

**THIRD RESTATED AND AMENDED  
BY-LAWS OF VILLAGES OF KAPOLEI ASSOCIATION  
(Adopted October 28, 1998)**

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 revesting 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.**

(a) 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.**

**(b) 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.**

**(c) 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.**

**(d) 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.

Witness the hand of the undersigned  
this \_\_\_\_ day of \_\_\_\_\_, 1999.

**STEPHEN ENOMOTO**