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RESTATEMENT OF BY-LAWS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF FAIRWAY HOUSE

WHEREAS, Section 514A-82.2(A), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to set forth all amendments thereof by resolution adopted by the Board of Directors;

WHEREAS, Section 514A-82.2(B), Hawaii Revised Statutes, provides that associations of apartment owners may at any time restate the by-laws of the associations to amend the by-laws as may be required in order to conform with the provisions of Chapter 514A, Hawaii Revised Statutes, or any other statute, ordinance, rule, or regulation enacted by any governmental authority, by resolution adopted by the Board of Directors, and the restated by-

laws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners. Section 514A-82.2(B), Hawaii Revised Statutes, further provides that the by-laws as restated pursuant to that section shall: 1) identify each portion so restated; 2) contain a statement that those portions have been restated solely for the purposes of information and convenience; 3) identify the statute, ordinance, rule, or regulation implemented by the amendment; and 4) state that in the event of any conflict, the restated by-laws shall be subordinate to the cited statute, ordinance, rule, or regulation;

WHEREAS, Section 514A-82.2(C), Hawaii Revised Statutes, provides that upon the adoption of a resolution pursuant to Section 514A-82.2(A) or (B), Hawaii Revised Statutes, the restated by-laws shall set forth all of the operative provisions of the by-laws, as amended, together with a statement that the restated by-laws correctly set forth, without change, the corresponding provisions of the by-laws, as amended, and that the restated by-laws supersede the original by-laws and all prior amendments thereto;

WHEREAS, the Board of Directors of the Association of Apartment Owners of Fairway House, by adoption of a resolution on February 6, 1990, voted to record a restated version of the by-laws which would set forth the provisions of the by-laws, as amended, and cause the by-laws to conform with the provisions of the Federal and State Fair Housing Acts.

NOW, THEREFORE, the by-laws of the Association of Apartment Owners of Fairway House are hereby restated as set forth

below. Each By-Law provision that has been restated to conform with the provisions of the Federal and State Fair Housing Acts has been identified in the endnotes attached hereto. Said provisions have been restated solely for the purposes of information and convenience. To the extent that there is any conflict between the restated provisions of the by-laws and the statute or statutes being implemented, the provisions of the restated by-laws shall be subordinate to said statute or statutes. The restated version of the by-laws correctly sets forth, without change, the corresponding provisions of the by-laws, as amended. This restated version of the by-laws shall supersede the original by-laws and all prior amendments thereto; provided, however, that in the event of any conflict, the restated version of the by-laws shall be subordinate to the original by-laws and all prior amendments thereto.

RESTATED BY-LAWS  
OF THE ASSOCIATION OF  
APARTMENT OWNERS OF FAIRWAY HOUSE

The following By-Laws shall apply to this condominium project (herein called the "project"), as described in and created by Declaration of Horizontal Property Regime (herein called the "Declaration") to be recorded or filed of record in the State of Hawaii contemporaneously herewith, and to all present and future owners, tenants and occupants of any apartments of the project and all other persons who shall at any time use the project.

ARTICLE I

MEMBERSHIP

Section 1. Qualification. All owners of apartments of the project shall constitute the Association of Apartment Owners, herein called the "Association." The owner of any apartment upon acquiring title thereto shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such apartment ceases for any reason, at which time his membership in the Association shall automatically cease; provided, however, that to such extent and for such purposes, including voting, as shall be provided by lease of any apartment registered under Ch. 501 or recorded under Ch. 502 of Hawaii Revised Statutes, the lessee of such apartment shall be deemed to be the owner thereof.

Section 2. Place of Meetings. Meetings of the Association shall be held at the project or such other suitable place within the State convenient to the apartment owners as may be determined by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held not later than one hundred eighty (180) days after recordation of the first apartment conveyance; provided forty percent (40%) of the project has been sold and recorded. If forty percent (40%) of the project is not sold and recorded at the end of one year, an annual meeting shall be called if at least ten percent (10%) of the apartment owners so request. Thereafter, the annual meeting of the Association shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Association may be held at any time upon the call of the President, or by resolution of the Board of Directors, or upon a petition signed by at least twenty-five per cent (25%) of the apartment owners and presented to the Secretary. On the receipt of such call or petition, the Secretary shall send written notice of the meeting

to all apartment owners and the meeting shall be held on the date and time specified in the petition or call, or if unspecified then within 30 days of the receipt of such call or petition at any reasonable time at the project unless some other suitable place within the State of Hawaii is designated by the Board.

Section 5. Notice of Meetings. The Secretary shall give written or printed notice of each annual and special meeting to every apartment owner according to the Association's record of ownership, and to every holder of the first mortgage of an apartment or of an apartment lease demising the same, as shown in the Association's record of ownership or who have given the Board notice of their interest through the Secretary or Managing Agent, at least fourteen days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the items on the agenda for such meeting and including a standard proxy form authorized by the Association, if any, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his apartment in the project or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Association's record of ownership. If notice is given pursuant to the provisions of this section, the failure of any apartment owner to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any apartment owner in person or by proxy at any meeting shall be deemed a waiver of any required notice to such owner unless he shall at the opening thereof object to the holding of such meeting because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of apartment owners shall constitute a quorum, and the acts of a majority of the apartment owners at any meeting at which a quorum is present shall be the acts of the Association except as otherwise provided herein. The term "majority of apartment owners" herein means the owners of apartments to which are appurtenant more than fifty percent (50%) of the common interests as established by the Declaration, and any other specified percentage of the apartment owners means the owners of apartments to which are appurtenant such percentage of the common interests.

Section 7. Voting. Voting shall be on a percentage basis, and the percentage of the total vote to which each apartment is entitled shall be the percentage of the common interests assigned to such apartment in the Declaration. Votes may be cast in person or by proxy by the respective apartment owners as shown in the record of ownership of the Association. An executor, administrator, guardian or trustee may vote in person or by proxy at any meeting of the Association the percentage of vote for any

apartment owned or controlled by him in such capacity, whether or not the same shall have been transferred to his name in the Association's record of ownership, provided that he shall first present evidence satisfactory to the Secretary that he owns or controls such apartment in such capacity. The vote for any apartment owned of record by two or more persons may be exercised by any one of them present at any meeting in the absence of protest by the other or others, and in case of protest each co-tenant shall be entitled to only a share of such vote in proportion to his share of ownership in such apartment.

Section 8. Proxies and Pledges. The authority given by any apartment owner to another person to represent him at meetings of the Association shall be in writing, signed by such owner and filed with the Secretary, and unless limited by its terms shall continue until revoked by writing filed with the Secretary or by the death or incapacity of such owner; provided, however, that any proxy form which accompanies a notice of meeting shall be valid for the meeting to which the notice pertains and its adjournment only, and may designate any person as proxy and may be limited as the apartment owner desires and indicates. Voting rights transferred or pledged by mortgage, deed or trust or agreement of sale of any apartment or interest therein, a true copy of which is filed with the Board through the Secretary or Managing Agent, shall be exercised only by the person designated in such instrument until the written release or other termination thereof is filed with the Board in like manner.

Section 9. Adjournment. Any meeting of the Association may be adjourned from time to time to a time not less than forty-eight (48) hours from the time the original meeting was called as may be determined by majority vote of the apartment owners present, whether or not a quorum be present, without notice other than the announcement at such meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 10. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

Section 11. Conduct of Meetings. All Association and Board meetings shall be conducted in accordance with Roberts Rules of

Order, or some other generally accepted rules for the conduct of meetings.

Section 12. Examination of Minutes. The minutes of meetings of the Board of Directors and Association of Apartment Owners shall be available for examination by apartment owners at convenient hours at a place designated by the Board.

## ARTICLE II

### BOARD OF DIRECTORS

Section 1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of nine (9) persons, each of whom shall be the sole owner or co-owner, an officer of any corporate owner of an apartment or vendee under an agreement of sale. The partners of a general partnership and the general partners of a limited partnership shall be deemed to be owners of an apartment for this purpose. In the case of fiduciary owners, the fiduciaries or officers or employees of such fiduciaries shall be eligible to serve as director. The directors shall serve without compensation. No resident manager or any employee of the Managing Agent shall serve on the Board of Directors.

Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Association and may do all such acts and things therefor as are not by law, the Declaration or these By-Laws to be exercised or done only by the Apartment owners.

Section 3. Election and Term. Election of directors shall be by cumulative voting by secret ballot at each meeting and any special meeting called for the purpose. Directors shall hold office for a period of three years and until their respective successors have been elected, subject to removal as herein provided, except that at the first annual meeting one-third of the directors shall be elected for one year, one-third for two years and one-third for three years.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Association shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Association. Death, incapacity or resignation of any director, or his continuous absence from the State of Hawaii for more than six months, or his ceasing to be the sole owner or co-owner of an apartment, shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Association duly called any one or more of the directors may be removed with or without cause by vote of a majority of apartment owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the apartment owners shall be given an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of and immediately following each annual meeting of the Association. At such meeting the Board shall elect the officers of the Association for the ensuing year. Notice of the annual board meeting shall be given in a reasonable manner at least fourteen days, if practicable, prior to such meeting.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one such meeting shall be held during each calendar quarter of every year. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or messenger service, at least three (3) days prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least eight hours' notice to each director given personally or by telephone or messenger service, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these By-Laws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be

transacted without further notice.

Section 11. Conflict of Interest. A director shall not vote or cast proxy at any Board meeting on any issue in which he has a conflict of interest. The determination of whether a conflict of interest exists as to a particular director or directors shall be made by a majority of the non-interested directors, which determination shall be conclusive and binding on all parties.

Section 12. Fidelity Bonds. The Board of Directors shall require that all officers, employees and agents of the Association handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

### ARTICLE III

#### OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Association shall be elected annually by the Board of Directors at its annual meetings and shall hold office at the pleasure of the Board.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors, and his successor elected, at any regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. Subject to the control of the Board, he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

Section 5. Vice-President. The Vice-President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. He shall also have such

other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Association and of the Board of Directors, give all notices thereof as provided by these By-Laws, maintain and keep a continuous and accurate record of ownership of all apartments, have charge of such books, documents and records of the Association as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall maintain and keep the financial records and books of account of the Association, prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Association of all its funds and securities.

Section 8. Auditor. The Association shall appoint annually a public accountant or accounting firm as auditor, who shall not be an officer of the Association nor own any interest in any apartment, to audit the books and financial records of the Association as required by law or directed by the Board of Directors. The members of the Association may require, by vote at the annual meeting, a yearly audit by a Certified Public Accountant.

#### ARTICLE IV

##### ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the project and have such powers and duties as may be necessary or proper therefor including without limitation the following:

(a) Supervision of its immediate management and operation;

(b) Maintenance, repair, replacement and restoration of the common elements and any additions and alterations thereto;

(c) Purchase, maintenance and replacement of any equipment and provision of all water and utility services required for the common elements;

(d) provision for all water and utility services required for the common elements and provision at each apartment of all water, sewer, electricity and such other utility services and utilities as the Board shall deem necessary either at the expense of such apartment or as a common expense as determined by the Board;

(e) Employment, supervision and dismissal of a resident manager and such personnel as may be necessary for the maintenance and operation of the project;

(f) Preparation of at least 60 days before each fiscal year of a proposed budget and schedule of assessments for such year;

(g) Collection of all installments of assessments levied and payment of all common expenses authorized by the Board;

(h) Purchase and maintenance in effort of all policies of hazard and liability insurance for the project required by the Declaration and such other insurance and bonds as may be required or authorized by the Declaration or the Board;

(i) Custody and control of all funds of the Association, maintenance of full and accurate books of account and records of such funds and preparation of regular financial reports thereof;

(j) Keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. All records and the vouchers authorizing the payments shall be kept and maintained at the address of the project, or elsewhere within the State of Hawaii as determined by the Board of Directors, and shall be available for examination by the apartment owners at convenient hours of business days;

(k) Notification of all persons having any interest in any apartment according to the Association's record of ownership of delinquency exceeding 60 days in the payment of any assessment against such apartment; and

(l) Establishment of such penalties and fines as it deems appropriate with respect to enforcement of the provisions of the Declaration, these By-Laws and the house rules adopted pursuant to Article V, Section 4, of these By-Laws; provided such penalties and fines are not inconsistent with the law or the provisions herein, and the unpaid amount of such penalties and fines against any apartment owner shall constitute a lien against his interest in his apartment which may be foreclosed by the Board of Directors or Managing Agent in the same manner as provided in the Horizontal Property Act for common expenses.

Section 2. Managing Agent. The Board of Directors shall annually employ a responsible corporation authorized to do business in Hawaii as Managing Agent to manage and control the project and subject at all times to direction by the Board, with all the administrative functions set forth specifically in the preceding Section 1 and such other powers and duties and at such compensation

as the Board may establish, subject to prior approval of every such employment contract by a majority of apartment owners.

Section 3. Representation. Except as provided in Section 5, Article V herein, the President or Managing Agent, subject to the direction of the Board of Directors, shall represent the Association or any two or more apartment owners similarly situated as a class in any action, suit, hearing or other proceeding concerning the Association, the common elements, or more than one apartment, and on its or their behalf may institute, defend, intervene in, prosecute and settle any such actions, suits and proceedings without prejudice to the rights of any apartment owners individually to appear, sue or be sued. Service of process on two or more apartment owners in any such action, suit or proceeding may be made on the President or Managing Agent.

Section 4. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other instruments shall be signed on behalf of the Association by such person or persons as shall be provided by general or special resolution of the Board of Directors or, in the absence of any such resolution applicable to such instrument, by the President or Vice-President and by the Treasurer or Secretary.

## ARTICLE V

### OBLIGATIONS OF APARTMENT OWNERS

Section 1. Assessments. All apartment owners shall pay to the Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective apartments for common expenses of the project in accordance with the Declaration.

Section 2. Maintenance of Apartments. Every apartment owner shall at his own expense at all times well and substantially repair, maintain, amend and keep his apartment, including without limitation all internal installations therein such as water, electricity, gas, telephone, sewer, sanitation, air conditioning, lights and all other fixtures and accessories belonging to such apartment and the interior decorated or finished surfaces of all walls, floors and ceilings of such apartment and ~~all limited common elements appurtenant and adjacent thereto~~, with all necessary reparations and amendments whatsoever in good order and condition except as otherwise provided by law or the Declaration, and shall be liable for all loss or damage whatsoever caused by his failure to perform any such work diligently, and in case of such failure after reasonable notice to perform shall reimburse to the Association promptly on demand all expenses incurred by it in performing any such work authorized by the Board of Directors or the Managing Agent. Every apartment owner and occupant shall

reimburse the Association promptly on demand all expenses incurred by it in repairing or replacing any uninsured loss or damage to the common elements or any furniture, furnishings and equipment thereof caused by such owner or occupant or any person under either of them and shall give prompt notice to the managing Agent of any such loss or damage or other defect in the project when discovered.

Section 3. Use of Project.

(a) All apartments of the project shall be used only for such purposes stated in the Declaration.

(b) All common elements of the project shall be used only for their respective purposes as designed.

(c) No apartment owner or occupant shall place, store or maintain in the halls, lobbies, stairways, walkways, grounds or other common elements of similar nature any furniture, packages or objects of any kind or otherwise obstruct transit through such common elements.

(d) Every apartment owner and occupant shall at all times keep his apartment in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority or the Association for the time being applicable to the use of the project.

(e) No apartment owner or occupant shall make or suffer any strip or waste or unlawful, improper or offensive use of his apartment or the project nor alter or remove any furniture, furnishings or equipment or the common elements.

(f) No apartment owner or occupant shall erect or place in the project any building or structure including fences and walls, nor make any additions or alterations to any common elements of the project, nor place or maintain thereon any signs, posters or bills whatsoever, except in accordance with plans and specifications, including detailed plot plan, prepared by a licensed architect if so required by the Board and also approved by the majority of the apartment owners (or such larger percentage required by law or the Declaration) including all owners of apartments thereby directly affected.

(g) No apartment owner shall decorate or landscape any entrance of his apartment or any other portion of the project except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board.

(h) All occupants shall exercise extreme care about making noises and in the use of musical instruments, radios,

televisions and amplifiers that may disturb other occupants.

(i) No garments, rugs or other objects shall be hung from the windows or facades of the project.

(j) No rugs or other objects shall be dusted or shaken from the windows of the project or cleaned by beating or sweeping on any hallway or exterior part of the project.

(k) No refuse, garbage or trash of any kind shall be thrown, placed or kept on any common elements of the project outside of the disposal facilities provided for such purpose.

(l) No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the project except that dogs, cats and other household pets in reasonable number may be kept by the apartment owners and occupants in their respective apartments but shall not be kept, bred or used therein for any commercial purpose nor allowed on any common elements except in transit when carried or on leash, provided that any such pet causing a nuisance or unreasonable disturbance to any other occupant of the project shall be permanently removed therefrom promptly upon notice given by the Board of Directors or Managing Agent; provided, however, that notwithstanding any other provision herein, visually impaired persons may keep certified seeing-eye dogs and hearing impaired persons may keep certified signal dogs in their apartments and may utilize such dogs on the common areas as necessary to full enjoyment of the property.

(m) No apartment owner or occupant shall without the written approval of the Board of Directors install any wiring for electrical or telephone installations, television antenna, machines or air conditioning units, or other equipment or appurtenances whatsoever on the exterior of the project or protruding through the walls, windows or roof thereof.

(n) No apartment owner or occupant shall erect, place or maintain any television or other antennas on said project visible from any point outside of the apartment.

(o) Nothing shall be allowed, done or kept in any apartment or common elements of the project which would overload or impair the floors, walls, or roofs thereof, or cause any increase in the ordinary premium rates or the cancellation or invalidation of any insurance thereon maintained by or for the Association.

Section 4. House Rules. The Board of Directors, upon giving notice to all apartment owners in the same manner as herein provided for notice of meetings of the Association and opportunity to be heard thereon, may adopt, amend or repeal any supplemental rules and regulations governing details of the operation and use,

of the common elements not inconsistent with any provision of law, the Declaration or these By-Laws.

Section 5. Expenses of Enforcement. Every apartment owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fee incurred by or on behalf of the Association in collecting any delinquent assessments against such apartment, foreclosing its lien therefor or enforcing any provisions of the Declaration or these By-Laws against such owner or any occupant of such apartment.

Section 6. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the apartment owner against whom the same are assessed. If the apartment owner shall fail to pay his assessment within 10 days after the due date, then the apartment owner shall pay an additional assessment of \$10.00 for each such failure and all delinquent assessments shall bear interest at the rate of 1% per month from the assessment due date. In the event of a default or defaults in payment of any such assessment or assessments and in addition to any other remedies herein or by law provided, the Board of Directors may enforce each such obligation as follows:

(a) By suit or suits at law to enforce any such assessment obligation. Each such action must be authorized by a majority of the Board at a regular or special meeting thereof and any such suit may be instituted by any one member of the Board or by the Managing Agent if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the apartment owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorneys' fees in such amount as the Court may adjudge against such defaulting apartment owner. Upon full satisfaction of any such judgment, it shall be the duty of the Board to authorize any two members thereof, acting in the name of the Board, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time within ninety (90) days after the occurrence of any such default, the Board (acting upon the authorization of the majority thereof at any regular or special meeting) may give a notice to the defaulting apartment owner, with a copy to the mortgagee of such apartment owner, if such mortgagee has furnished its name and address to the Board, which said notice shall state the date of the delinquency, the amount of the delinquency and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to file a claim of lien against the apartment of such delinquent apartment owner. Such claim of lien shall state (1) the name of the delinquent apartment owner or reputed apartment owner, (2) a description of the apartment against

which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Board pursuant to the terms of these By-Laws and of Chapter 514, Hawaii Revised Statutes, as amended, and (5) that a lien is claimed against said described apartment in an amount equal to the amount of the stated delinquency. Any such claims of lien shall be signed and acknowledged by any two or more members of the Board and shall be dated as of the date of the execution by the last such Board member to execute said claim of lien. Upon recordation of a duly executed original or copy of such claim of lien with the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State of Hawaii, the Board shall have all remedies provided in Section 514A-90, Hawaii Revised Statutes, as amended. Each default shall constitute a separate basis for a claim of lien or a lien. In the event the foreclosure is under of power of sale, the Board, or any person designated by it in writing, shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The certificate of sale shall be executed and acknowledged by any two members of the Board or by the person conducting the sale.

(c) For the purposes of this Section 5, a certificate executed and acknowledged or made under penalty of perjury by any two members of the Board shall be conclusive upon the Board and the apartment owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any apartment owner shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his apartment (or the fact that all assessments due are paid if such is the case) within fifteen (15) days after demand therefor and upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00). In the event any claims of liens have been recorded and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the apartment owner or his successor, any payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Board, acting by any two members, shall execute and acknowledge (in the manner provided above) a release of lien, stating the date of the original claim of lien, the amount claimed, the date, the recordation data if recorded in the Bureau of Conveyances or the document number if filed in the Land Court, the fact that the particular lien is released and discharged, such release of lien to be delivered to the apartment owner or his successor upon payment of the fee.

Section 7. Record of Ownership. Every apartment owner shall promptly cause to be duly recorded or filed of record the deed, lease, assignment or other conveyance to him of such apartment or other evidence of his title thereto and shall file such document with and present such other evidence of his title to the Board of Directors through the Managing Agent. The Resident Manager or Managing Agent or Board of Directors shall keep an accurate and

current list of members of the Association and their current addresses and the names and addresses of vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the Board.

## ARTICLE VI

### MORTGAGES AND MORTGAGEES

Section 1. Notice to Board of Directors. Any apartment owner who mortgages his interest in an apartment shall notify the Association of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Association within ten (10) days after the execution of the same. The Association shall maintain such information in a book entitled "Mortgages of Apartments."

Section 2. Notice of Unpaid Common Expenses. The Association whenever so requested in writing by an owner or mortgagee of an apartment, shall promptly report any then unpaid assessments or common expenses due from the apartment owner involved, and if no request is made then notice shall be given as provided in Article IV, Section 1(k) hereof.

Section 3. Notice of Default. The Board, when giving notice to an apartment owner of a default in paying common expenses or any other default in performance of any obligation under the Declaration, By-Laws, Apartment Deed, House Rules or other document of the Association, shall send a copy of such notice to each mortgagee of such apartment whose name and address has theretofore been furnished to the Association.

Section 4. Examination of Books. Each mortgagee shall be permitted to examine the books and records of the Association at convenient hours of business days.

Section 5. Mortgage Protection. Notwithstanding any other provisions contained in these By-Laws or the Declaration:

(a) The liens in favor of the Association on any apartment and its appurtenant interest in the common elements created by the Declaration, these By-Laws or Chapter 514A, Hawaii Revised Statutes, shall be subject and subordinate to the rights of the holder of any indebtedness secured by any recorded mortgage under such interest, made for value, provided that after the foreclosure of any such mortgage there shall be a lien upon the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed to such apartment if falling due after the date of such foreclosure sale.

(b) All taxes, assessments and charges which may become

liens prior to the first mortgage under the laws of the State of Hawaii shall relate only to the individual apartment units and not to the condominium project as a whole.

(c) The Declaration and By-Laws shall not give an apartment owner priority over any rights of first mortgagees of apartments pursuant to their mortgages in the case of a distribution to apartment owners of insurance proceeds or condemnation awards for losses to or a taking of apartment units and/or common elements.

(d) No amendment to this Article VI shall affect the rights of the holder of any first mortgage filed in the Bureau of Conveyances of the State of Hawaii, or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, who does not join in the execution thereof if such mortgage was filed prior to the filing of such amendment.

Section 6. Right of First Refusal Not Applicable. In the event that there shall be any right of first refusal to purchase any apartment by the Association, any first mortgagee who obtains title to an apartment pursuant to the remedies provided in the mortgage, or foreclosure, shall be exempt from such "right of first refusal."

Section 7. Unpaid Common Expenses or Assessments. Any first mortgagee who obtains title to the apartment pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such apartment's unpaid common expenses and assessments which accrue prior to the acquisition of title to such unit by the mortgagee. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer of such apartment, his successors and assigns.

Section 8. Release of Information. The Board of Directors may provide any information available to it pertaining to an apartment or the project to the first mortgagee of such apartment and such mortgagee may provide any information to the Board of Directors regarding the mortgagor, the mortgagor's loan and the status of such loan.

## ARTICLE VII

### MISCELLANEOUS

Section 1. By-Laws, Amendments, Copies. These By-Laws may be amended in any respect not inconsistent with provisions of law or the Declaration by vote of seventy-five per cent (75%) of the apartment owners at any meeting of the Association duly called for such purpose, effective only upon the recording of an amendment to

the Declaration setting forth such amendment of these By-Laws. Upon request of any apartment owner, mortgagee or other interested party, the Secretary or the Managing Agent shall supply such party with a copy of the By-Laws as amended and shall certify that such copy is current to the date of such certification; provided, however, that the requesting party shall pay a service charge of \$5.00 plus the actual cost of reproduction.

Section 2. Liability and Indemnity of Directors and Officers. The members of the Board of Directors and officers shall not be liable to the apartment owners for any mistake of judgment or otherwise except for their own individual negligence or misconduct. The Association shall indemnify each director and officer of the Association against all costs, expenses and liabilities, including the amount 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 him in connection with any claim, action, suit, proceeding, investigation or inquiry hereafter made, instituted or threatened in which he may be involved as a party or otherwise by reason of his being or having been a director or officer, or by reason of any action taken or authorized or approved by him or any omission to act as director or officer 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 he is liable by reason of his negligence or misconduct toward the Association in the performance of his duties as such director or officer. As to whether or not a director or officer was liable by reason of negligence or misconduct toward the Association in the performance of his duties as such director or officer, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each director and officer may conclusively rely upon an opinion of legal counsel selected by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any such director or officer 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 director or officer. The Board of Directors shall procure insurance for such indemnity of members of the Board of Directors.

Section 3. Waiver. The failure of the Board to insist in any one or more instances upon a strict performance of or compliance with any of the covenants of the apartment owner hereunder or to exercise any right or option herein contained, or to serve any notice, or to institute any action or summary proceeding, shall not be construed as a waiver, or relinquishment for the future, of such covenant or option or right, but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Board of any sum paid by the apartment owner hereunder, with or without knowledge by the Board of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver, express or implied, by the Board of any provision hereof shall be

deemed to have been made unless expressed in writing and signed by the President pursuant to authority contained in resolution of the Board of Directors.

Section 4. Association May Incorporate. All of the rights, powers, obligations and duties of the Association imposed hereunder may be exercised and enforced by a non-profit membership corporation, formed under the laws of the State of Hawaii for the purposes herein set forth by the Association. Said corporation shall be formed upon the written approval of a majority of the voting apartment owners. The formation of said corporation shall in no way alter the terms, covenants and conditions set forth herein and the Articles and By-Laws of said corporation shall be subordinate hereto and controlled hereby. Any action taken by said corporation, which said action is in violation of any or all of the terms, covenants or conditions contained herein, shall be void and of no effect.

Section 5. Subordination. These By-Laws are subordinate and subject to all provisions of the Declaration and any amendments thereto and the Horizontal Property Act (Chapter 514, Hawaii Revised Statutes, as amended), which shall control in case of any conflict. All terms herein (except where clearly repugnant to the context) shall have the same meaning as in the Declaration or said Horizontal Property Act.

Section 6. Interpretation. In case any provisions of these By-Laws shall be held invalid, such invalidity shall not render invalid any other provision hereof which can be given effect. Nothing in these By-Laws shall be deemed or construed to authorize the Association or Board of Directors to conduct or engage in any active business for profit on behalf of any or all of the apartment owners.

CERTIFICATE OF ADOPTION

The undersigned officers of the Association of Apartment Owners of Fairway House hereby adopt the foregoing as the Restated By-Laws of the Association of Apartment Owners of FAIRWAY HOUSE, this 7<sup>th</sup> day of OCTOBER, 1990.

ASSOCIATION OF APARTMENT OWNERS  
OF FAIRWAY HOUSE

By *William D. King*  
Its

By *Cynthia Angerich*  
Its

RESTATED BY-LAWS OF THE ASSOCIATION OF APARTMENT  
OWNERS OF FAIRWAY HOUSE

ENDNOTES

The following By-Law provisions have been restated for the reasons set forth below:

1. Article V, Section 3(1) of the By-Laws has been amended to conform with the provisions of the State and Federal Fair Housing Act.

All provisions of the By-Laws which have been restated to implement the provisions of the Federal or State Fair Housing Acts have been restated solely for the purpose of information and convenience. In the event of any conflict, the restated provisions shall be subordinate to the provisions of the Federal and State Fair Housing Acts.

STATE OF Hawaii )  
and County )  
CITY OF Honolulu ) SS.  
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On this 24<sup>th</sup> day of October, 1990, before me personally appeared William Fung, to me personally known, who being by me duly sworn, did say that he is the President of the ASSOCIATION OF APARTMENT OWNERS OF FAIRWAY HOUSE and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association. Said Association has no seal.

Wesley A. [Signature]  
Notary Public  
State of Hawaii

My commission expires: 7-21-93

STATE OF Hawaii )  
and County )  
CITY OF Honolulu ) SS.  
^

On this 24<sup>th</sup> day of October, 1990, before me personally appeared Cynthia Gingerich, to me personally known, who being by me duly sworn, did say that she is the Secretary of the ASSOCIATION OF APARTMENT OWNERS OF FAIRWAY HOUSE and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and that said officer acknowledged said instrument to be the free act and deed of said Association. Said Association has no seal.

Wesley A. [Signature]  
Notary Public  
State of Hawaii

My commission expires: 7-21-93