

Villages of Kapolei Association

Resolution re Suspension of Privileges For Nonpayment of Assessments

WHEREAS, Article II, Section 2.01 of the Third Restated and Amended By-Laws of Villages of Kapolei Association provides that the property and affairs of the Association shall be managed and controlled by the Board of Directors; and

WHEREAS, Article VIII of the Declaration of Covenants, Conditions and Restrictions for Villages of Kapolei, as amended and restated, (“Declaration”) authorizes the Association to impose initiation, maintenance, and special assessments against owners; and

WHEREAS, Article VII, Section 7.05 of the Declaration provides that the Association shall have all the powers set forth in the Articles of Incorporation, By-Laws, and covenants, conditions, and restrictions contained in the Declaration (the “Restrictions”), and all powers conferred upon the Association by the Hawaii Nonprofit Corporation Act, HRS Chapter 415B, (now known as HRS, Chapter 414D), as amended, (subject, however, to limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, By-Laws, and 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 in Villages of Kapolei; and

WHEREAS, Article VII, Section 7.05(a) of the Declaration provides that 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 of the Declaration, to defray the cost of satisfying the duties and obligations and take any such action, whether or not expressly authorized by the Restrictions, the Rules adopted pursuant to Article VII, Section 7.06 of the Declaration, or the Design Review Committee Rules; and

WHEREAS, Article IX, Section 9.02(a) of the Declaration provides that the Association shall have the right to enforce any of the covenants, conditions, restrictions, obligations, liens, and charges imposed by the Restrictions upon other owners or upon any property within the Community Area; and

WHEREAS, Article VII, Section 7.06(a)(1) of the Declaration authorizes the Board of Directors of the Villages of Kapolei Association (“Board of Directors”) to adopt rules and regulations governing the use of the common area, including the recreational facilities by any owner or by the family, invitees, licensees, or lessees of such owner or by any other person; and

WHEREAS, §6.8 of the Restatement (Third) of the Law Property (Servitudes) (2000) (“Restatement”), provides:

§ 6.8 Enforcement Powers

Except to the extent limited by statute or the governing documents, a common interest community has the power to enforce the governing documents, the rules and regulations adopted pursuant to §6.7, and the obligation to pay assessments and other charges imposed pursuant to §6.5. ***In addition to seeking court enforcement, the association may adopt reasonable rules and procedures to encourage compliance and deter violations, including the imposition of fines, penalties, late fees, and the withdrawal of privileges to use common recreational and social facilities.***

WHEREAS, from time to time, owners become delinquent in the payment of assessments and fail to respond to demands by the Association that they bring their accounts current; and

WHEREAS, said delinquencies sometimes arise as the result of the failure of owners to pay assessments and other times as the result of the failure of owners to pay other amounts due and having payments applied first to those other amounts pursuant to the Association's application of payment policy; and

WHEREAS, the Board of Directors deems it to be in the best interest of the Association to adopt a procedure for the suspension of privileges of owners who become delinquent in the payment of Initiation Assessments, Maintenance Assessments, and/or special Maintenance Assessments, as those terms are used and/or referred to in the Declaration (hereinafter Initiation Assessments, Maintenance Assessments, and/or special Maintenance Assessments shall be referred to in the singular as an "Assessment" and in the plural and/or collectively as "Assessments"); and

WHEREAS, the Board of Directors believes that such procedure shall encourage owners to pay Assessments and other amounts due and owing;

NOW, THEREFORE, the Board of Directors hereby adopts the following resolution:

BE IT RESOLVED THAT:

1. Owners who become delinquent in the payment of any Assessment or Assessments or any installment or installments thereof, when due, shall be deemed to be delinquent. The Association may suspend the privileges of any owner who has been delinquent for sixty (60) or more days;

2. Prior to the suspension of privileges, the Association shall give written notice to the delinquent owner of its intent to suspend said owner's privileges. Said notice shall be mailed to said 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 is shown in the Association's record of ownership and shall state that the privileges of membership related to the Recreation Center and any other

recreational facilities of the Association shall be suspended effective thirty (30) days from the date of said notice. Such suspension of privileges shall include, but shall not be limited to:

- a. The suspension of the privilege of using the Recreation Center or any other recreational facilities of the Association;
- b. The suspension of the privilege of renting or reserving any portion of the Recreation Center or any other recreational facilities of the Association;
- c. The suspension of the privilege of enrolling and/or participating in classes and/or programs offered or made available at the Recreation Center or any other recreational facilities of the Association;
- d. The suspension of the privilege of attending free movies or other events at the Recreation Center or any other recreational facilities of the Association that requires the use of a Villages of Kapolei I.D. card for entry.

3. The suspension of privileges shall apply to the delinquent owner and to all others who may enjoy privileges by, through, or under the delinquent owner including, but not limited to, family members, invitees, licensees, and lessees of the delinquent owner (hereinafter a person whose privileges are suspended shall be referred to as a "Person Subject to Suspension").

4. Any suspended privilege shall be restored once the Association has received and processed full payment of all delinquent Assessments, all outstanding late fees, fines, and interest, and all attorneys' fees and costs incurred in connection with the delinquency and/or the collection of sums due and owing.

5. If a Person Subject to Suspension has rented or reserved all or any portion of the Recreation Center or all or any portion of any other recreational facility of the Association prior to the suspension of privileges, the reservation will be automatically canceled as of the date of the suspension of privileges without further notice or action. Once a reservation is canceled pursuant to a suspension of privileges, the Association will have no obligation to reassign the same date and/or restore the reservation even if the delinquency is thereafter cured. For purposes of the return of any fee and/or deposit paid in connection with a reservation, the termination of a reservation hereunder shall be treated in the same fashion as a cancellation by the Person Subject to Suspension and the refund of fees and/or deposits shall be handled according to the existing policy on cancellations.

6. Enrollment by a Person Subject to Suspension in a class or program offered or made available at the Recreation Center or any other recreational facilities of the Association will be terminated effective as of the date of the suspension of privileges and the Person Subject to Suspension will not be allowed to complete such class or program. For purposes of the return of any fee and/or deposit paid in connection with a class or program, the termination of the Person Subject to Suspension's enrollment in a class or program shall be treated in the same fashion as a cancellation by the Person Subject to Suspension and the refund of fees and/or deposits shall be handled according to the existing policy on cancellations.

7. All Villages of Kapolei I.D. cards issued to a Person Subject to Suspension must be surrendered to the Association until the suspension of privileges is lifted by written notice from the Association. No Villages of Kapolei I.D. cards will be renewed or issued to any Person Subject to Suspension. The reference to Villages of Kapolei I.D. cards herein shall mean and include, membership, guest, and renter I.D cards issued by the Villages of Kapolei Association.

8. The period for which a Villages of Kapolei I.D. card is effective will not be extended upon the restoration of privileges to make up for any loss of use during the period of suspension nor will any payments be pro-rated due to the suspension of privileges.

IN WITNESS WHEREOF, the undersigned, being the Secretary of the Villages of Kapolei Association certifies that the foregoing resolution was adopted by said Association's Board of Directors at its meeting held on _____, 2007.

Dated: _____, 2007.

JOHN RIGGINS
Secretary