; ii) any Lot owned by Declarant after August 2, 2030; and iii) any Lot conveyed to Declarant after any conveyance by Declarant of said Lot or the land upon which said Lot is situated to any Developer or any other person, including, but not limited to, Lots conveyed to Declarant under any buy-back provision or any other provision of Chapter 201E, Hawai'i Revised Statutes, Lots conveyed to Declarant by way of a deed in lieu of foreclosure, Lots purchased by Declarant at foreclosure or other judicial sales, and Lots conveyed to Declarant in any arms-length transaction. Notwithstanding the foregoing, this Subsection (3) shall not include any Lot exempt from assessments as described in Section 8.03(d);
 - (4) Any Developer with respect to: i) any Lot conveyed to Developer after any conveyance by Developer of said Lot or the land upon which said Lot is situated to any person; ii) any Lot owned by Developer that has been fit for occupancy for more than twelve (12) months; and iii) any Lot owned by any Developer upon which is situated an Apartment Building.
- (c) The Owner of any Commercial Lot shall have no right to Association Membership, but shall be subject to the restrictions and limitations of Sections 5.08 and 5.09 above.
- (d) No Association Member shall be terminated, or his Association Membership forfeited, except upon transfer of his interest in the Lot in the Community Area which entitles him to Association Membership; provided, however, that upon execution, delivery and Recordation of a valid agreement of sale of interest in a Lot and delivery of a copy of such agreement of sale to the Secretary of the Association, the vendor's Association Membership and all voting rights and obligations incident thereto, shall be considered temporarily transferred to the vendee, such transfer becoming permanent upon subsequent execution, delivery and recordation of a deed or assignment of lease in satisfaction of said agreement of sale or reversioning equitable title in the vendor in the event of termination of said agreement of sale. No Association Member may withdraw, transfer or otherwise dispose of his Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which Association Membership is appurtenant.
- (e) There shall be two (2) classes of Association Membership as follows:
- (1) Class A Association Members shall include all Owners described in Section 7.02(b)(1), Section 7.02(b)(3), and Section 7.02(b)(4) above; and
 - (2) Class B Association Members shall include Declarant and all Developers described in Section 7.02(b)(2) above.

Declarant's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate upon the conveyance and transfer of all interest in the Community Area by Declarant to Developers, Owners, the Association and other third parties such that Declarant no longer retains any interest in the Community Area or August 2, 2030, whichever occurs first. In the event that Declarant continues to own any Lots in the Private Area as of August 2, 2030 which qualified Declarant as a Class B Association Member theretofore, Declarant's Class B Association Membership shall convert to a Class A Association Membership with respect to each Lot so owned and Declarant shall have the same voting rights and privileges and obligations as any other Class A Association Member with respect to said Lots.

A Developer's Class B Association Membership and all voting rights and obligations incident thereto shall cease and terminate with respect to a Lot upon the sale and transfer of such Lot by a Developer to the initial Owner of such Lot. A Developer's Class B Association Membership shall cease and convert to a Class A Association Membership with respect to a Lot if pursuant to Section 8.05 a Developer fails to certify to the Association at the time the Residence on such Lot is rendered fit for occupancy that such Developer is not retaining or taking title with the intent of holding such Lot for such Developer's own use or for resale later than twelve (12) months following the date of such certificate.

(f) The owner of an Apartment Building who is not an owner of the land upon which the Apartment Building is situated shall not be considered an Association Member with respect to said ownership of the Apartment Building. The owner of the Lot upon which the Apartment Building is situated shall be considered the Association Member with respect to said Lot and shall be fully responsible for complying and ensuring full compliance by the owner and occupants of the Apartment Building with all terms, covenants, conditions, and restrictions set forth herein. The occupants of Rental Units in an Apartment Building who do not own the land upon which the Apartment Building is situated shall not be considered Association Members with respect to said Rental Units. Said occupants shall have the same rights as occupants of other Lots with respect to the use of the Common Areas.

(g) An Association Member shall have all rights, duties, privileges and obligations of an Owner as set forth in this Declaration, and in the Articles of Incorporation and the By-Laws of the Association.

7.03 Voting Rights.

Association Members shall be entitled to vote as follows:

- (a) Each Class A Association Member shall be entitled to one (1) vote for each Lot owned in Private Area. As provided hereinabove, for voting purposes, Rental Units shall be considered Lots. As such, a Class A Association Member who owns the land upon which an Apartment Building is situated shall be entitled to one vote per Rental Unit. No separate voting rights shall be given for ownership of the Lot upon which the Apartment Building is situated.
- (b) Each Class B Association Member shall be entitled to one (1) vote for each Lot owned in the Community Area.
- (c) There shall not be more than one vote per Lot or Rental Unit (in the case of an Apartment Building), regardless of the number of co-Owners thereof. If an Association Member is an Owner comprised of more than one person or entity, any one person or entity shall exercise the vote attributable to such Association Member in the absence of protest by the other co-Owners. In case of protest, each co-Owner shall be entitled to vote its respective fraction of the one vote in proportion to the co-Owner's share of ownership in the Lot.

7.04 Duties and Obligations of the Association.

The Association shall have the following duties and obligations subject to the Restrictions, to be performed and for the maintenance and improvement of Villages of Kapolei for the benefit of the Owners:

- (a) The Association shall consider as part of Villages of Kapolei all real property annexed to the Community Area pursuant to Sections 4.02, 4.03 and 4.07 and shall accept all Owners as Association Members.
- (b) The Association shall acquire, accept and hold title to all Common Areas and other real property from time to time conveyed to the Association pursuant to Section 9.05. The Association may also acquire, accept and hold title to any other real, personal or mixed property; provided that Association shall not carry on any business or trade for profit. The Association may charge reasonable fees to Owners for use of the Recreational Facilities on the Common Areas to defray the costs of construction, maintenance, repair or operation of Recreational Facilities, or of other facilities owned by the Association, where permitted under the Internal Revenue Code of 1986, as amended from time to time.
- (c) The Association shall maintain the Common Area and other property owned by the Association, including without limitation Recreational Facilities, drainage facilities, equipment, landscaping, Lots and easements designated or reserved for dedication to Governmental Agencies but held by the Association pending such dedication and all Improvements located on the Common Area and other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any improvement constructed upon the Common Area by any Owner, but may compel such Owner to maintain such improvement.
- (d) The Association shall accept and undertake to fulfill any delegation, responsibility or liability for the upkeep, repair and maintenance in good order of any property and Improvements, including drainage facilities and equipment and landscaping, within or adjoining the Community Area, which obligation, responsibility or liability is imposed by or exists by virtue of law or which is imposed by or exists by virtue of a private agreement entered into by Declarant or commitment made by Declarant to a Governmental Agency in the course of the development of the Community Area, whether or not the Association was or is made a party to such agreement or commitment;
- (e) The Association shall accept and undertake the responsibility and obligation to upkeep, repair and maintain any area within the Community Area (whether or not such area is formally designated a Lot) for which such responsibility and obligation has been delegated to the Association by Declarant, or by a Developer with the consent of Declarant, provided that, (1) the area is intended to be conveyed to the Association as a Common Area, (2) the area is fully and completely developed for its intended use, (3) the area is available for use by all Owners within the Community Area or is of general benefit to the Community Area and (4) Declarant or a Developer gives the Association thirty (30) days prior written notice that responsibility for upkeep, maintenance and repair is being transferred to the Association.
- (f) The Association shall pay all real property taxes and assessments levied upon any portion of the Common Area to the extent not assessed to or paid by the Owners.
- (g) The Association may contract for, employ or otherwise provide security and refuse disposal services if such services are not provided by the City and County of Honolulu or other governmental agency, and if the cost for such services is assessed directly or indirectly against the Owners.
- (h) The Association, acting through its Board, shall obtain and continue in effect if reasonably available the following policies of insurance:
 - (1) Blanket property insurance covering risks of direct physical loss or comparable coverage by whatever name denominated for all insurable improvements on the Common Area and on other areas to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement in the event of a loss. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property; and
 - (2) commercial general liability insurance with respect to the Common Area and Improvements thereon, under policies for bodily injury, personal injury, property damage, advertising injury, with endorsements for general aggregate, products and completed operations liability for ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence or

such other limits as the Association may from time to time establish with due regard to prevailing prudent business practices in Hawai'i.

The policy or policies of insurance referred to in subparagraph (2) above shall name as insureds (i) the Association and its officers, the Board and its members, the Design Review Committee and its Members and the employees of the Association, Board and Design Review Committee; and (ii) with respect to any liability arising out of the maintenance and use of the Common Area, the Owners. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies, provided, however, that such policy or policies shall not require the insured or insurers to pay any amounts in excess of the maximum limits stated therein. Each policy of insurance obtained by the Association shall expressly waive all rights of subrogation against Declarant and any Owner.

- (3) Workers compensation and employers liability insurance if and to the extent required by law;
- (4) Directors and officers liability insurance or equivalent Association liability insurance which may name the Association's Managing Agent and/or Manager as an additional insured;
- (5) Commercial crime insurance, including but not limited to, fidelity insurance, in an amount determined by the Board in its best business judgment. Fidelity insurance policies shall contain an endorsement covering noncompensated individuals and may include the Managing Agent and Manager as an insured; and
- (6) Such additional insurance as the Board in its best business judgment determines advisable, including, but not limited to, commercial auto insurance, commercial liability umbrella insurance, business income insurance, flood insurance, earth movement insurance, and boiler and machinery insurance.

The Association shall have no insurance responsibility for any part of property of any private amenity or property of Owners.

- (i) The policies of insurance required under subsection (h) above may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as an expense of the Association or in the same manner as the premiums for the applicable insurance coverage.
- (j) All insurance coverage obtained by the Association, through its Board, shall, if reasonably available:
 - (1) Be written with a company authorized to do business in the State of Hawai'i which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies, if any, as the Board requires;
 - (2) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association;
 - (3) Not be brought into contribution with insurance purchased by individual Owner, occupants, or their mortgagees;
 - (4) Include an agreed amount endorsement if the policy contains a co-insurance clause; and
 - (5) Contain insurable replacement cost coverage.
- (k) In addition, the Association, through its Board, may secure, if reasonably available, insurance policies providing the following:
 - (1) A waiver of transfer of recovery rights as to any claims against the Association's Board, officers, employees, and its Manager and the Owners;
 - (2) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
 - (3) An endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;
 - (4) An endorsement requiring at least 30-days prior written notice to the Association of any cancellation, substantial modification or non-renewal;
 - (5) A provision vesting the Board with exclusive authority to adjust property losses; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

7.05 Powers of Association.

The Association shall have all the powers set forth in the Articles of Incorporation, the By-Laws, and the Restrictions, and all powers conferred upon the Association by the Hawai'i Nonprofit Corporation Act, HRS Chapter 415B, as amended, subject, however, to limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation and By-Laws and in the Restrictions, to do all lawful things which may be authorized, required or permitted to be done by the Association under the Restrictions and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the purposes of the Association or for the health, safety and general welfare of the Owners of Villages of Kapolei. Without limiting the generality of the foregoing, the Association shall have the following express powers:

- (a) The Association shall have all the powers set forth in the Restrictions, including, without limitation, the power to levy assessments on Association Members pursuant to Article VIII, to defray the cost of satisfying the duties and obligations and take any such action, whether or not expressly authorized by Restrictions, the Rules or the Design Review Committee Rules;
- (b) In fulfilling any of its duties and obligations under the Restrictions, including without limitation, its duties and obligations for the maintenance, repair,

operation and administration of the Common Area or in exercising any of its rights to construct Improvements or other work upon any Common Area and any Recreational Facility, the Association shall have the following power:

- (1) to contract and pay for and provide for the construction of Improvements or other work upon Common Area, and to contract and pay for and provide for the maintenance, restoration and repair of all Improvements of whatever kind located on any Common Area, and to contract and pay for and provide for such other services as may be necessary or otherwise in carrying out its functions as set forth in Restrictions on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;
 - (2) to obtain, maintain and pay for such insurance policies or bonds as the Association may deem appropriate for the protection or benefit of Villages of Kapolei, the Association, the members of the Board, the Design Review Committee or the Owners;
 - (3) to contract and pay for or provide for such utility services including, without limitation, water, sewer, garbage disposal, refuse collection and recycling, electrical, telephone, community antenna television and gas service, provided such services are made available to all Owners on a commercially reasonable basis;
 - (4) to contract and pay for, or provide for the services of Architects, engineers, attorneys and certified public accountants and such other services as the Association may deem necessary;
 - (5) to contract and pay for, or provide for, fire, police and such other public safety and security as the Association may deem necessary for the benefit of Villages of Kapolei and the Owners; and
 - (6) to contract and pay for or provide for such materials, supplies, furniture, equipment and labor as the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any Common Area on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.
- (c) The Association shall have the power and authority from time to time to convey to any Governmental Agency, public utility, private utility or third party for reasonable compensation or on such other terms as the Board may approve such easements, rights-of-way, parcels or strips of land in, on, over or under any Common Area, for the purpose of:
 - (1) constructing, directing, operating and maintaining roads, public streets, walks, driveways, parkways and park areas;
 - (2) installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith; and
 - (3) constructing, operating and maintaining public and private sewers, storm water drains, land drains and water systems, sprinkler systems, water, heating and gas lines or pipes and necessary facilities in connection with the foregoing.
 - (d) The Association may from time to time employ the services of a manager (the "Manager") to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawai'i Nonprofit Corporation Act, the Association may delegate to the Manager any of its powers under the Restrictions, provided, however, that the Manager may execute any contract on behalf of the Association for a sum not to exceed \$10,000 or for the performance of any work or services, which work or services will be completed within sixty (60) days, and shall not have the power to sell, convey, mortgage or encumber any real or personal property of the Association other than unserviceable maintenance or recreation equipment.
 - (e) The Association may from time to time pay, compromise or contest any or all taxes and assessment levied against all or any part of the Common Area, or upon any personal property belonging to the Association, provided, however, that prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.
 - (f) The Association, acting by and through its Board, may exchange, sell, convey, or otherwise dispose of, for cash or on such terms as the Board shall approve, any portion of the Common Area, with Improvements thereon, the retention of which property the Board has determined is no longer necessary, advantageous or beneficial for the Association; provided, however, that no such exchange, sale or other disposition of any real property shall be made without the affirmative vote at a meeting of the Association, duly called for such purpose, of not less than a two-thirds (2/3) interest of the Class A Members present at the meeting in person or by proxy. The notice for any such meeting shall describe the real property to be sold, exchanged, conveyed, or otherwise disposed of, the terms thereof, and shall give the reasons therefor. Any such sale, exchange, conveyance, or disposition of any Common Area shall be subject to an easement for ingress and egress in favor of any Lot which requires access through such Common Area. All proceeds, if any, of any sale, exchange, conveyance or disposition, less the expenses thereof, shall be invested by the Association in additional property acquired for the benefit of the Association, or in improving the properties of the Association.
- Notwithstanding the foregoing or any other provision herein, the Association, acting by and through its Board, may purchase and sell real property that has not been classified as Common Area without a vote of the Association members. This includes, without limitation, the purchase of Lots at foreclosure auctions and on the open market and selling Lots so purchased by the Association, acting by and through its Board, upon such terms as the Board determines to be in the best interest of the Association. Any such real

property purchased by the Association shall be held in the name of the Association.

Notwithstanding the foregoing, the Board shall have the right and authority to lease the Common Areas, Improvements thereon, and other real property owned by the Association or any portion thereof for any period of five years or less without the approval of the Owners. The Board shall not enter into any lease of the Common Areas, Improvements thereon, or any other real property owned by the Association, or any portion thereof with a term in excess of five years without the affirmative vote at a meeting of the Association, duly called and held for such purpose, of not less than two-thirds (2/3) interest of the Class A Association Members present at the meeting in person or by proxy.

In addition to the foregoing and notwithstanding the provisions of Article V, Section 5.04(d) above, the Board shall have the right and authority, in its discretion, to permit Owners and occupants to reserve portions of the Common Area, including, but not limited to, portions of the Recreation Facilities and the private parks, for limited periods of time for such uses and purposes as the Board shall determine appropriate from time to time, including, but not limited to, for parties, weddings, picnics, social events, and/or educational events. The Board may adopt reasonable rules, regulations, and policies regarding the reservation and use of the Common Area, including, but not limited to the Recreational Facilities and private parks, and may impose fees and other costs in connection with said reservations, provided the imposition of said fees and costs shall not cause the Association to become a corporation for profit under applicable tax laws. The Board shall adopt and publish in the Association's newsletter a schedule of fees for the use of the Common Area, including, but not limited to, the Recreational Facilities and private parks from time to time. Notwithstanding the foregoing, the right of the Board to permit Owners and occupants to reserve portions of the Common Area shall at all times be subject to any limitations and restrictions set forth in any recorded private park dedication agreement with the City & County of Honolulu affecting said Common Area.

So long as the Common Area owned by the Association is not used as security for payment, the Board shall have the authority, from time to time, without being required to obtain the approval of the Owners, to: 1) enter into leases for equipment or other similar transactions; 2) borrow funds; 3) mortgage real property owned by the Association (except real property classified as Common Area); and/or 4) establish a line of credit on a revolving account.

The Board may secure a loan or line of credit by a mortgage on the Common Area owned by the Association upon obtaining the affirmative vote of two thirds (2/3) of the Class A members who are present in person or by proxy at a meeting of the Association at which a quorum is present, duly called and held for such purpose.

- (g) The Association shall have the power and authority, at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot or Commercial Lot for the purposes of (i) maintaining and repairing any such Lot or Commercial Lot, if for any reason whatsoever the Owner of such Lot fails to maintain and repair such Lot or Commercial Lot in good condition and repair, (ii) removing any Improvement constructed, reconstructed, refinished, altered or maintained upon any Lot or Commercial Lot in violation of the provisions of these Restrictions, the Design Review Committee Rules or Design Guidelines and (iii) inspecting such Lot or Commercial Lot to determine compliance with these Restrictions, the Design Review Committee Rules or the Design Guidelines.
- (h) The Association shall have the power and authority (but shall not be required) from time to time, in its own name or behalf or in the name and behalf of any Owner who consents thereto, to commence and maintain actions or suits to restrain and enjoin any breach or threatened breach of these Restrictions, the Design Review Committee Rules or the Design Guidelines, or to enforce by mandatory injunction or otherwise any of the provisions of these Restrictions, the Design Review Committee Rules or the Design Guidelines.
- (i) All reasonable expenses incurred by the Association in exercising its rights under subsections (g) and (h) above, including court costs and attorneys' fees, shall be a special assessment levied pursuant to Section 8.04 against the Owner of the Lot or Commercial Lot whose violation of these Restrictions, the Design Review Committee Rules or the Design Guidelines resulted in the Association incurring expenses.
- (j) The Association, through its Board, shall have the power and authority to regulate the use of any street, road, cul-de-sac, or other paved vehicular way owned by Declarant, provided Declarant has assigned the right to regulate said street, road, cul-de-sac, or other paved vehicular way to the Association.
- (k) The Association, through its Board, shall have the power and authority to enter into use, lease, easement, license, and other forms of agreements (hereinafter in this subsection referred to as "agreements"), upon such terms and conditions as the Board determines appropriate, for the use of property not owned by the Association; provided that each agreement includes a provision permitting any party thereto to terminate the agreement at any time, with or without cause, upon not more than sixty (60) days written notice and provided further that HUD gives its approval to said agreement. Said property may be used for boat storage for Owners and occupants of Villages of Kapolei, storage of Association property, as a compost site, as a nursery for plants and vegetation for the Common Area, or any other purpose that the Board determines to be in the best interest of or for the benefit of the Association. The Association shall have all rights, duties, and privileges conferred or imposed upon it pursuant to the terms of any such use agreement including, but not limited to, the right and authority to lease said property to Owners or others or to permit Owners and others to use said property. The Board may purchase equipment for the use of said property, it may purchase policies of insurance to protect it and the Association from liabilities with respect to the property or the use thereof, it

may make such improvements, alterations, and/or additions to the property as it determines appropriate, it may regulate the use of the property, and it may take all such action as it determines appropriate in the administration and operation of said property. All costs incurred in connection with any such agreement or the use, administration, regulation, or operation of said property, or in the exercise of any of the rights or powers of the Association in connection with said property shall be an expense of the Association.

- (l) It is anticipated that in connection with the dedication of Roads or roadways to the City & County of Honolulu by Declarant, the City & County of Honolulu may require that the land adjacent to or in the vicinity of the Road or roadways and the improvements thereon be repaired and maintained by the Association notwithstanding that said land and improvements are not owned by the Association but are part of the land and improvements so dedicated to the City & County of Honolulu. In this event, the Association, acting by and through its Board, shall have the power and authority to agree to undertake the responsibility for the repair and maintenance of said land and improvements or any part thereof and may condition or limit any such agreement as the Board deems appropriate. In the event that the Association, acting by and through its Board, does agree to undertake the responsibility for the repair and maintenance of the land and improvements or any part thereof, the Association, acting by and through the Board, shall have the power and authority to make alterations, additions, and improvements to said land and improvements and to place thereon such signs as the Board determines appropriate; provided, however, that any such alterations, additions, improvements, or signs shall be subject to any ordinances, rules, regulations, or restrictions of the City & County of Honolulu and, provided further, that any alterations, additions, or improvements made by the Board on behalf of the Association or signs placed on said land and/or improvements shall require Design Review Committee approval to the extent that such approval would be required if said land and improvements were part of the Common Area. All costs incurred in connection with any such repair, maintenance, alteration, addition, improvement, or sign or in the exercise of any of the rights or powers of the Association in connection with said land and improvements shall be an expense of the Association.

7.06 Rules.

- (a) The Board may from time to time adopt, amend and repeal rules and regulations to be known as the Rules to govern the following:
 - (1) the use of Common Area, including Recreational Facilities by any Owner or by the Family, invitees, licensees, or lessees of such Owner or by any other person;
 - (2) the use of Roads;
 - (3) the collection and disposal of refuse;
 - (4) the burning of open fires;
 - (5) the maintenance of animals within Villages of Kapolei; and
 - (6) the amount of the Initiation Assessment to be paid by each new Association Member.
 - (7) the Village V Cluster Driveways, as defined in the First Supplemental Declaration of Covenants, Conditions and Restrictions for Iwalani Village - Village V of the Villages of Kapolei recorded at the Land Court as Document 2258054, provided said rules are consistent with the provisions of said Supplemental Declaration, as amended from time to time.
 - (8) any street, road, cul-de-sac, or other paved vehicular way owned by Declarant, provided Declarant has assigned the right to regulate said street, road, cul-de-sac, or other paved vehicular way to the Association;
- (b) Without limiting the scope of the rules that may be adopted pursuant to any other provision herein including, but not limited to, the provisions of Section 7.06(a)(1) - 7.06(a)(8) above, with respect to any Road defined in Article III, any Cluster Driveway referred to in Section 7.06 (a)(7) above, any street, road, cul-de-sac, or other paved vehicular way referenced in Section 7.06(a)(8) above, or any Common Area, the Rules may provide for:
 - (1) parking restrictions;
 - (2) maximum speeds for vehicular traffic;
 - (3) the time or times when commercial vehicles may be permitted to use Roads owned by the Association; and
 - (4) the types of vehicles other than passenger automobiles which may be permitted to use Roads owned or regulated by the Association.
- (c) **[THERE IS NO SUBSECTION (c)].**
- (d) The Association shall maintain a copy of the Rules as adopted, amended or repealed from time to time, certified by the secretary of the Association, and shall deliver a duplicate copy to each Owner on his acquisition of a Lot, and shall deliver a copy of each new rule or amendment of an existing rule and notice of repeal of any rule to each Owner. The Rules shall be incorporated in and have the same force and effect as if they were a part of the Restrictions. Failure of any Owner to receive a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

7.07 Liability of Members of the Board.

No member of the Board shall be personally liable to any Owner, guest, invitee or to any other person, including the Declarant, for any error or omission of the Association, its employees, the Design Review Committee or the Manager of the Association, so long as such member has acted in good faith.

7.08 Exclusive Powers of the Association.

The Association, through the Board, shall have the exclusive authority to exercise the powers described in paragraphs (b) through (f) inclusive of Section 7.05.

7.09. Association Newsletters. The Association shall publish from time to time a newsletter covering Association business and events and other matters affecting the

Association and the surrounding community. All Owners, as defined herein, shall be considered subscribers to the Association's newsletter and a copy shall be mailed to each Owner at the address of the Owner as shown in the Association's record of ownership. The cost of production and distribution of the Association newsletter shall be included in the Maintenance Assessments of the Association.

VIII. FUNDS AND ASSESSMENTS

8.01 Operating Fund.

The Association shall maintain an Operating Fund into which the Association shall deposit all monies received by the Association, whether from Initiation Assessments, Maintenance Assessments, Special Assessments, income attributable to the Operating Fund or any other rents, charges or fees levied by the Association. The Operating Fund shall comprise the working capital of the Association from which the Association shall make all disbursements and discharge all liabilities in the exercise and performance of its duties and obligations under this Declaration and the Articles of Incorporation and By-Laws of the Association.

8.02 Initiation Assessment.

The Association shall charge to each Owner, except Owners exempt under Section 8.05, an Initiation Assessment upon such Owner taking title to a Lot from a Developer thereby becoming an Association Member. The Initiation Assessment shall be in addition to any other Assessments provided for in this Article VIII. The initial Initiation Assessment shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00). The Initiation Assessment may be increased or decreased pursuant to the Rules. For purposes of payment of the Initiation Assessment, each Rental Unit shall be considered a separate Lot.

8.03 Maintenance Assessment.

- (a) The initial Maintenance Assessment for each Association Member of each class shall be FIFTEEN AND NO/100 DOLLARS (\$15.00) per month.
- (b) No later than thirty (30) days prior to the commencement of each Fiscal Year beginning with the first Fiscal Year in which the first annual meeting of the Association shall be held, the Board shall estimate the costs and expenses to be incurred by the Association during Fiscal Year in performing its duties and obligations including, but without limitation, the cost of utilities for the Common Area, janitorial services, trash disposal, repairs and maintenance, security, management, the cost of management contracts, supplies, wages and salaries of employees used in maintenance and general operations, payroll taxes (and similar governmental charges) with respect thereto, depreciation or rental of equipment used in operation and maintenance, accounting and bookkeeping expenses, the Association's legal fees and expenses and financing expenses relating to operation and management, and insurance premiums. In addition, the Board shall make a reasonable provision for contingencies, reconstruction and replacements and for alterations, modifications and improvements to existing Common Area and facilities, and for any development of substantial new Recreational Facilities, and for all fees and expenses of the Design Review Committee and its operations. The Board shall subtract from the above imposed expenditures the following sources of income:

- (1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the operating fund at the start of the Fiscal Year; and
- (2) the estimated receipts for all user fees to be collected from users of Recreational Facilities or other facilities during the Fiscal Year.

The sum thus derived shall constitute the basis for determining the Maintenance Assessment for each Fiscal Year.

- (c) In each Fiscal Year, the Board shall determine the per unit Maintenance Assessment by dividing the sum determined pursuant to subsection 8.03(b) by the sum of the following:
 - (1) the total number of Lots in the Private Area owned by Class A Associates Members, plus
 - (2) the total number of Lots in the Private Area owned by Class B Association Members, but excluding the number of Lots exempt from assessment pursuant to subsection 8.03(d).

For purposes of determining Maintenance Assessments, each Rental Unit in an Apartment Building shall be considered a separate Lot under Section 8.03(c)(1) above and Section 8.03(e)(1) below and the Owner or Owners of the Lot upon which an Apartment Building is situated shall be obligated to pay assessments on a per Rental Unit basis. No separate assessment shall be charged against the Lot upon which the Apartment Building is situated.

- (d) The following real property in the Community Area shall not be subject to assessment: (1) the Property or portions of the Property not annexed into the Community Area; (2) any portion of the Property which has not yet been subdivided into individual residential Lots; (3) Lots upon which the construction of proposed Residences have not been completed and such Residences are not fit for occupancy; (4) Commercial Lots; (5) Common Areas; and (6) Cotenancy Areas. Notwithstanding any other provision herein, the owner of any real property that is not subject to assessment shall have no right to use the Recreational Facilities.
- (e) In each fiscal year, the Board shall, by a majority vote at a meeting duly called for such purpose, determine the individual Maintenance Assessment to be paid by each Association Member by multiplying the per unit Maintenance Assessment by:
 - (1) the number of Lots owned, in the case of each Class A Association Member; and
 - (2) the number of non-exempt Lots owned in the case of each Class B Association Member.

The Board shall prepare and send to all Association Members the budget determined and Maintenance Assessment so determined.

- (f) In the event the Board does not determine the Maintenance Assessment by the commencement of a Fiscal Year, the Owners shall continue to pay a Maintenance Assessment in the amount determined for the preceding Fiscal Year.
- (g) If at any time during any Fiscal Year, the estimated Maintenance Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may upon notice to all non-exempt Association Members levy a special Maintenance Assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in subsection (e) above.
- (h) An Owner's obligation to pay the Maintenance Assessment shall commence upon the later of annexation or at such time as such Owner's Lot is fit for occupancy pursuant to subsection 8.03(d). Owners shall pay the Maintenance Assessment to the Association in equal quarterly installments on or before the first day of each January, April, July and October, or in such other installments as the Board may designate.
- (i) Any assessment charged pursuant to this Article to any Owner of an Apartment or a Lot within a Condominium will be in addition to any assessment or maintenance fees levied by any Sub-Association or association of Apartment Owners.
- (j) All Condominiums with Apartments subject to this Declaration, except those for which declarations of condominium property regimes have already been Recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i which do not contain such a provision, shall include a provision in their respective declarations of condominium property regimes requiring the Condominium associations to collect from their respective members the Maintenance Assessments assessed against the respective Apartments pursuant to the provisions of this Declaration. Notwithstanding the foregoing, unless otherwise provided in said governing instruments of said Condominium associations, said Condominium associations shall not be liable for payment of such Maintenance Assessments as principals but only as the agent of the members of said Condominium associations to transmit said payments to the Villages of Kapolei Association on behalf of said members. Said Condominium associations shall not be required to initiate legal action to collect Maintenance Assessments assessed hereunder in the event of default by members of said Condominium associations. The Villages of Kapolei Association shall have all rights and remedies available hereunder and at law and/or in equity in the event of default by a Condominium unit owner in the payment of Maintenance Assessments assessed pursuant to the provisions of this Declaration. In addition, no holder of a mortgage on any Apartment shall be required to collect Maintenance Assessments nor shall the failure of any mortgagor to pay Maintenance Assessments constitute a default under the loan.

8.04 Individual Special Assessments.

The Board shall levy a special assessment against any Owner whose acts or failure to comply with the Restrictions, the Rules or the Design Review Committee Rules or decisions resulted in the Association expending monies from the operating fund to enforce the Restrictions, the Rules or the Design Review Committee Rules or decisions. Such assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, interest, all costs of enforcement, and engineers', Architects', attorneys' and accounts' fees incurred by the Association.

8.05 Association, Declarant and Other Exemptions.

The following Owners of Lots shall be exempt from assessments under this Article VIII as follows:

- (a) the Association shall be wholly exempt;
- (b) Declarant shall be wholly exempt except as follows: i) Declarant shall not be exempt from assessments with respect to any Lot owned by Declarant upon which is situated an Apartment Building; ii) Declarant shall not be exempt from assessments with respect to any Lot conveyed to Declarant after any conveyance by Declarant of said Lot or the land upon which said Lot is situated to any Developer or any other person, including, but not limited to, any Lots conveyed to Declarant under any buy-back provision or any other provision of Chapter 201E, Hawai'i Revised Statutes, Lots conveyed to Declarant by way of a deed in lieu of foreclosure, Lots purchased by Declarant at foreclosure or other judicial sales, and Lots conveyed to Declarant in any arms-length transaction; and iii) Declarant shall not be exempt from assessments with respect to any Lot owned by it after August 2, 2030. Notwithstanding the foregoing, this provision shall not be interpreted in any manner as to require Declarant to pay assessments with respect to any real property not subject to assessments as provided in Section 8.03(d) above;
- (c) a Sub-Association shall be wholly exempt, except to the extent that the Sub-Association's governing instruments require the Sub-Association to collect and pay assessments to the Association;
- (d) a Governmental Agency shall be wholly exempt with respect to any Lot owned by the Governmental Agency that is being used for a nonresidential public, governmental, or public utility purpose provided that said use is authorized by this Declaration. If said use is not authorized by this Declaration, said use shall not be permitted and no exemption from the obligation to pay assessments shall apply. This provision shall not exempt any Governmental Agency from the obligation to pay assessments with respect to any Lot owned by any Governmental Agency during any period of time that said Lot is not being used for a nonresidential public, governmental, or public utility purpose. Any Lot being used by any Governmental Agency for any residential purposes including, but not limited to, Lots used for Apartment Buildings, regardless of whether said Lot is also being used for a public, governmental, or public utility purpose shall be subject to assessments; and

- (e) a Developer shall be exempt from the Initiation Assessment pursuant to Section 8.02, unless such Developer retains or takes title to a Lot, and fails to certify to the Association at the time the Residence on such Lot is rendered fit for occupancy that such Developer is not retaining or taking title with the intent of holding such Lot for its own use or for resale later than twelve (12) months following the date of such certificate.

8.06 Default in Payment of Assessments.

- (a) Each assessment under this Article VIII shall be a separate distinct and personal debt and obligation of the Owner of the Lot against which the assessment is made; provided, however, that no Owner of a Lot shall have any personal liability for the payment of the debts and liabilities of the Association or for damage to any Common Area or any Lot not determined to be caused by such Owner. Each Owner of a Lot by acceptance of a deed therefor, whether or not so expressed in any such deed, is deemed to covenant and agree to pay such assessment to the Association. If the Owner does not pay any installment of such assessment or any other amount when due, the Owner shall be deemed in default. The amount of any unpaid assessment or other amount, together with the amount of any subsequent unpaid assessments or other amounts, including any unpaid late fee(s) imposed by the Board as set forth below, any unpaid interest at the maximum rate allowed by law, any unpaid fine(s), and any unpaid costs, including reasonable attorneys' fees, shall be and become an automatic lien upon the Lot or Lots of such Owner. Such lien shall be subordinate to the lien of any mortgage upon the Lot, provided said mortgage lien is valid and is recorded prior to the Recordation of a notice of default or notice of lien by the Association; provided, however, that no mortgagee shall be required to collect any assessment on a Lot. The Lot Owner's failure to pay an assessment shall not be deemed or constitute a default under any Insured Mortgage. With respect to any assessment imposed against an Owner of a Lot upon which is situated an Apartment Building, the assessment shall be the personal debt and obligation of the Owner of said Lot and the lien of the Association shall be upon the Lot upon which the Apartment Building is situated and the improvements, including the Apartment Building, thereon.
- (b) The sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, shall extinguish the lien against the Lot as to payments of assessments which became due prior to such sale or transfer, but no such sale or transfer shall relieve such Lot or the purchaser or transferee from the obligation to pay prospective assessments nor shall such sale or transfer release the defaulting Owner from his/her obligation to pay sums due or preclude the Association from recovery of a judgment against said defaulting Owner for sums due and owing. In the case of a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid amounts assessed against the grantor or grantor's Lot for the grantor's share of assessments, and for any unpaid late fees, interest, costs, fines, attorneys' fees, and any other sums assessed by the Association, up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the Association setting forth the amounts due as against the grantor. The grantee is not liable for, and the Lot conveyed is not subject to a lien for, any unpaid amounts assessed by the Association against the grantor or the grantor's Lot in excess of the amount set forth in the statement, except as to the amount of any subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement.
- (c) The Association has an automatic lien, and may, in its discretion, record a notice of default or notice of lien any time following the occurrence of a default. The Association may commence proceedings to enforce its lien at its discretion at any time upon default regardless of whether a written notice of default or notice of lien has been Recorded. The Association may foreclose its lien either by judicial or nonjudicial foreclosure, and the Association shall have the power and authority to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. The Association may also maintain a suit to recover a money judgment for unpaid assessments without foreclosing or waiving the lien on the Lot. The foregoing remedies shall be in addition to any other remedies provided by law or in equity for the enforcement of such assessment obligation.
- (d) Upon the request of an Owner, the Association shall execute a certificate stating the amount of the unpaid assessments secured by the lien upon any Lot or Lots. Such certificate shall be conclusive upon the Association and the Owner as to the amount of such unpaid assessment as of the date of the certificate. The Association may charge a reasonable fee for furnishing such certificate.
- (e) If an Owner shall fail to pay any assessment when due, such Owner shall pay a late fee for each such default or defaults in such amount as shall be determined by the Board of Directors from time to time. Late fees shall be assessed on a specific day of each month established by the Board from time to time. All delinquent assessments shall bear interest at the maximum rate allowed by law from the date of such default until paid.
- (f) All assessments, late fees, interest, expenses, costs, attorneys' fees, and other sums assessed against an Owner shall be promptly paid on demand to the Association by the Owner. The Board of Directors shall be authorized to adopt a policy whereby payments received from the Owners may be applied toward the indebtedness of such Owners to the Association in such order as the Board of Directors may specify. In the absence of the adoption of such a policy, payments from Owners shall be applied in the following order: (i) toward the payment of expenses, costs, and attorneys' fees assessed against the delinquent Owner; (ii) toward the payment of late fees and interest assessed against the delinquent Owner; and (iii) the balance remaining, if any, toward

the payment of assessments. Such acceptance and application of payments shall not be construed as an "accord and satisfaction" or "compromise and settlement", or as a waiver of any rights the Association shall have against such Owner for any and all outstanding amounts due and owing to the Association and the Board of Directors, at its sole discretion, may refuse acceptance of any payment which may be insufficient to satisfy all amounts due and owing to the Association.

- (g) If an Owner rents or leases the Lot owned by the Owner and is in default for thirty days or more in the payment of the Lot's share of Maintenance Assessments (*i.e.*, Association dues), other assessments, and/or other sums due, including but not limited to, attorneys' fees, costs, late fees, interest, and fines, the Board, for as long as the default continues, may demand in writing and receive each month, or any other period of time for rental payment as provided in the lease, from any tenant occupying the Lot or rental agent renting the Lot, an amount sufficient to pay all sums due from the Owner to the Association, but the amount shall not exceed the tenant's rent due at the time of demand.
- (1) Before taking any action under this subsection (g), the Board shall give to the delinquent Owner written notice of the Board's intent to collect the rent owed. The notice shall:
 - (i) Be sent both by first-class and certified mail;
 - (ii) Set forth the exact amount the Association claims is due and owing by the Owner; and
 - (iii) Indicate the intent of the Board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.
 2. The Owner shall not take any retaliatory action against the tenant for payments made under this subsection (g).
 3. The Board may not demand payment from the tenant pursuant to this section if:
 - (i) A commissioner or receiver has been appointed to take charge of the Lot pending a mortgage foreclosure;
 - (ii) A mortgagee is in possession of the Lot pending a mortgage foreclosure; or
 - (iii) The tenant is served with a court order directing payment to a third party.
 4. In the event of any conflict between this subsection (g) and any provision of Hawai'i Revised Statutes, Chapter 521, the conflict shall be resolved in favor of this subsection (g); provided that if the tenant is entitled to an offset of rent under said Chapter 521, the tenant may deduct the offset from the amount due to the Association, up to the limits stated in said Chapter 521. Nothing herein shall preclude the Owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.
- (h) If the Owner of a Lot which is owner-occupied, fails to pay Maintenance Assessments, other assessments, and/or other sums due, including but not limited to, attorneys' fees, costs, late fees, interest, and fines, the Association, acting by and through its Board, may, after sixty days written notice to the Owner of nonpayment of the amounts due, terminate the delinquent Lot's access to the common areas, including without limitation the Recreation Center and parks, and cease supplying the delinquent Lot with any and all services normally supplied or paid for by the Association.
1. Any terminated services and privileges shall be restored upon payment of all delinquent amounts owed, but need not be restored until payment in full is received.
 2. The actions authorized herein may be taken in conjunction with or as an alternative to foreclosure proceedings under Section 421J-10.5(a), Hawai'i Revised Statutes.

IX. MISCELLANEOUS PROVISIONS

9.01 Amendment of Repeal.

- (a) Declarant may by written amendment at any time prior to annexation of all of the Property to the Community Area unilaterally amend or supplement:
- (1) these Restrictions for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or omission or mistake or manifest error contained in this Declaration, or to supplement the provisions of this Declaration with respect to special use areas described in an Annexing Declaration;
 - (2) the general plan of Villages of Kapolei as described in Exhibit C; or
 - (3) the Design Guidelines contained in Exhibit D.
- (b) These Restrictions and the attached Design Guidelines may also be amended or repealed by the affirmative vote of Owners, in person or by proxy, representing: (i) not less than seventy-five percent (75%) of the total voting power of the Class A Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum, as defined in this section, is present; and (ii) not less than seventy-five percent (75%) of the total voting power of the Class B Association Members who are present in person or by proxy at said duly called and held meeting of the Association at which a quorum, as defined in this section, is present. The presence of Owners, in person or by proxy, representing at least: (1) twenty-five percent (25%) of the voting power of the Class A Association Members or five hundred (500) Class A votes, whichever is less; and (2) twenty-five percent (25%) of the voting power of the Class B Association Members, so long as there are Class B Association Members, shall constitute a quorum for purposes of amending or repealing this

Declaration. In the event that there are no Class B Association Members, subsection (ii) of the first sentence of this paragraph and subsection (2) of the second sentence of this paragraph as said provisions relate to Class B Association Members shall not be applicable to any amendment or repeal of this Declaration. The notice of such meeting shall state as a purpose the consideration of such amendment or repeal and shall include the proposed text of the amendment(s) in substantially the form to be adopted or identification of the provisions to be repealed. The Board shall be authorized to restate the provisions of this Declaration from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein and/or any provisions contained in any supplemental and/or annexing Declarations filed in accordance with the provisions hereof. In restating this Declaration, the Board may correct any misnumbering of provisions and any typographical or grammatical errors in this Declaration or in any amendment to this Declaration. The Board may also add diacritical marks, such as an 'okina or kahakō, in words where it determines it appropriate to do so. The Board may Record said restated Declaration in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i.

- (c) The provisions of subsection 9.01(b) above to the contrary notwithstanding, no provision of this Declaration may be amended or repealed, the effect of which amendment or repeal would be to limit, abridge, modify or terminate any rights, easements, privileges and immunities of Declarant, any Developer or any Owner of a Commercial Lot, or any authority and powers reserved to Declarant, any Developer or any Owner of a Commercial Lot, unless Declarant, all affected Developers, and all affected Owners of Commercial Lots consent in writing to such amendment or repeal prior to the consideration of such amendment or repeal.

9.02 Enforcement, Non-Waiver.

- (a) The Association or any Owner shall have the right to enforce any of the covenants, conditions, restrictions, obligations, liens and charges now or hereafter imposed by the Restrictions upon other Owners or upon any property within the Community Area, and the costs of enforcement, including court costs and attorneys' fees, shall be paid by any Owner who violated any such restriction, covenant, condition, or restriction or failed to pay and satisfy when due any such lien or charge.
- (b) No Owner or the Association shall have any right to enter upon the Lot or Commercial Lot of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association until reasonable notice and demand has been given to the Owner of the Lot or Commercial Lot to cure or rectify the violation involved, provided that no notice need be given if the violation involved poses an immediate threat of personal injury or property.
- (c) The Association or any Owner shall have the right to enjoin or abate every act or omission constituting a violation of any condition, covenant or restriction of the Restrictions, which violation is hereby declared to constitute a nuisance to be abated, by the Association or by an Owner pursuant to subsections (a) and (b) above. Insofar as any breach of these Restrictions may not adequately be compensated by the recovery of damages, the Association in addition to all other remedies available at law or in equity, may require and shall be entitled to the remedy of injunction to restrain or abate any such violation or breach or any threatened violation or breach by any Owner.
- (d) Each remedy provided for in the Restrictions is cumulative and non-exclusive.
- (e) The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation, lien or charge of the Restrictions shall not constitute a waiver of any right to enforce any such provision of the Restrictions in any other case with respect to any Owner or Lot. No right of action shall accrue in favor of any Owner against the Association or Declarant for or on account of any failure by the Association or Declarant to bring any action on account of any violation or breach, by any Owner of the provisions of these Restrictions, the Design Review Committee Rules or the Design Review Committee Rules or the Design Guidelines.

9.03 Construction, Compliance with Laws, Severability, Singular and Plural, Titles.

- (a) All of the covenants, conditions and restrictions of the Restrictions shall be liberally construed to promote and effectuate the purposes of Villages of Kapolei as set forth in the recitals to this Declaration.
- (b) No provision of the Restrictions shall excuse any person from observing any law or regulation of any Governmental Agency having jurisdiction over such person or over Villages of Kapolei. If all uses to which a Lot may be devoted under the provisions of the Restrictions are illegal under the applicable zoning ordinances or statutes, an Owner may use his Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of the Restrictions which lawfully apply to the Lot.
- (c) If any provision of the Restrictions is held to be invalid or unenforceable, the validity and enforceability of the other provisions will remain unaffected.
- (d) The singular shall include the plural and the plural shall include the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter as the context requires.
- (e) The titles of sections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or described the scope or intent of any provision of the Restrictions.

9.04 Subdivision and Consolidation and Conversion of Apartment Building Into Condominium or Cooperative.

No Lot within the Community Area shall be subdivided or consolidated and resubdivided by any Owner, other than Declarant or Developer, or other than the dedication or granting of easements by the Association or any Owner, without the prior written approval of the Design Review Committee. The Design Review Committee shall review the proposed

subdivision or consolidation and resubdivision for compliance with the Restrictions. The Design Review Committee may charge a reasonable fee for review as determined by the Design Review Committee. If the approval of the Design Review Committee is given, the Design Review Committee shall certify its approval on a copy of the subdivision map.

Declarant may convert any Apartment Building into a condominium property regime formed under Chapter 514A, Hawai'i Revised Statutes. In such instance, Declarant may subdivide the Lot upon which the Apartment Building is situated without the approval of the Design Review Committee in connection with said conversion. In the event of such conversion, the building shall no longer be considered an Apartment Building. Each condominium unit shall be a Lot as defined herein and the owner of each condominium unit shall be an Owner and shall have all rights afforded to and all obligations imposed on Owners of Lots in the Private Area. The conversion of any Apartment Building by anyone other than Declarant into a condominium property regime shall require approval of the Design Review Committee and the Board of Directors.

Declarant may convert any Apartment Building into a cooperative housing corporation, subject to the approval requirements set forth herein. In this event, each unit of the cooperative housing corporation shall be a Lot as defined herein and the lessee under the proprietary lease for each unit shall be an Owner and shall have all rights afforded to and all obligations imposed on Owners of Lots in the Private Area. Conversion of any Apartment Building into a cooperative housing corporation shall require approval of the Design Review Committee and the Board of Directors. The Design Review Committee and the Board of Directors may condition its approval upon the adoption of the necessary amendments herein to clarify the rights and obligations of the cooperative housing corporation and the proprietary lessees.

9.05 Conveyance of Common Area; Reservation of Easements and Rights-of-Way and Classification of Land Area.

- (a) The Association shall acquire, accept and hold all real property and interests in real property conveyed as Common Area by the Declarant, or by a Developer upon obtaining Declarant's prior written consent, provided that the Association shall acquire, accept and hold title to real property in fee subject to the following exception, liens and encumbrances:
- (1) the lien of any non-delinquent real property taxes and assessments;
 - (2) easements and rights-of-way on, over or under all or any part of such real property as may be reserved to Declarant or a Developer with Declarant's consent or granted to any Owner or Sub-Association in accordance with the Restrictions;
 - (3) easements and rights-of-way on, over or under all or any part of such real property as may be reserved to Declarant or to a Developer or to an Owner for access to real property contiguous to the Common Area, or to be granted to or for the benefit of a Governmental Agency, the State of Hawai'i, the City and County of Honolulu, or any public utility, Sub-Association, or to any Lot for the purpose of constructing, erecting, operating and maintaining Roads, poles, wires, pipelines or ditches for lighting, electricity, telephone, gas, community antenna television, water, sewer, irrigation and storm water transmission and any other utility systems;
 - (4) easements for Roads, poles, wires, pipelines or ditches for lighting, electricity, telephone, gas, community antenna television, water, sewer, irrigation and storm water transmission and any other utility systems in favor of public utilities, Governmental Agencies, Sub-Associations or individuals; and
 - (5) any other lien, encumbrance or defect in title (other than a lien to secure an obligation to pay money) which would not materially prejudice the Owners in their use and enjoyment of such real property.
- (b) Declarant or a Developer upon obtaining Declarant's consent may change the land classification of any real property not previously designated as Common Area of which Declarant or such Developer is the Owner, and may convey such real property to the Association pursuant to the provisions of Section 4.03 and this Section 9.05. The Association shall accept the same, and upon acceptance such real property shall become Common Area.
- (c) The Association may accept dedication of the Common Area in a Village prior to the recordation of the first Insured Mortgage of a Lot in such Village.
- (d) All Owners of any real property within the Community Area which is not a Common Area may petition the Association to accept a dedication of such real property as a Common Area. The Association may accept the same if the Board finds the use of such real property to be of benefit to all Association Members or to the members of a Sub-Association. Such real property shall become Common Area upon acceptance.
- (e) Following the conveyance of Common Area by Declarant or by a Developer to the Association, Declarant or such Developer may, without the approval of the Design Review Committee, construct, reconstruct, refinish or alter any Improvement upon or make or create any excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area if Declarant or such Developer shall determine that any such work (1) is reasonably necessary for any utility installation serving any property within Villages of Kapolei, (2) is reasonably necessary for the construction of any facility for use by the Owners, (3) is desirable in order to provide access to or to enhance the use and enjoyment of the Common Area, or (4) is desirable to preserve any property which constitutes a part of Villages of Kapolei.

9.05.1. Conveyance of Common Areas to Association.

Except for any encumbrances reserving easements that are reasonably necessary for utility and access purposes, the Common Areas shall be conveyed to the Association free and clear of all encumbrances.

9.05.2. Conveyance of Common Areas Subject to Easements for Access by Lots.

If ingress or egress to any Lot is through a Common Area, any conveyance or encumbrance of such Common Area shall be subject to the Owner's easement for ingress and egress.

9.06 Assignment of Powers.

Except as otherwise provided herein, Declarant may delegate, transfer, assign or release to the Association or a Developer any rights and powers vested in Declarant pursuant to the Restrictions and the Association or such Developer shall accept the same upon the recording by Declarant of a notice of such delegation, transfer, or assignment or release. Declarant shall be prohibited from assigning any or all of its Class B voting rights to any person; provided, however, that this provision shall not be deemed to prevent Declarant from giving a proxy to another person to vote on its behalf at meetings of the Association.

9.07 Condemnation of Common Area.

If any portion of the Common Area or any interest therein shall be taken by eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation.

9.08 HUD Approval of Actions.

Any provision contained in this Declaration to the contrary notwithstanding, so long as:

- (a) any Lot in the Community Area is subject to the lien of an Insured Mortgage, and
- (b) any Lot in the Community Area is owned by a Class B Association Member, HUD must approve any of the following actions:
 - (1) any annexation of portions of the Property or other real property not within Villages of Kapolei to the Community Area,
 - (2) any dedication of Common Area to Governmental Agencies, and
 - (3) any amendment to these Restrictions.

9.09 Obligations of Owners, Avoidance, Termination.

No Owner through his non-use of any Common Area, including any recreational facility, or by abandonment of his Lot, may avoid the burdens or obligations of ownership imposed on him by the Restrictions.

9.10 Notices, Documents, Delivery.

Whenever notice is required, reasonable notice shall be deemed to be five (5) days. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by first class mail prepaid postage, or by hand delivery, or by facsimile telecopier with a copy sent by first class mail, to any Owner at the address of the Owner as shown in the Association's record of ownership or the address of the Lot owned by the Owner if no other address has been designated, to the Declarant at 677 Queen Street, 3rd Floor, Honolulu, Hawai'i or such other address as may be designated by Declarant from time to time for receipt of notices, and to the Association, the Board of Directors, or the Design Review Committee at the address of the Association's Managing Agent or Manager or such other address as is designated by the Association, the Board, or Design Review Committee for receipt of notices from time to time. Any such address may be changed from time to time by serving notice to all other parties as above provided. Service of such notice or demand shall be deemed complete on the date of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier.

9.11 Governing Law.

These Restrictions shall be governed by and construed in accordance with the laws of the State of Hawai'i.

9.12 Persons.

The reference to a person or persons or Owner or Owners shall include natural persons, corporations, limited liability companies, unincorporated associations, partnerships, limited liability partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

X. MERGER WITH NEHOA ASSOCIATION

The Association, created and existing pursuant to this Declaration, as amended and supplemented from time to time, and the Nehoa Association, created and existing pursuant to that certain Declaration of Protective Covenants, Conditions and Restrictions for Nehoa ("Nehoa Declaration") filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 1752835, as amended, have merged. The Association (i.e., Villages of Kapolei Association) is the surviving corporation. The following provisions are added to address the maintenance, repair, and use of specific areas formerly constituting a part of the Nehoa Association.

10.1 Notwithstanding any other provision herein and subject to the right of the Association, through its Board to elect otherwise as stated in Section 10.1(a) below, the Association shall have the exclusive right, at all times to: (1) landscape and re-landscape the Nehoa Landscape Easement Areas, including, but not limited to, planting and re-planting any trees, shrubs, or ground cover and otherwise improving the Nehoa Landscape Easement Areas; (2) install sprinkler systems within the Nehoa Landscape Easement Areas; (3) water, irrigate and maintain and keep in good condition all trees, grass, lawns, plantings, landscaping and other Improvements located on the Nehoa Landscape Easement Areas; (4) trim and restrain all trees, shrubs, and plantings within the Nehoa Landscape Easement Areas so that they shall not exceed any applicable height limits, or overhang or otherwise encroach upon any walkway or street; (5) maintain in good condition and repair the walkways and sprinkler systems within the Nehoa Landscape Easement Areas; (6) maintain in good condition and repair and adequately paint or otherwise finish all walls, fences, hedges, landscaping, and other Improvements located on the Nehoa Landscape Easement Areas; and (7) repair, maintain, replace, improve, alter, and/or add to the Nehoa Roadway Areas; PROVIDED, HOWEVER, that the Association shall not, without the prior written consent of the Design Review Committee: (a) relocate, replace, alter, or remove or allow to be relocated, replaced, altered, or removed any wall, fence, hedge, or Improvement placed within the Nehoa Landscape Easement Areas; or (b) construct or allow to be constructed any additional wall, fence, hedge, or Improvement within the Nehoa Landscape Easement Areas, and PROVIDED, FURTHER, that the Association shall not be obligated to landscape or maintain such portions of the Nehoa Landscape Easement Areas as are not visible from any street within Villages of Kapolei or which are located behind any wall, fence, hedge, or Improvement placed within the Nehoa Landscape Easement Areas. In addition, the Association shall have, and by virtue of the acceptance of any right, title or interest in any Lot, each Owner is deemed to have granted to the Association, a nonexclusive easement and right to use water from the water lines serving the Lot and electricity from the electrical system serving the Lot for the purpose of watering and irrigating the Nehoa Landscape Easement Areas located on the Lot and/or the landscaped Common Areas immediately adjacent thereto, if any. Each Owner shall allow the Association to enter upon his Lot and to connect such hoses, sprinklers and other watering devices as the

Association may require for such purposes, and also to connect timing and any similar devices required for the operation of any automatic sprinklers or other watering devices to such Owner's electrical system. To the extent that any portion of the Nehoa Landscape Easements encumber any property not covered by this Article X or its subsections, the Association shall maintain such areas, unless otherwise provided herein, in the same manner as Common Areas of the Association.

- (a) Notwithstanding the foregoing, the Association, by and through and in the sole discretion of its Board of Directors, may elect from time to time, for any period or periods of time, to require Owners of Lots subject to the Nehoa Landscape Easements (as opposed to the Association as provided above), at their sole cost and expense, to: (1) landscape and/or re-landscape (which includes, but is not limited to, planting and re-planting any trees, shrubs or ground cover and otherwise improving) all or any portion of the Nehoa Landscape Easement Areas on their respective Lots; (2) install, maintain in good condition and repair, replace, and/or improve sprinkler systems within the Nehoa Landscape Easement Areas on their respective Lots or any portion thereof; (3) water, irrigate and maintain and keep in good condition all trees, grass, lawns, plantings, landscaping and other Improvements located on the Nehoa Landscape Easement Areas on their respective Lots or any portion thereof; (4) trim and restrain all trees, shrubs and plantings within the Nehoa Landscape Easement Areas on their respective Lots or any portion thereof so that they shall not exceed any applicable height limits, or overhang or otherwise encroach upon any walkway or street; (5) maintain in good condition and repair the walkways within the Nehoa Landscape Easement Areas on their respective Lots or any portion thereof; and/or (6) maintain in good condition, repair, replace, improve, adequately paint and/or otherwise finish all walls, fences, hedges, landscaping, and other Improvements located on the Nehoa Landscape Easement Areas on their respective Lots or any portion thereof; PROVIDED, HOWEVER, that the Owners shall not, without the prior written consent of the Design Review Committee, make any alterations, additions, improvements, or exterior changes to the Nehoa Landscape Easement Areas or relocate, replace, alter, or remove or allow to be relocated, replaced, altered, or removed any wall, fence, hedge, or Improvement placed thereon or construct or allow to be constructed any additional wall, fence, hedge, or Improvement within the Nehoa Landscape Easement Areas; PROVIDED FURTHER, that the Owners of the Lots affected by the Nehoa Landscape Easements shall at all times comply with all provisions, including all applicable approval requirements, of this Declaration, the Design Guidelines, the Design Review Committee Rules, and all other restrictive covenants, rules, and regulations whatsoever affecting their respective Lots unless clearly contrary to this Article X; and PROVIDED FURTHER, that any election by the Association, by and through its Board of Directors, to require Owners to undertake the duties and responsibilities set forth in this Section 10.1(a) shall not be deemed a waiver or relinquishment of any right or rights of the Association, including, but not limited to, any right with respect to or under any Grant of Easement, Nehoa Landscape Easement, or Nehoa Landscape Easement Area. Notwithstanding the foregoing or any other provision herein, if during any period of time that the Owners are required to undertake any of the duties and responsibilities set forth in this Section 10.1(a), the Association, in the sole discretion of its Board of Directors, determines that it is in the best interest of the Association that the Association undertake said duties and responsibilities or any portion thereof, the Association may so undertake such duties and responsibilities or any portion thereof, provided that the Association shall first give written notice of its intent to do so in the manner provided in Section 10.1(c) below. For purposes of Section 10.1 above and this Section 10.1(a), references to the Nehoa Landscape Easement Areas (including, but not limited to, references to Nehoa Landscape Easement Areas located on [the] respective Lots) shall include the planting strips or portions thereof, if any, lying between the sidewalk and the street bordering such Lots to the extent that such areas are covered by the Landscape Easements even though the planting strips may not constitute a part of the Lots.
 - (b) In the event that any Owner, during any period of time that the Association, by and through its Board, has elected to require Owners to undertake the duties and responsibilities set forth in Section 10.1(a) above, fails to exercise such duties and responsibilities, the Association, through its Board of Directors or designated representative(s), shall have the right, but not the obligation, to go upon said Owner's Lot and the Nehoa Landscape Easement Areas (without being deemed guilty of trespass) and to undertake such duties and responsibilities. In such event, the cost and expense thereof may be imposed as an Individual Special Assessment against said Owner. In addition to the foregoing, in the event that any Owner fails to exercise the duties and responsibilities imposed on such Owner under Section 10.1(a) above, the Association shall have all rights and remedies available to it under the provisions of this Declaration, the Design Guidelines, the Design Review Committee Rules, and all other governing instruments of the Association. The Association shall also have all rights and remedies available to it at law and/or in equity.
 - (c) Upon the merger of the Villages of Kapolei Association and the Nehoa Association, the obligations for repair and maintenance of the Nehoa Landscape Easement Areas shall be as they were immediately prior to the effective date of the merger. This means that if the Nehoa Association had exercised its right to require Owners to maintain and repair such areas and such policy was in force as of the date of merger, that shall be the policy in force immediately upon merger. However, said policy is subject to change upon notice as set forth herein.
- The Association, by and through its Board, shall send written notice to the Owners of the Lots affected by the applicable Nehoa Landscape Easements at least 60 days prior to the effective date of any election: 1) to require Owners to undertake any or all of the duties and responsibilities set forth in Section 10.1(a) above; or 2) of the Association during any period of time that Owners are undertaking any or all of the duties and responsibilities set forth in Section 10.1(a) to resume undertaking such duties and responsibilities or any portion thereof. Said notice shall be mailed to the address of the Owners as shown in the Association's record of ownership and shall be deemed given on the date mailed.
- (d) In the event that the Association, by and through its Board, elects to maintain, repair, replace, improve, alter, or add to the Nehoa Landscape Easement Areas or any portion thereof, or to undertake any other duty or responsibility set forth in Section 10.1 above, the Association may assess all costs and expenses incurred in

connection therewith against the Owners of the Lots whose Nehoa Landscape Easement Areas are affected as determined by the Board from time to time. The Board of Directors of the Association shall make the determination, from time to time, whether to assess said costs and expenses against said Owners or to pay for the same at the expense of the Association. In the event that the Board elects to assess the Owners for said costs and expenses, said costs and expenses may be assessed on a regular periodic basis or on an as needed basis, as determined to be necessary from time to time by the Board of Directors. The Board shall have the right to establish reserves for said costs and expenses and to assess the Owners therefor. If the Nehoa Landscape Easement Areas maintained by the Association affect more than one Lot, the cost thereof may be apportioned among the Owners of the affected Lots in an equitable manner as determined by the Board from time to time. In the event that any Owner fails to pay any such assessment when due, the Association shall have all rights and remedies available to it under the provisions of this Declaration and all other governing instruments of the Association, including, but not limited to, filing a lien for nonpayment of the assessment and foreclosure thereon in like manner as a mortgage of real property. The Association shall also have all other rights and remedies available to it at law and/or in equity.

- (e) The Association shall assess all costs and expenses incurred in connection with the repair, maintenance, replacement, improvement, alteration of, or addition to the Nehoa Roadway Areas against the owners of the 95 Lots described in Exhibit "1" attached hereto. Said costs and expenses shall be proportioned so that each of the 95 Lots described in Exhibit "1" shall be assessed 1/95th of said total costs and expenses. The Owners of said 95 Lots shall be responsible for payment of said costs and expenses assessed against their respective Lots in the same manner as Maintenance Assessments. Said costs and expenses may be assessed on a regular periodic basis or on an as needed basis, as determined to be necessary from time to time by the Board of Directors. The Board shall have the right to establish reserves for said costs and expenses and to assess the Owners therefor. In the event that any Owner fails to pay any such assessment, the Association shall have all rights and remedies available to it under the provisions of this Declaration and all other governing instruments of the Association, including, but not limited to, filing a lien for nonpayment of the assessment and foreclosure thereon in like manner as a mortgage of real property. The Association shall also have all other rights and remedies available to it at law and/or in equity.

10.2 Exclusive Use of Nehoa Landscape Easement Areas. Subject to the Association's right of access and use for purposes set forth in this Declaration, including without limitation the right to maintain, landscape, and improve and subject to all rights, easements, grants, and privileges of the Association set forth in any grant of easement for said Nehoa Landscape Easements, the exclusive use of those portions of the Nehoa Landscape Easement Areas located on particular Lots shall be reserved to the Owner or Owners from time to time of those Lots, which exclusive right of use shall be appurtenant to and shall pass with title to such Lots.

10.3 Exclusive Use of Nehoa Roadway Areas. Subject to the Association's right to maintain, landscape, replace, improve, alter, or add to the Nehoa Roadway Areas, its right to promulgate rules governing the Nehoa Roadway Areas, its right to grant easements, licenses, and rights-of-way as may from time to time be required for the purpose of providing water, sewage disposal, garbage collection, gas, electrical, telephone, television cable, fire protection, security, mail delivery, drainage and other utility and support services to the Property or any portion thereof, the exclusive use of the Nehoa Roadway Areas shall be reserved to the Owners from time to time of the Lots intended to be benefitted thereby, as set forth in Exhibit "1", which exclusive right of use shall be appurtenant to and shall pass with title to such Lots.

10.4 Parking Requirements. No Owner or guest or any other person shall keep or park or permit to be kept or parked any automobile, mobile home, boat, trailer, truck, camper or other vehicle in or on any Nehoa Roadway Area.

10.5 Speeding/Rules. Vehicles shall not be driven at speeds in excess of five (5) miles per hour on any Nehoa Roadway Area.

10.6 Adoption of Rules and Regulations/Grant of Easements, Etc. The Association, by and through its Board, shall be authorized to adopt, amend, and repeal, in whole or in part, reasonable rules and regulations governing the use of the Nehoa Roadway Areas as it determines to be necessary or convenient from time to time. In addition to all other rights granted to the Association under any grant of easement, conveyance instrument, or other instrument granting legal rights, the Association shall have the right to grant easements, licenses, and rights-of-way over the Nehoa Roadway Areas as may from time to time be required for the purpose of providing water, sewage disposal, garbage collection, gas, electrical, telephone, television cable, fire protection, security, mail delivery, drainage and other utility and support services to the Property or any portion thereof.

10.7 Other Property of Nehoa Association. Upon the merger of the Villages of Kapolei Association with the Nehoa Association, all property, real and personal, of the Nehoa Association shall become the property of the Villages of Kapolei Association. Any real property owned by the Nehoa Association and not expressly referred to herein will become a part of the Common Area of the Association upon such merger. All monies transferred from the Nehoa Association to the Villages of Kapolei Association upon the merger shall be used first to pay any outstanding indebtedness of the Nehoa Association. Any remaining funds or funds thereafter collected on any account of the Nehoa Association or paid to the credit of the Nehoa Association shall be held and used for the benefit of the Owners of the 95 Lots identified in Exhibit "1". Said monies ("Nehoa Funds") shall be used exclusively toward the cost of the repair, maintenance, replacement, improvement, alteration of, or addition to the Nehoa Roadway Areas; provided, however, that in the event that the Villages of Kapolei Association elects to maintain the Nehoa Landscape Easement Areas of each of the 95 former Nehoa Lots, described in Exhibit "1", and to charge the owners of said Lots for the same, then said funds may also be used to pay said costs and expenses. However, if the Association maintains the Nehoa Landscape Easement Areas on less than all of the 95 Lots, the cost thereof shall be assessed separately against the affected Owners or paid by the Association, at the election of the Board, and shall not be paid from the Nehoa Funds. Nothing herein is intended to limit or restrict the right of the Association to use Association funds for the purpose of paying for the cost of the repair, maintenance, replacement, improvement, alteration of or addition to the Nehoa Landscape Easement Areas or Nehoa Roadway Areas; provided, however, that, except as otherwise provided herein, the Association shall thereafter assess the cost thereof against the Owners of the affected Lots in the manner provided above.

XI. IMPOSITION OF FINES

11.01 Imposition of Fines. The Board of Directors shall have the right, in addition to any other right set forth in this Declaration, the Articles of Incorporation, By-Laws, Design Guidelines, Design Review Committee Rules, or Association Rules, to impose monetary fines upon Owners, tenants, and any other person using or coming upon the Property or any part thereof for any purpose whatsoever, for violations of this Declaration, the Articles of Incorporation, By-Laws, Design Guidelines, Design Review Committee Rules, or Association Rules or any statute, ordinance, or applicable requirement of any governmental entity, in accordance with a reasonable schedule of fines to be imposed in a fair and impartial manner. The Board of Directors may authorize the Managing Agent, the Manager, or other persons designated by the Board from time to time, to impose the aforementioned fines in accordance with such schedule. Notice of the initial schedule of fines and each new schedule of fines, including any amendments thereto, shall be published at least once in an Association newsletter prior to the imposition of any fines thereunder. Said newsletter shall be mailed to all Owners at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate the schedule of fines or any fines imposed in accordance with this provision.

The unpaid amount of such fines against any Owner shall constitute a lien against his interest in his Lot which may be foreclosed by the Association through its Board of Directors in the same manner as provided herein for Maintenance Assessments.

The Board shall adopt and may amend from time to time, appeal procedures to be followed by persons who believe that they have been wrongfully or unfairly fined. The Board shall publish the initial appeal procedure and any amendments thereof at least once in the Association's newsletter before implementing the appeal procedure or any amendment thereof. Said newsletter shall be mailed to all Owners at their address as shown in the Association's record of ownership. Failure to receive said newsletter shall not invalidate any fines imposed in accordance with this provision.

THIRD RESTATED BY-LAWS

(Recorded April 24, 2000)

The following are the By-laws of Villages of Kapolei Association (the "Association").

I. ASSOCIATION MEMBERS

1.01 Association Membership.

- (a) Each Owner (as defined in that certain Declaration of Covenants, Conditions and Restrictions (the "Declaration"), dated August 3, 1990, made by Housing Finance And Development Corporation, a body corporate and politic of the State of Hawaii ("Declarant"), as the same may be amended from time to time) of a Lot (as defined in the Declaration) within the Community Area (as defined in the Declaration) shall be a member of the Association (hereinafter referred to as an "Association Member", the membership of such Association Member hereinafter referred to as the "Association Membership").
- (b) There shall be two (2) classes of Association Membership as follows:
- (1) Class A Association Members shall include all Owners described in Article VII, Section 7.02(b)(1), Section 7.02(b)(3), and Section 7.02(b)(4) of the Declaration; and
- (2) Class B Association Members shall include Declarant and Developers as described in Article VII, Section 7.02(b)(2) of the Declaration.
- (c) The Owner of any Commercial Lot shall have no right to Association Membership, but shall be subject to the restrictions and limitations of Sections 5.08 and 5.09 of the Declaration.
- (d) No Association Member shall be terminated, or his Association Membership forfeited, except upon transfer of his interest in the Lot in the Community Area which entitles him to Association Membership; provided, however, that upon execution, delivery and Recordation (as defined in the Declaration) of a valid agreement of sale of interest in a Lot and delivery of a copy of such agreement of sale to the Secretary of the Association, the vendor's Association Membership and all voting rights and obligations incident

thereto, shall be considered temporarily transferred to the vendee, such transfer becoming permanent upon subsequent execution, delivery and recordation of a deed or assignment of lease in satisfaction of said agreement of sale or reversioning equitable title in the vendor in the event of termination of said agreement of sale. No Association Member may withdraw, transfer or otherwise dispose of his Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which Association Membership is appurtenant.

- (e) There shall be two (2) classes of Association Membership as follows:

- (1) Class A Association Members shall include all Owners described in subsection (b)(1) above; and
- (2) Class B Association Members shall include Declarant and all Developers described in subsection (b)(2) above.

- (f) An Association Member shall have all rights, duties, privileges and obligations of an Owner as set forth in these By-Laws, the Articles of Incorporation of the Association and the Declaration.

1.02. Voting Rights. The voting rights for each respective class of Association members is set forth in Article VII, Section 7.03(a),(b), and (c) of the Declaration.

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

1.04. Proxies. Any Association Member may attend and vote at meetings in person, or by a proxy holder duly appointed by a written proxy signed by the Association Member and filed

with the secretary of the Association or such other person or entity as may be designated by the Board from time to time for such purpose. Proxies shall be delivered to the secretary or such other person or entity designated by the Board no later than 4:30 p.m. on the second business day prior to the day of the meeting to which the proxy pertains or is to be voted in order to be valid for that meeting. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. A proxy shall be deemed revoked when the secretary shall receive actual notice of the death or judicially declared incompetence of such Association Member, or upon termination of such Association Member's status as an Owner. Where two or more persons or entities constitute an Association Member, only one person or entity shall exercise the votes attributable to such Association Member in the absence of protest by the other co-Owners. In case of protest, each co-Owner shall be entitled to vote its respective fraction of the vote in proportion to the co-Owner's share of ownership in the Lot.

- 1.05 Annual Meeting.** The Association shall hold an annual meeting each year within thirteen (13) months of the previous annual meeting at such place in the City and County of Honolulu, State of Hawaii, as may be designated in the notice of annual meeting, for the purpose of electing directors, unless the election is conducted by mail ballot, and for the transaction of such other business as required under the Declaration or as may be brought before the meeting.
- 1.06 Special Meetings.** The Association Members may hold special meetings of the Association at such time and at such place in the County of Honolulu, State of Hawaii, and for such purposes as shall be specified in a call for any such meeting made by resolution of the Board of Directors or by a writing filed with the secretary signed by the president, or by a majority of the directors, or by ten percent in voting interest of the entire Association Membership.
- 1.07 Notice.** The Secretary of the Association shall give notice of each meeting of the Association Members, specifying the day and time and place of the meeting and the purposes for which the meeting is called, and specifying whether it is an annual or special meeting, to each Association Member at least ten (10) days before the date fixed for such meeting, by advising him in writing of the meeting at his residence address as it appears on the records of the Association or his usual place of business, or by mailing written notice of the meeting postage prepaid addressed to him at his said residence address or usual place of business. In case of the death, absence, incapacity or refusal of the secretary, such notice may be given by a person designated either by the secretary or by the person or persons calling the meeting or by the Board of Directors. If notice is given pursuant to the provisions of these By-laws, nonreceipt of actual notice of any meeting by any Association Member shall in no way invalidate the meeting or any proceedings taken or any business done at the meeting.
- 1.08 Record Date.** The record date for the purpose of determining Association Members entitled to notice of or to vote at any annual Association meeting shall be thirty (30) days prior to the date of such meeting. The record date for purpose of determining Association Members for any other purpose, including, but not limited to, receiving notice of and voting at any special Association meeting or receiving information or materials, shall be fixed by the Board from time to time, but in no event shall the record date be more than fifty (50) days or less than ten (10) days prior to the date on which the particular action requiring determination of Association Members is proposed or expected to be taken or to occur. If no record date is established for a special Association meeting, the date on which notice of such meeting is first given to any Association Member shall be deemed the record date for the meeting. The Association Members of record on any such record date shall be deemed the Association Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, information or material with respect to the same matter and for any adjournment of the same meeting.
- 1.09 Quorum.**
- Except as otherwise provided herein, the presence of Owners, in person or by proxy, representing at least: i) twenty percent (20%) of the voting power of the Class A Association Members or two hundred (200) Class A votes, whichever is less; and ii) twenty-five percent (25%) of the voting power of the Class B Association Members shall constitute a quorum.
 - Notwithstanding the foregoing, for purposes of amending the Declaration of Covenants, Conditions & Restrictions for Villages of Kapolei Association, the Articles of Incorporation, or these By-Laws, the quorum requirements are set forth in Article IX, Section 9.01(b) of said Declaration, Article XV of said Articles of Incorporation, and Article X, Section 10.1 of these By-Laws, respectively.
 - Whether a quorum be present or not, a majority vote of the total authorized votes of the Association Members present in person or by proxy may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, Owners, in person or by proxy, representing at least: i) a majority of the total voting power of the Class A Association Members who are present in person or by proxy at the meeting; and ii) a majority of the total voting power of the Class B Association Members who are present in person or by proxy at said meeting, shall be valid and binding upon the Association except as otherwise provided by law, the Articles of Incorporation, the Declaration, or these By-laws.
 - In the event that there are no Class B Members of the Association at any given time, there shall be no requirement that Class B Members be represented at a meeting to constitute a quorum. In that event, a quorum shall be determined by subsection (a)(i) above and the percentage of Class A Association Members set forth in subsection (c)(i) above may act for the Association except as otherwise provided by law, the Articles of Incorporation, the Declaration, or these By-Laws.

II. BOARD OF DIRECTORS

- 2.01 Number.** The property and affairs of the Association shall be managed and controlled by a Board of Directors of nine Association Members. Each director shall be an Association Member. A partner in a general partnership, a partner in a limited liability partnership, a general partner of a limited partnership, an officer or director of a corporation, a member of a member-managed limited liability company, and a manager of a manager-managed limited liability company that owns a Lot shall be deemed to be an Association Member for this purpose. Any officer, director or employee of Declarant, so long as Declarant continues to be a Class B Association Member, shall also be eligible to serve on the Board. If and when Declarant becomes a Class A Association Member and is no longer a Class B Association Member, it shall be treated in the same fashion as all other Class A Association Members with respect to the eligibility requirements for service on the Board. At least one (1) member of the Board of Directors shall be a resident of the State of Hawaii, and in the absence of such member the Board shall not function.
- 2.02 Term.** The directors shall be classified by dividing them into three classes, each class consisting of three directors. At each annual election of the director(s), the successor(s) to the class of director(s) whose terms shall expire in that year shall be elected director(s) for a term of three years, so that the term of office of one class of directors shall expire each year,

but each director of whatever class shall hold office until his successor shall have been elected and shall qualify, or until his death, or until he shall resign or shall have been removed in the manner herein provided. Except with respect to their respective terms of office, all directors shall have equal powers.

2.03 Nominations and Elections.

The Board of Directors shall determine each year whether the election of directors shall be by a vote at the annual meeting or by mail ballot and shall give notice to the Association Members of its determination no later than 120 days prior to the date of the annual meeting.

If the election is to take place by vote at the annual meeting, nominations shall be made as set forth in this paragraph. Nomination for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of at least three members, all of whom shall be Association members and at least one of whom shall be a member of the Board. The Nominating Committee, including the Chair, shall be appointed annually by resolution adopted by a majority of the Board of Directors and shall serve until the close of the next annual Association meeting following its appointment. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations for elections to be held by vote at any annual meeting of the Association may also be made from the floor at the annual meeting.

If the election is to be conducted by mail ballot, the Board shall, from time to time, adopt equitable procedures for conducting the election, permitting nominations by the Nominating Committee referenced above and nominations by the Association Members. If said election is to be conducted by mail ballot, said procedures duly adopted by the Board shall be published in the Association's newsletter, if any, or otherwise stated in writing and mailed to all Association Members no later than 120 days prior to the date of the annual meeting. If the election is to be held by mail ballot, the election results shall be announced at the annual meeting.

- 2.04 Secret Ballot/Election.** Election to the Board of Directors shall be by secret ballot and shall be conducted pursuant to procedures adopted by the Board of Directors from time to time as set forth above. The persons receiving the largest number of votes shall be elected to the positions to be filled, regardless of whether said persons receive a majority vote.

- 2.05 Vacancies.** Vacancies on the Board may be temporarily filled by a majority of the remaining directors though less than a quorum, and each director so appointed by the Board to act as a temporary director shall hold office until a successor is elected by the Association members at the next annual meeting of the Association following the vacancy, by mail ballot, or at a special meeting duly called for that purpose. The successor elected by the Association members shall be elected to serve for the remainder of the term of the director whose office became vacant. Death, incapacity, or resignation of any director, his continuous absence from the State of Hawaii for more than six months, his having three consecutive unexcused absences, as determined by the Board of Directors, from regularly scheduled meetings of the Board of Directors, or his ceasing to meet the qualifications to serve on the Board as set forth in Article II, Section 2.01 of these By-Laws shall cause his office to become vacant.

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

- 2.07 Notice.** Notice of each special meeting of the Board of Directors, specifying the day and time and place of the meeting shall be given by or under direction of the secretary or by a person calling the meeting to each member of the Board of Directors, by advising him in writing or facsimile or by leaving written or oral notice of the meeting at his residence or usual place of business, or by mailing written notice of the meeting postage prepaid addressed to him at his residence or usual place of business not less than seventy-two (72) hours before the meeting. Nonreceipt of notice 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. No notice of any meeting need be given to any member of the Board of Directors who at the time of the meeting is absent from the State of Hawaii. Any member of the Board of Directors may waive notice of any meeting either prior to or at or after the meeting, with the same effect as though notice of the meeting has been given to 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.

- 2.08 Action By Board Without Meetings.** In the event of an emergency, the Board may conduct meetings by means of conference telephone or similar communication equipment by which all persons participating in the meeting may hear each other at the same time, provided that an explanation of any action taken thereby shall be posted at a prominent place at the main office of the Association within three (3) days after such action and that an explanation of the action taken shall be announced at the next regular meeting of the Board of Directors; provided, further, however, that nothing herein shall be construed as requiring the Board to disclose the details of any action taken while in executive session. Other than in emergencies, as determined by the Board, the Board shall not conduct meetings by means of conference telephone or similar communication equipment. Any action which could properly be taken by the Board of Directors at a meeting may also be taken by unanimous written consent of the members of the Board of Directors without a meeting, provided that an explanation thereof be posted at a prominent place at the main office of the Association within three (3) days after such consent has been obtained; provided, further, however, that nothing herein shall be construed as requiring the Board to disclose the details of any action taken by unanimous written consent that would be considered a matter suitable for executive session if a meeting had been held.

- 2.09 Quorum.** A majority of the members of the Board of Directors shall constitute a quorum for the conduct of business at any meeting, and any decision of a majority of such quorum, within the scope of the authority of the Board of Directors, shall be valid and binding on the Association. Any business within the scope of the authority of the Board of Directors may be transacted at any meeting thereof, irrespective of any specification of the business to be conducted at the meeting which may be set forth in the call or notice thereof.

- 2.10 General Powers.** The property, business and affairs of the Association shall be managed and controlled by the Board of Directors, which shall have and may exercise all of the powers

of the Association, including, without limitation, all of the powers of the Association as set forth in the Declaration, except such as are expressly reserved to or may from time to time be conferred upon the members by law, by the Articles of Incorporation, by the Declaration or by these By-laws. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, create and appoint one or more committees. Each committee shall consist of at least three Association members, at least one of whom shall be a Board member. Each committee shall consist of a Chair who shall be appointed by the Board of Directors. Said committees, to the extent provided in said resolution or resolutions or in other provisions of these By-laws, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Association. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. The Board of Directors may also combine, reorganize, subdivide, rename, and/or dissolve such committees and alter, amend, or repeal the powers given to such committees by resolution in the same manner in which said committees were created and empowered. The Board of Directors, shall, by a resolution or resolutions passed by a majority of the whole Board, appoint the member or members of the Design Review Committee who are to be appointed by the Association and by a resolution or resolutions so passed may remove such member or members, all as set forth in Article VI of the Declaration.

2.11 Compensation. Directors shall not receive any stated salary for their services as such, but by resolution of the board a fixed reasonable sum or expenses of attendance, if any, or both, may be allowed for attendance at such regular or special meeting of the Board of Directors. The Board of Directors shall have power in its discretion to contract for and pay to directors rendering unusual or exceptional services to the Association special compensation appropriate to the value of such services.

2.12 Open Meetings. Regular and special meetings of the Board of Directors other than executive sessions, shall be open to all members of the Association and Association Members who are not on the Board of Directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the Board of Directors votes to prohibit or otherwise limit participation by Owners. The Board of Directors may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, matters involving attorney-client communication, and orders of business of a similar nature. No persons, including members of the Association, other than members of the Board of Directors shall be permitted to attend executive sessions except by invitation of the Board. The general nature of any and all business to be considered in executive session shall first be announced in open session.

2.13 Removal of Directors. At any special meeting of the Association duly called for such purpose or at any annual meeting of the Association duly called, at which a quorum is present, any one or more of the directors may be removed with or without cause by the affirmative vote of Association Members having a majority of the votes of each respective class of Association Members who are present in person or by proxy at such meeting and a successor shall then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Association Members and who is present shall be given an opportunity to be heard at such meeting; provided that the foregoing shall not be deemed or construed to require that a director whose removal is proposed be present in order for the removal of such director to be effective.

III. OFFICERS AND AGENTS

3.01 Number. The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and a Treasurer who shall be appointed by the Board of Directors and who shall hold office until their successors are appointed and qualified. The Association may have such other officers, agents and factors as may be deemed necessary, who shall be appointed in such manner, hold their offices for such terms, and have such authority and duties as may be determined by the Board of Directors.

3.02 Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meeting and shall hold office at the pleasure of the Board, except that the initial officers of the Association shall be as designated in the Articles.

3.03 Multiple Offices. Any two (2) of the offices of President, Vice President, Secretary or Treasurer may be held by the same person, provided that, at any one time, there shall be at least two (2) persons serving as officers.

3.04 Duties. In addition to the duties and powers herein set forth, each officer shall have such duties and powers herein set forth, each officer shall have such duties and powers as are commonly incident 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 office, agent or employee are not specifically prescribed by these By-laws or by the Board of Directors, such officer, agent or employee shall obey the orders and instructions of the President.

3.05 President. Subject to the control of the Board of Directors, the President shall be the chief executive officer of the Association and shall exercise general supervision and direction over the management and conduct of such affairs and business of the Association. 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.

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

3.07 Secretary. The Secretary shall have charge of the membership ledger, all documents pertaining to the title to all real property owned or held by the Association, and all rules, regulations and other documents required to be filed with the Association by the Declaration, an original or duplicate of each of which shall at all times during the usual hours of business be open to the examination of every member at the principal office or place of business of the Association in Honolulu, Hawaii. The Secretary shall record all proceedings of the meetings of the members and Board of Directors in a book which shall be the property of the Association, to be kept for that purpose at the office of the Association and such other duties as shall be assigned to such person. In the absence of the Secretary from any such meeting, a temporary Secretary shall be chosen who shall record the proceedings of such meeting, a temporary Secretary shall be chosen who shall record the proceedings of such meeting in the aforesaid book. The duties of the Secretary may, from time to time, be delegated by the Board of Directors to the Association's Managing Agent, Manager, or other persons designated by the Board from time to time.

3.08 Treasurer. Subject to the direction and under the supervision of the Board of Directors, and the provisions of the foregoing paragraph, the Treasurer shall have the care and custody of the funds and valuable papers of the Association, shall have power to endorse for deposit or collection all notes, checks, drafts and other obligations for the payment of money to the Association or its order, and shall keep or cause to be kept accurate financial books and accounts of the Association and to render statements of the same in such form and as often as required by the Board of Directors. The duties of the Treasurer may, from time to time, be delegated by the Board of Directors to the Association's Managing Agent, Manager, or other persons designated by the Board from time to time.

3.09 Subordinate Officers. The Board of directors may from time to time appoint such subordinate officers, employees or agents as the affairs of Association may require, fix their tenure of office and allow them suitable compensation for services actually rendered.

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

3.11 Compensation. The officers of the Association shall not receive any stated salary for their services as such, but by resolution of the board a fixed reasonable sum or expenses, if any, or both, may be allowed for performance of their duties as officers. The Board of Directors shall have power in its discretion to contract for and pay to officers rendering unusual or exceptional services to the Association special compensation appropriate to the value of such services.

IV. MANAGEMENT

4.01 Management. The Board of Directors shall at all time maintain, manage, and operate the Common Area and the Recreational Facilities as defined in the Declaration and shall have such powers and duties as may be necessary and proper therefore including without limitation the following:

- (a) To adopt and publish rules and regulations governing the use of the Common Area, Recreational Facilities and Lots;
- (b) To exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles or the Declaration;
- (c) To employ or discharge managing agents, independent contractors, or caretakers and such other employees as the Board of Directors deems necessary and to prescribe their authority and duties, subject to the provisions of the Declaration;
- (d) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (e) As more fully provided in the Articles and the Declaration, to:
 - (1) Fix the amounts of the Assessments payable by the Association Members;
 - (2) Send written notice of each Assessment to every member subject thereto; and
 - (3) Foreclose the lien against any Lot for which Assessments, or other amounts due under the Declaration, are not timely paid or to bring an action at law against the member personally obligated to pay the same;
- (f) To procure and maintain and keep in force adequate fire and extended coverage insurance, comprehensive liability insurance for injury or death, and other insurance, as more fully provided in the Declaration; and
- (g) To cause the Common Area and the Recreational Facilities to be maintained.

V. EXECUTION OF INSTRUMENTS

5.01 Persons Authorized. All checks, notes, bonds, deeds, leases, contracts or other documents or instruments shall be executed by such person or persons as may be authorized by the Board of Directors from time to time by general or special resolution or, in the absence of a resolution, by any two of the following officers: the President, a Vice President, the Treasurer and/or the Secretary. Without limitation as to the generality of the foregoing, the Board of Directors may give powers of attorney to the Association's legal counsel or any other persons to execute notice of lien and release of lien instruments on behalf of the Association.

VI. INVESTMENTS

6.01 Investments. The Association shall have the right to retain all or any part of the securities or property acquired by it in whatsoever manner and to invest and reinvest any funds held by it according to the judgment of the Board of Directors, without being restricted to the class of investments which a director shall or may hereafter be permitted by law to make, provided, however, that the Association shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and provided, further, that the Association shall not make or retain any investment which may jeopardize the carrying out of any of its exempt purposes under Section 528 of the Code, or subject the Association to the tax imposed by Section 4944 or any other applicable Section of the Code.

VII. INCOME AND EXPENDITURES

7.01 Income and Expenditures. The Association's gross income shall consist of at least sixty percent (60%) of exempt function income, and the Association shall expend at least ninety percent (90%) of the Association's annual expenditures for each taxable year on qualifying expenditures, all as defined in Section 528 of the Code, provided, further, if Section 528 of the Code or any replacement thereof is revised, the Association shall comply with the revised provisions of the Code notwithstanding that these By-laws are not amended.

VIII. HUD APPROVAL OF ACTIONS

8.01 HUD Approval of Actions. Any provision contained in these By-Laws to the contrary notwithstanding, so long as:

- (a) any Lot in the Community Area is subject to the lien of an "Insured Mortgage" as defined in the Declaration; and
- (b) any Lot in the Community Area is owned by a Class B member as defined in the Declaration;

"HUD" as defined in the Declaration must approve any of the following actions:

- (1) any annexation of portions of the Property or other real property not within Villages of Kapolei to the Community Area,
- (2) any merger or consolidation of the Community A with other real property not within Villages of Kapolei,
- (3) any mortgaging of the "Common Area," as defined in the Declaration;
- (4) any amendment to these By-laws; or
- (5) any dissolution of the Association.

IX. SEAL

9.01 Seal. The Association may adopt and use a corporate seal and it shall be in such form and device as shall from time to time be determined by the Board of Directors of the Association.

X. ADOPTION, AMENDMENT AND REPEAL

10.01 Vote Required. These By-Laws may be amended or repealed by the affirmative vote of Owners, in person or by proxy, representing: i) a majority of the total voting power of the Class A Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum, as defined in this section, is present; and ii) a majority of the total voting power of the Class B Association Members who are present in person or by proxy at said duly called and held meeting of the Association at which a quorum, as defined in this section, is present. The presence of Owners, in person or by proxy, representing at least: 1) twenty-five percent (25%) of the total voting power of the Class A Association Members or a total of five hundred (500) Class A votes, whichever is less; and 2) twenty-five percent (25%) of the voting power of the Class B Association Members, so long as there are Class B Association Members, shall constitute a quorum for purposes of amending or repealing these By-Laws. In the event that there are no Class B Association Members, subsection (ii) of the first sentence of this paragraph and subsection (2) of the second sentence of this paragraph as it relates to Class B Association Members shall not be applicable to any amendment or repeal of these By-Laws. The notice of such meeting shall state as a purpose the consideration of such amendment or repeal. The text of the proposed amendments in substantially the form to be adopted or the identification of the provisions to be repealed shall be included with the notice. The Board shall be authorized to restate the provisions of these By-Laws from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein. In

restating these By-Laws, these Board may correct any misnumbering of provisions in these By-Laws or any amendment to said By-Laws.

XI. FISCAL YEAR

11.01 Fiscal Year. The fiscal year of the Association shall end on December 31 of each year.

XII. CAPTIONS/GENDER/PLURAL VS. SINGULAR

12.01 Captions/Gender/Plural vs. Singular. The headings of paragraphs herein are for convenience and reference only and shall in no way define, limit, or describe the scope or intent of any provision herein. The use of any gender herein shall be deemed to include the other gender and the use of the singular herein shall be deemed to include the plural (and *vice versa*), whenever appropriate. The reference to a person or persons or Owner or Owners shall include natural persons, corporations, unincorporated associations, partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

AUTHORITY FOR FUTURE AMENDMENT BY BOARD

The Declarant (HFDC) has indicated that it intends to deannex all lots intended to be Commercial Lots and all areas intended to be Commercial Areas so that there will be no Commercial Lots or Commercial Areas subject to the DCC&R, the Articles of Incorporation, or By-Laws at the Villages of Kapolei. Therefore, the references and provisions in the DCC&R and in the Articles of Incorporation and By-Laws related to Commercial Lots and Commercial Areas shall be amended by either deleting the references to the Commercial Lots and Commercial Areas or by deleting entire provisions, where applicable, as determined by the Board, so as to clarify that there shall be no Commercial Lots or Commercial Areas subject to the DCC&R, the Articles of Incorporation, and the By-Laws of Villages of Kapolei.

CERTIFICATION

STEPHEN ENOMOTO, Secretary of Villages of Kapolei Association, a Hawaii nonprofit corporation, hereby certifies that the foregoing is a true copy of the Restated and Amended By-laws of said Association, and that said By-laws were adopted on the 28th day of October, 1998, and are in full force and effect

THIRD RESTATED ARTICLES OF INCORPORATION

(Recorded April 24, 2000)

THESE ARTICLES OF INCORPORATION, made and entered into this 21st day of May, 1990, by WILLIAM W. L. YUEN, desiring to organize a nonprofit corporation in accordance with the provisions of Chapter 415B, Hawaii Revised Statutes ("H.R.S.") and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, does hereby organize a nonprofit corporation and make and enter into the following Articles of Incorporation (the "Articles"):

- I. NAME**
The name of the corporation shall be VILLAGES OF KAPOLEI ASSOCIATION (the "Association").
- II. INCORPORATOR**
The incorporator is William W. L. Yuen, having his principal place of business and post office address at 220 S. King Street, Suite 2000, Honolulu, Hawaii 96813.
- III. LOCATION OF OFFICE**
The initial office and mailing address of the Association shall be Seven Waterfront Plaza, Suite 300, 500 Ala Moana Blvd., Honolulu, Hawaii 96813.
- IV. PURPOSES**
The Association is organized and shall be operated exclusively as a nonprofit corporation in accordance with the provisions of Chapter 415B, H.R.S., as amended, and regulations thereunder as they now exist or as they may hereafter be amended. The purposes of the Association are to provide for the management, maintenance, care and control of common areas and facilities, and the control of architectural design and development of real property in the District of Ewa, City and County of Honolulu, State of Hawaii, within the area known as "Villages of Kapolei", as defined in that certain Declaration of Covenants, Conditions and Restrictions of Villages of Kapolei (the "Declaration"), made by Housing Finance and Development Corporation, a body corporate and body politic of the State of Hawaii ("Declarant"), filed or to be filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as the same may be amended, supplemented and modified from time to time as therein provided, to be conveyed by Declarant to the Association, and also to protect the value, desirability and attractiveness of the aforesaid property and to promote the health, safety and welfare of the members of the Association.
- V. POWERS**
As a means of accomplishing the foregoing purposes and in accordance with Chapter 415B, H.R.S. and Section 528 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Regulations promulgated thereunder (the "Regulations"), the Association shall have all powers, rights, privileges and immunities, and shall be subject to all 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 nonprofit corporations and tax exempt residential real estate associations consistent with the provisions of Chapter 415B, H.R.S., and within the meaning of Section 528 of the Code and the Regulations, respectively, and shall also have the following additional powers:
 - (a) To exercise all of the powers and privileges to perform all of the duties and obligations of the Association as set forth in the Declaration, the Declaration being incorporated herein as if set forth in its entirety;
 - (b) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration and pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
 - (c) To elect or appoint officers and agents as the business of the Association may require, define their duties and fix their compensation.
- VI. NON-PROFIT STATUS**
 1. 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 permitted under said Chapter 415B H.R.S. or Section 528 of the Code.
2. No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Association property, and other than by a rebate of excess membership dues, fees or assessments) to the benefit of any individual, whether upon liquidation or dissolution of the Association or otherwise.
3. The Association is not organized for profit and shall not issue any stock, and no part of its assets, income or earnings shall be used for dividends, or otherwise withdrawn or distributed to any of its members, directors or officers, except as provided in Article VI, Section 2 of these Articles.
- VII. DURATION**
The duration of the Association shall be perpetual.
- VIII. MEMBERSHIP**
Each "Owner" of a "Lot", as those terms are defined in the Declaration, by virtue of being an "Owner" and for so long as he is an Owner, shall be a member of the Association. No person other than an Owner may be a member, except that upon execution, delivery and recordation of a valid agreement of sale of an interest in a lot and delivery of a copy of such agreement of sale to the Secretary of the Association, the vendor's Association Membership and all voting rights and obligations incident thereto shall be considered temporarily transferred to the vendee, such transfer becoming permanent upon subsequent execution, delivery and recordation of a deed or assignment of lease in satisfaction of such agreement of sale or reversioning equitable title in the vendor in the event of termination of such agreement of sale. Such temporary transfer shall not relieve the Owner from the obligations, charges and assessments imposed upon his membership in the Association. Proof of status as an Owner of any Lot, as defined in the Declaration, for purposes of establishing membership in the Association and proof of assignment or delegation of membership rights, privileges, duties and obligations shall be furnished in accordance with the provisions pertaining thereto set forth in the By-Laws of the Association (the "By-Laws"). Except as provided above, 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 Association. No Association Member may withdraw, transfer or otherwise dispose of his Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which Association Membership is appurtenant.
There shall be two (2) classes of Association Membership as follows:
 - (1) Class A Association Members shall include all Owners described in Article VII, Section 7.02(b)(1), Section 7.02(b)(3), and Section 7.02(b)(4) of the Declaration; and
 - (2) Class B Association Members shall include Declarant and Developers as described in Article VII, Section 7.02(b)(2) of the Declaration.
 The voting rights for each respective class of Association members is set forth in Article VII, Section 7.03(a),(b), and (c) of the Declaration.
- IX. BOARD OF DIRECTORS**
The management of the business and affairs of the Association and the control and distribution of its property shall be vested in a Board of Directors, which shall consist of such number of directors at least one of whom shall be a resident of the State of Hawaii, as shall be specified from time to time by the By-Laws, but in no event less than three (3) nor more than nine (9) members. Until the members of the Association shall otherwise determine, the Board of Directors shall consist of three (3) persons, all of whom shall be appointed by Declarant. Each director shall be a member of the Association, a partner of a partnership member of the Association, an officer or director of a corporate member of the Association or an officer, director or employee of Declarant. The directors shall be qualified, nominated, elected, and appointed as is provided for in the By-Laws. The Board of Directors shall have full power to control and direct the business affairs of the Association, subject, however, to any limitations contained herein or in the By-Laws. The initial directors of the Association, shall act as the directors of the Association until the selection of their successors at the first annual meeting of the Association.
- X. OFFICERS**

The officers of the Association shall consist of such officers as shall be provided for in the By-Laws with such qualifications, duties, and powers as are provided for in the By-Laws. The officers shall be elected or appointed, hold office and may be removed as may be prescribed by the By-Laws. Any two or more offices may be held by the same person, provided that at any one time there shall be at least two (2) persons serving as officers. All officers and agents of the Association as between themselves and the Association, shall have such authority and perform such duties in the management of the Association as may be provided in the By-Laws, or as may be determined by resolution of the Board of Directors not inconsistent with the Declaration, these Articles of Incorporation or the By-Laws. The initial officers and directors of the Association, all residents of the State of Hawaii, and their home addresses are as follows:

<u>Office</u>	<u>Name</u>	<u>Address</u>
President and Director	Lloyd Haraguchi	94-517 Holaniku Street Mililani Town, HI 96789
Vice President and Director	Elmer E. Manley	2136 Alaeloa Street Honolulu, HI 96821
Secretary Treasurer and Director	Scott Kami	1550 Wilder Avenue #806 Honolulu, HI 96822

XI. LIMITATION OF LIABILITY

The property of the Association shall alone be liable in law for payment of the debts and liabilities of the Association. Neither the members of the Association, nor the members of the Board of Directors, nor any of the officers shall have any personal liability for the payment of such debts or the discharge of such obligations, except that the members of the Association shall be subject to assessment for and on account of debts, expenses and obligations of the Association as provided in the Declaration.

XII. DISSOLUTION

The Association may be dissolved in the manner set forth by law, except that no voluntary dissolution of the Association or liquidation of its assets shall take place without the assent of three-fourths of the voting interest of the members of each class of the Association, as provided in the Declaration, obtained by vote at a meeting of the members of the Association duly called and held for the purpose of authorizing such dissolution or liquidation. Written notice, setting forth the purpose of the meeting shall be given to all Members not less than ten (10) days in advance of the meeting. Upon any such dissolution or liquidation, the assets of the Association, whether real, personal or mixed, shall be dedicated to one or more successor who shall be a tax exempt residential real estate association consistent with the provisions of Section 528 of the Code and the Regulations. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization or to any Governmental Agency to be devoted to charitable purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. To the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for similar purposes, provided that any such merger or consolidation shall have the consent of two-thirds in voting interest of the members of each class of the Association, obtained as herein provided in the case of dissolution.

XIII. DIRECTOR OR OFFICER CONFLICTS OF INTEREST

- (A) Voting at Meetings. No director shall vote on any issue as to which he or she has a conflict of interest. Each director shall disclose the nature of any conflict of interest prior to the vote on any such matter at a Board meeting, and the minutes of the meeting shall record the fact that such a disclosure was made. In the event of a conflict of interest by any director or directors, a majority of the disinterested directors shall constitute a quorum and a majority of said quorum shall be empowered to act on behalf of the Association on any such matter as to which such conflict exists.
- (B) Effect. No contract or other transaction between the Association and any other person, firm, corporation, association or other organization, and no act of the Association, shall in any way be affected or invalidated by the fact that any of the directors or officers of the Association are parties to such contract, transaction or act or are pecuniarily or otherwise interested in the same or are directors or officers or members of any such other firm, corporation, association or other organization, provided that the interest of such director or officer shall be disclosed and said transaction is authorized or approved by vote or consent sufficient for that purpose as provided hereinabove and the contract or transaction is fair and reasonable to the Association.
- (C) Liability. Neither any director nor officer of the Association, being so interested in any such contract, transaction, or act of the Association which shall be approved by the Board of Directors as aforesaid, nor any such other person, firm, corporation, association or other organization in which such director or officer may be a director, officer or member, shall be liable or accountable to the Association, or to any member thereof, solely by reason of being an interested person, for any loss incurred by the Association pursuant to or by reason of such contract, transaction or act, or for any gain received by any such other party pursuant thereto or by reason thereof so long as the procedure set forth above is followed.
- (D) Scope of Article. For the purposes of this Article XIII, "conflict of interest" shall mean that a director has a direct personal or pecuniary interest not common to other members of the Association, provided that a director shall not be deemed to have a conflict of interest solely on account of the fact that the director's Lot is or may be affected by the matter to be voted upon or that the director is an officer, director or employee of Declarant on matters involving Declarant.

XIV. INDEMNIFICATION AND LIABILITY

The Association shall indemnify each past, present and future officer and director of the Association and each person who serves at the request of the Association as an officer or director of any other corporation whether or not such person is also an officer or director of the Association, against all costs, expenses and liabilities, including the amounts of judgments, amounts paid in compromise settlements and amounts paid for services of counsel and other related expenses, which may be incurred by or imposed on such person in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which such person may be involved as a party or otherwise by reason of such person's being or having been such officer or director, or by reason of any past, present, or future action taken or authorized or approved by such person or any omission to act as such officer or director, whether or not such person continues to be such officer or director at the time of the incurring or imposition of such costs, expenses or liabilities except such costs, expenses or liabilities as shall relate to matters as to which such person shall in such action, suit or proceeding be finally adjudged to be, or shall be, liable by reason of such person's gross negligence or willful misconduct toward the Association in the performance of such person's duties as such officer or director. In the absence of such final adjudication of the existence of such liability, the Board of Directors and each officer and director may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing

right of indemnification shall not be exclusive of other rights to which any such officer or director may be entitled as a matter of law or otherwise, and shall inure to the benefit of the heirs, executors, administrators and assigns of each such officer or director.

No person who serves as an officer or director of the Association without remuneration or expectation of remuneration shall be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform, the duties of the position to which the person was elected or appointed, unless the person is finally adjudicated to have been guilty of gross negligence or willful misconduct in the performance of, or failure to perform, such duties.

XV. AMENDMENT

No proposed amendment of these Articles shall be adopted without the affirmative vote of: Owners, in person or by proxy, representing at least: i) two-thirds (2/3) of the total voting power of the Class A Association Members who are present in person or by proxy at a duly called and held meeting of the Association at which a quorum, as defined in this section, is present; and ii) two-thirds (2/3) of the total voting power of the Class B Association Members who are present in person or by proxy at said duly called and held meeting of the Association at which a quorum, as defined in this section, is present. The presence of Owners, in person or by proxy, representing at least: 1) twenty-five percent (25%) of the voting power of the Class A Association Members or five hundred (500) Class A votes, whichever is less; and 2) twenty-five percent (25%) of the voting power of the Class B Association Members, so long as there are Class B Association Members, shall constitute a quorum for purposes of amending or repealing these Articles. In the event that there are no Class B Association Members, subsection (ii) of the first sentence of this paragraph and subsection (2) of the second sentence of this paragraph as it relates to Class B Association Members shall not be applicable to any amendment or repeal of these Articles. The notice of such meeting shall state as a purpose the consideration of such amendment. The proposed text of the amendment(s) in substantially the form to be adopted shall be included with the notice; (b) in addition, so long as Declarant owns a Lot, Declarant must give written consent to such amendment; and (c) the percentage of the voting power necessary to amend a specific clause or provision of these Articles of Incorporation shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision. The Board shall be authorized to restate the provisions of these Articles of Incorporation from time to time to include the provisions of any amendments duly adopted in accordance with the provisions herein. In restating these Articles of Incorporation, the Board may correct any misnumbering of provisions in these Articles of Incorporation or in any amendment to these Articles of Incorporation. The Board may file the restated Articles of Incorporation with the Department of Commerce and Consumer Affairs.

XVI. HUD APPROVAL OF ACTIONS

Any provision contained in these Articles to the contrary notwithstanding, so long as:

- any Lot in the Community Area is subject to the lien of an "Insured Mortgage" as defined in the Declaration; and
- any Lot in the Community Area is owned by a Class B member as defined in the Declaration;

"HUD" as defined in the Declaration must approve any of the following actions:

- any annexation of portions of the Property or other real property not within Villages of Kapolei to the Community Area;
- any merger or consolidation of the Community Area with other real property not within Villages of Kapolei;
- any mortgaging of the "Common Area," as defined in the Declaration;
- any amendment to these Articles; or
- any dissolution of the Association.

XVII. CAPTIONS/GENDER/PLURAL VS. SINGULAR

The headings of paragraphs herein are for convenience and reference only and shall in no way define, limit, or describe the scope or intent of any provision herein. The use of any gender herein shall be deemed to include the other gender and the use of the singular herein shall be deemed to include the plural (and vice versa), whenever appropriate. The reference to a person or persons or Owner or Owners shall include natural persons, corporations, unincorporated associations, partnerships, joint ventures, governmental entities, eleemosynary corporations, and/or any other form of entity recognized by law.

XVIII. AUTHORITY FOR FUTURE AMENDMENT BY BOARD

The Declarant (HFDC) has indicated that it intends to de-annex all lots intended to be Commercial Lots and all areas intended to be Commercial Areas so that there will be no Commercial Lots or Commercial Areas subject to the DCC&R, the Articles of Incorporation, or By-Laws at the Villages of Kapolei. Therefore, the references and provisions in the DCC&R and in the Articles of Incorporation and By-Laws related to Commercial Lots and Commercial Areas shall be amended by either deleting the references to the Commercial Lots and Commercial Areas or by deleting entire provisions, where applicable, as determined by the Board, so as to clarify that there shall be no Commercial Lots or Commercial Areas subject to the DCC&R, the Articles of Incorporation, and the By-Laws of Villages of Kapolei.

XIX. CERTIFICATION

I certify under the penalties of Section 415B-158, H.R.S., that I have read the above statements and that the same are true and correct.

Rubin J. Riggins, President
Stephen T. Enomoto, Secretary