

Prepared by and return to:
Paul L. Wean, Esquire
Wean & Malchow, P.A.
646 E. Colonial Drive
Orlando, FL 32803

Note: This restatement incorporates the original “Declaration of Condominium of Xanadu, A Condominium” recorded in the Public Records of Brevard County, Florida, on March 21, 1983 at Official Record Book 2417, Page 1831. The Declaration has been previously amended at Official Record Book 2426, Page 2530; Official Record Book 2523, Page 2805; and re-recorded at Official Record Book 2989, Page 1570; Official Record Book 2683, Page 845; and Official Record Book 3474, Page 2913, all of the Public Records of Brevard County, Florida.

**CONSOLIDATED AND RESTATED DECLARATION
OF CONDOMINIUM OF XANADU, A CONDOMINIUM**

_____ XANADU OF COCOA BEACH, INC. and SUNFLOWER CLUB, INC., doing business as XANADU JOINT VENTURE, hereinafter called “Developer”, do hereby make, declare, and establish this Declaration of Condominium (hereinafter sometimes called “this Declaration”), as and for a plan of condominium apartment ownership for XANADU, A CONDOMINIUM consisting of real property and improvements thereon as hereinafter described.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said condominium and in consideration of receiving and by acceptance of a conveyance, grant, devise, lease, or mortgage, all grantees, devisees, lessees, and assigns and all parties claiming by, through or under such persons, agree to be bound by all provisions hereof. Both the burdens imposed and the benefits shall run with each unit and the interests in the common property as herein defined.

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ESTABLISHMENT OF CONDOMINIUM

The Developer is the owner of the fee simple title to that certain real property situate in the City of Cocoa Beach, County of Brevard, and State of Florida, which property is more particularly described as follows; to-wit:

SEE SHEET 5 OF EXHIBIT “A” ATTACHED HERETO

and on which property the Developer owns one (1) fifteen-story apartment building containing a total of one hundred eight (108) apartments and other appurtenant improvements as hereinafter described. The Developer does hereby submit the above described real property, together with the improvements thereon, to condominium ownership pursuant to the Florida Condominium Act, and hereby declares the same to be

known and identified as XANADU, A CONDOMINIUM, hereinafter referred to as the "condominium".

The provisions of the Florida Condominium Act, as is now written or as it may hereafter be written or amended, are hereby adopted herein by express reference and shall govern the condominium and the rights, duties and responsibilities of apartment owners hereof, except where permissive variances therefrom appear in the Declaration and the Bylaws and Articles of Incorporation of XANADU CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit. The provisions of this paragraph shall not apply if the Condominium Act provision that is in conflict with a provision of this Declaration shall state that it applies only if there is no provision on that subject in this Declaration.

The definitions contained in the Florida Condominium Act shall be the definition of like terms as used in this Declaration and exhibits hereto unless other definitions are specifically set forth. As the term is used herein and in exhibits hereto, "apartment" shall be synonymous with the term "unit" as defined in said Act, and the term "apartment owner" synonymous with the term "unit owner" as defined therein.

II

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Attached hereto and made a part hereof, and marked Exhibit "A", consisting of forty-two (42) pages are surveys of the land and and [sic] graphic descriptions of improvements in which apartments are located, and plot plan thereof, identifying the apartments, the common elements and the limited common elements, and their respective locations and dimensions.

Said surveys, graphic descriptions and plot plans were prepared by :

ALLEN ENGINEERING, INC.
By: John R. Campbell
Professional Land Surveyor
No. 2351, State of Florida

and have been certified in the manner required by the Florida Condominium Act. Each apartment is identified and designated by a specific number. No apartment bears the same numerical designation as any other apartment. Said specific numbers identifying each apartment are listed on Sheets 7 through 20, of Exhibit "A" attached to this Declaration of Condominium.

It is anticipated that this project will be completed by August 1983.

III

OWNERSHIP OF APARTMENTS AND APPURTENANT SHARE IN COMMON ELEMENTS AND COMMON SURPLUS, AND SHARE OF COMMON EXPENSES

Each apartment shall be conveyed as an individual property capable of independent use and fee simple ownership and the owner or owners of each apartment shall own, as an appurtenance to the ownership of each said apartment, an undivided one-one hundred eighth (1/108) share of all common elements and limited common elements of the condominium, which includes, but is not limited to, ground support area, walkways, yard area, patios, balconies, garages, storage areas, open parking areas, foundations, etc., and substantial portions of the exterior walls, floors, ceiling and wall between units, The space within any of the units and common property shall not be further subdivided. Any undivided interest in the common property is hereby declared to be appurtenant to each unit and such undivided interest shall not be separated from the unit and such interest shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such interest is not expressly mentioned or described in the conveyance, or other instrument. Any instrument, whether a conveyance, mortgage or otherwise, which describes only a portion of the space within any unit shall be deemed to describe the entire unit owned by the person executing such instrument and an undivided one-one hundred eighth (1/108) interest in all common elements and limited common elements of the condominium.

The Developer hereby, and each subsequent owner of any interest in a unit and in the common property, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the common property under the laws of the State of Florida as it exists now or hereafter until this condominium apartment project is terminated according to the provisions hereof or by law. Any owner may freely convey an interest in a unit together with an undivided interest in the common property subject to the provisions of this Declaration. The Developer hereby reserves the right to remove any party walls between any condominium units in order that the said units may be used together as one (1) integral unit. All assessments and voting rights, however, shall be calculated as if such units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that the several units are used as one.

All owners of units shall have as an appurtenance to their units a perpetual easement of ingress to and egress from their units over walks, terraces and other common property from and to the public highways bounding the condominium complex, and a perpetual right or easement, in common with all persons owning an interest in any unit in the condominium complex, to the use and enjoyment of all public portions of buildings and to other common facilities (including but not limited to facilities as they now exist) located in the common property.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist or hereafter may exist caused by settlement or movement of the buildings, and such encroachments shall be permitted to remain undisturbed and such easement shall continue until such encroachment no longer exists.

All units and the common property shall be subject to a perpetual easement in gross granted to XANADU CONDOMINIUM ASSOCIATION, INC., and its successors, for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the Association set forth herein; however, that access to the units shall only be at reasonable times.

The common expenses shall be shared and the common surplus shall be owned in the same proportion as each unit owner's share of the ownership of the common elements; namely, an undivided one-one hundred eighth (1/108).

IV

APARTMENT BOUNDARIES. COMMON ELEMENTS. AND LIMITED COMMON ELEMENTS

The apartments of the condominium consist of that volume of space which is contained within the decorated or finished exposed interior surfaces of the perimeter walls, floors (excluding carpeting and other floor coverings) and ceilings of the apartments, the boundaries of which apartments are more specifically shown on Exhibit "A", pages 7 through 20, attached hereto. The dark solid lines on the floor plans herein above mentioned represent the perimetrical boundaries of the apartments, while the upper and lower boundaries of the apartments, relating to the elevations of the apartments, are shown in notes on said plan.

There are limited common elements appurtenant to each of the units in this condominium, as shown and reflected by the floor and plot plans. These limited common elements are reserved for the use of the units appurtenant thereto, to the exclusion of other units, and there shall pass with a unit, as an appurtenance thereto, the exclusive right to use the limited common elements so appurtenant. In addition, there are one hundred thirty-seven (137) garages or garage spaces numbered 1 through 39, inclusive, B-1 through B-16, inclusive C-1 through C-16, inclusive, and D-1 through D-66, inclusive, and storage areas shown on Sheets 7 through 20 of Exhibit "A" which are common elements but which the Developer reserves the right to designate for use by individual unit owners and upon such designation by Developer said garages or garage spaces and storage areas shall become limited common elements.

Expenses of maintenance, and repair or replacement relating to the limited common elements shall be treated as and paid for as part of the common expenses of the Association, except that the expense of the maintenance, repair or replacement made necessary by the act of any unit owner shall be borne by said unit owner. In addition, the

expenses of the maintenance relating to the decorated or finished exposed interior floor, ceiling and inside walls surfaces, as well as the expenses for maintenance, repairs and replacement of facilities, such as garage enclosures, entrance grills, hurricane shutters, etc.. constructed at the owner's expense in common or limited common areas shall be borne by and assessed against the individual unit owner, except that when, in accordance with Article XII hereof, an owner is given credit for shutters installed by the owner, the cost of operating maintaining and replacing those shutters shall then be borne by the Association.

The common elements of the condominium consist of all of the real property, improvements and facilities of the condominium other than the apartments and the limited common elements as the same are hereinabove defined, and shall include easements through the apartments for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the apartments, limited common elements and common elements and easements of support in every portion of an apartment which contributes to the support of improvements and shall further include all personal property held and maintained for the joint use and enjoyment of all the owners of the apartments.

There are located on the common grounds of the condominium property swale areas for the purpose of water retention and these areas are to be perpetually maintained by the Association so that they will continue to function as water retention areas.

V

ADMINISTRATION OF CONDOMINIUM BY
XANADU CONDOMINIUM ASSOCIATION, INC.

The operation and management of the condominium shall be administered by XANADU CONDOMINIUM ASSOCIATION, INC., a corporation not for profit, organized and existing under the laws of the State of Florida, hereinafter referred to as the "Association".

The Association shall have all of the powers and duties set forth in the Florida Condominium Act and, where not inconsistent therewith, those powers and duties set forth in this Declaration, Articles of Incorporation and Bylaws of the Association. True and correct copies of the Articles of Incorporation and the Bylaws are attached hereto, made a part hereof, and marked Exhibit "B" and Exhibit "C", respectively.

The owners shall place members on the Board of Administration in accordance with the schedule as follows: When unit owners other than the Developer own fifteen percent (15%) or more of the units, the unit owners shall be entitled to elect not less than one-third (1/3) of the members of the Board of Administration. Unit owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Administration: (a) Three years after fifty (50%) percent of the units that will be operated ultimately by the association have been conveyed to purchasers; (b) three months after ninety (90%) percent of the units that will be operated ultimately by the association have

been conveyed to purchasers; (c) when all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business; or (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, whichever shall occur first.

VI

MEMBERSHIP AND VOTING RIGHTS

The Developer and all persons hereafter owning a vested present interest in the fee title to any one of the units shown on the exhibits hereto and which interest is evidenced by recordation of a proper instrument in the public records of Brevard County, Florida, shall automatically be members of the Association and their memberships shall automatically terminate when they no longer own such interest.

There shall be a total of one hundred eight (108) votes to be cast by the owners of the condominium units. Such votes shall be apportioned and cast as follows: The owner of each condominium unit (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where the condominium unit is owned by the Association, no vote shall be allowed for such condominium unit. Where a condominium unit is owned by more than one (1) person, all the owners thereof shall be collectively entitled to the vote assigned to such unit and such owners shall, in writing, designate an individual who shall be entitled to cast the vote in behalf of the owners of such condominium unit of which he is a part until such authorization shall have been changed in writing. The term, "owner", as used herein shall be deemed to include the Developer.

All of the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Administration of the Association who are all to be elected annually by the members entitled to vote, as provided in the Bylaws of the corporation. Each director shall be the owner of a condominium unit (or a partial owner of a condominium unit where such unit is owned by more than one (1) individual, or if a unit is owned by a corporation, including the Developer, any duly elected officer or officers of an owner corporation may be elected a director or directors). The first election of Directors shall be held sixty (60) days from the date of recording of the Declaration of Condominium.

The Owner of every Unit shall accept ownership of said Unit subject to restrictions, easements, reservations, conditions and limitations now of record and affecting the land and improvements constituting the Condominium.

VII

COMMON EXPENSES, ASSESSMENTS, COLLECTION LIEN AND ENFORCEMENT, LIMITATIONS

The Board of Administration of the Association shall adopt annual budgets in advance for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the common expense budget, which shall include, without limitation of the generality of the foregoing, the estimated amounts necessary for maintenance, and operation of common elements and limited common elements, landscaping, street and walkways, office expense, utility services, replacement and operating reserve, casualty insurance, liability insurance, administration and salaries. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying an additional assessment in any calendar year for which the budget has been projected. In determining such common expenses, the Board of Administration may provide for an operating reserve not to exceed fifteen percent (15%) of the total projected common expenses for the year. Each apartment owner shall be liable for the payment to the Association of one-one hundred eighth (1/108) of the common expenses as determined in said budget.

After adoption of a budget and determination of the annual assessment per unit, the Association shall assess such sum by promptly notifying all owners by delivering or mailing notice thereof to the voting member representing each unit at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12) of the annual assessment shall be due and payable in advance to the Association on the first (1st) day of each month.

Special assessments may be made by the Board of Administration from time to time to meet other needs or requirements of the Association in the operation and management of the condominium and to provide for emergencies, repairs or replacements, and infrequently recurring items of maintenance. However, any special assessment which is not connected with an actual operating, managerial or maintenance expense of the condominium, shall not be levied without the prior approval of the members owning at least a majority of the apartments in the condominium.

In the event that assessments levied against any Unit or any installments thereof shall remain unpaid for sixty (60) days or more, then so long as such delinquent assessments and/or installments are not received by the Association, such unpaid assessments and/or installments may be deemed to be a common expense of the Association to be paid out of Association reserves or surplus and, in the event said reserves or surplus are exhausted, then by means of a special assessment as the Board of Administration shall determine. Nothing herein shall be deemed to forgive or abate the obligation of the delinquent Unit to pay the amount of such unpaid assessments and/or installments to the Association or to pay assessments and installments thereafter becoming due.

The liability for any assessment or portion thereof may not be avoided by an apartment owner or waived by reason of such apartment owner's waiver of the use and enjoyment of any of the common elements of the condominium or by his abandonment of his apartment.

The record owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, made by the Association and for all costs of collection of delinquent assessments. In the event assessments against a unit are not paid within thirty (30) days after their due date, the Association shall have the right to foreclose its lien for such assessments.

The Developer shall be excused from the payment of its share of common expenses and assessments related thereto on units it owns in the said Condominium for the period of time commencing with the date of the recording of this Declaration until January, 1983, or until the unit owners, other than the Developer, elect the majority of the Board Members, whichever occurs last, during which period of time the Developer guarantees that the assessments for common expenses of the Condominium imposed upon the respective unit owners shall not increase over the dollar amount as set forth in the Projected Operating Budget, which is attached hereto and made a part hereof, and obligates itself to pay any amount of common expenses incurred during said period of time not produced by the assessments at the guaranteed level.

Assessments that are unpaid for over thirty (30) days after due date shall bear interest at the rate of ten percent (10%) per annum until paid. The Board of Administration shall have the sole discretion to impose a late charge not to exceed Twenty-Five and No/100 Dollars (\$25.00) on payments more than ten (10) days late.

The Association shall have a lien on each condominium parcel (the term "condominium parcel" shall include the condominium unit and the interest in the common elements and limited common elements) to secure payment of assessments. The said lien shall be effective from and after the time of recording in the public records of Brevard County, Florida (the same being the county in which the subject condominium is located) of a claim of lien stating the description of the condominium parcel, the name of the record owner, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. No such lien shall be effective longer than 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1 year period shall automatically be extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien shall secure all unpaid assessments which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title as well as interest, late charges and all reasonable costs and attorney's fees incurred by the association incident to the collection. Where any such lien shall have been paid in full, the party making payment thereof shall be entitled to receive a satisfaction of such lien in such form that it may be

recorded in the public records of Brevard County, Florida. By recording a notice in substantially the following form, a unit owner or his agent or attorney may require the Association to enforce a recorded claim of lien against his condominium parcel.

Notice of Contest of Lien

To: XANADU CONDOMINIUM ASSOCIATION, INC.
Cocoa Beach, Florida 32931

You are notified that the undersigned contests the claim of lien filed by you on _____, and recorded in Official Records Book _____ at Page _____, of the Public Records of Brevard County, Florida, and that the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this _____ day of _____, 19_____

Signed: _____
Owner, Agent or Attorney

After service of a copy of the Notice of Contest of Lien, the Association shall have ninety (90) days in which to file an action to enforce the lien, and if the action is not filed within that ninety (90) day period, the lien is void.

The Association may bring an action in its name to foreclose a lien for assessment in the manner a mortgage or real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's Fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified mail, return receipt requested addressed to the unit owner. If after diligent search and inquiry the Association cannot find the unit owner or a mailing address at which the unit owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a Notice of Contest of Lien as provided in Section 718.116(4).

If the unit owner remains in possession of the unit and the claim of lien is foreclosed, the court in its discretion may require the unit owner to pay a reasonable rental for the unit and the Association is entitled to the appointment of a receiver to collect the rent.

The provisions of Section 718.116 of the Florida Condominium Act, are incorporated herein by reference and made a part hereof, and the Association shall have all of the powers and duties as set forth in said Section 718.116 as well as all the powers and duties set forth in this Article VII of this Declaration, where the same are not in conflict with or limited by Section 718.116.

The Association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage and convey it.

When the mortgagee of a first mortgage of record, or other purchaser, of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the share of common expenses or assessments by the Association pertaining to the condominium parcel or chargeable to the former unit owner of the parcel which became due prior to acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage or for which a deed was given in lieu of foreclosure. The unpaid share of common expenses or assessments are common expenses collectible From all of the unit owners, including such acquirer, his successors and assigns. The foregoing provision may apply to any mortgages of record and shall not be restricted to the first mortgage(s) of record. A first mortgagee acquiring title to a condominium parcel as a result of Foreclosure, or a deed in lieu of foreclosure, may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

Any unit owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his condominium parcel. The holder of a mortgage or other lien of record has the same right as to any condominium parcel upon which he has a lien.

Any first mortgagee may make use of any unit acquired as may facilitate its sale including, but not limited to, the showing of the property and the display of "For Sale Signs" and neither the other apartment owners nor the Association shall interfere with the sale of such apartments.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for assessment shall be subordinate and inferior to any recorded mortgage unless the assessment is secured by a claim of lien which is recorded prior to the recording date of the mortgage.

Any person purchasing or encumbering a unit shall have the right to rely upon any statement made in writing by an officer of the Association regarding assessments against units which have already been made and which are due and payable to the Association and the Association and the members shall be bound thereby. No action or suit shall be brought to enforce foreclosure of any lien arising under this Declaration after two (2) years from the date of any unpaid assessment.

The Association may at anytime require owners to maintain a minimum balance on deposit with the Association to cover future assessments. Said deposit shall be uniform for each and every unit and shall in no event exceed three (3) months' assessments.

A unit owner, regardless of how title is acquired, including without limitation, a purchaser at a judicial sale, shall be Liable for all assessments coming due while he is an owner of a unit. In a voluntary conveyance the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amount paid by the grantee therefor.

VIII

INSURANCE COVERAGE, USE AND DISTRIBUTION OF PROCEEDS, REPAIR OR RECONSTRUCTION AFTER CASUALTY

a. All insurance policies upon the condominium property shall be purchased by the Association. The named insured shall be the Association and the apartment owners and their mortgagees as their interest may appear. Provisions shall be made for the issuance of mortgagee endorsements and/or memoranda of insurance to the apartment owners and their mortgagees.

The insurance purchased by the Association does not insure for injury or damages resulting from an accident within an owner's unit, therefore each unit owner is responsible for purchasing liability insurance covering accidents within the owner's unit.

b. The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association property and the condominium property. This would include "Hazard" and flood insurance covering all improvements upon the land, including all parts of the building, both exterior and interior, and including fixtures, in an adequate amount, exclusive of foundation and excavation cost. All hazard policies issued to protect condominium buildings shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, fixtures, installation or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceiling of the individual units initially installed or replacements thereof, in accordance with the original plans and specifications, or as existed at the time the unit was initially conveyed if the original plans and specifications are not available. However, the word "building" shall not include floor coverings, wall coverings or ceiling coverings, and, as to contracts entered into after July 1, 1992, does not include the following equipment if it is located within a unit and the unit owner is required to repair or replace such equipment: electrical fixtures, appliances, air conditioner or heating equipment, water heaters or built-in cabinets. With respect to the coverage provided for by this paragraph, the unit owners shall be considered additional insureds under the policy. The Association shall also be required to obtain and maintain comprehensive liability insurance with combined single limits of at least one million (\$1,000,000.00) dollars for the Association and its members. All liability insurance maintained by the Association shall contain cross liability endorsements to cover liability of the apartment owners as a group to each apartment.

The Association may carry such other insurance or as may be required by any local State or Federal agency and shall obtain such other coverage as the Board of Administration may determine to be desirable.

c. The premiums upon all insurance policies shall be paid by the Association as an operating expense.

d. Any proceeds becoming due under the casualty insurance policy or policies for loss, damage or destruction sustained to the building or other improvements, shall be payable to the Association, the owners and the mortgagees which have been issued loss payable endorsements and/or memoranda of insurance.

In the event any loss, damage or destruction to the insured premises is not substantial (as such term "substantial" is hereinafter defined), and such loss, damage or destruction is replaced, repaired or restored with the Association's funds, the first mortgagees which are named as payees upon the draft issued by the insurance carrier shall endorse the draft and deliver the same to the Association, provided, however, that

any repair and restoration on account of physical damage shall restore the improvements to substantially the same condition as existed immediately prior to the casualty.

Substantial loss, damage or destruction as the term is herein used, shall mean any loss, damage or destruction sustained to the insured improvements which would require an expenditure of sums in excess of ten thousand (\$10,000.00) dollars, in order to restore, repair or reconstruct the loss, damage or destruction sustained.

Any casualty insurance proceeds becoming due by reason of substantial loss, damage or destruction sustained to the condominium improvements shall be payable to the Association and such proceeds shall be made available to the Board and shall be held in a construction fund to provide for the payment of all work, labor and materials to be furnished for the reconstruction, restoration and repair of the condominium improvements. Disbursements from such construction fund shall be by usual and customary construction loan procedures. Any sums remaining in the construction loan fund after the completion of the restoration, reconstruction and repair of the improvements and after full payment therefore shall be paid over to the Association and held for, and/or distributed to the apartment owners in proportion to each owner's share of common surplus. If the insurance proceeds payable as the result of such casualty are not sufficient to pay the estimated cost of such restoration, repair and reconstruction, which estimate shall be made prior to proceeding with restoration, repair or reconstruction, the Association shall levy a special assessment against the apartment owners for the amount of such insufficiency, and shall pay said sum into the aforesaid construction loan fund.

If the damage sustained to the improvements is less than substantial, as heretofore defined, the Board of Administration may determine that it is in the best interest of the Association to pay the insurance proceeds into a construction fund to be administered by the Board.

Any restoration, repair or reconstruction made necessary through a casualty, shall be commenced and completed as expeditiously as reasonably possible, and must substantially be in accordance with the plans and specifications for the construction of the original building. In no event shall any reconstruction or repair change the relative locations and approximate dimensions of the common elements and of any apartment, unless an appropriate amendment be made to this Declaration.

e. Where physical damage has been sustained to the Condominiums improvements and the insurance proceeds have not been paid into a construction loan fund as hereinabove more fully provided, and where restoration, repair or reconstruction has not been commenced, an institutional mortgagee who has commenced foreclosure proceedings upon a mortgage encumbering an apartment, shall be entitled to receive that portion of the insurance proceeds apportioned to said apartment in the same share as the share in the common elements appurtenant to said apartment.

f. If substantial loss, damage or destruction shall be sustained to the condominium improvements, and at a special members' meeting called for such purpose, the owners of a majority of the apartments in the condominium vote and agree in writing that the damaged property will not be repaired or reconstructed, the condominium shall be terminated, provided, however, such termination will not be effective without the written consent of all first mortgagees holding mortgages encumbering apartments.

IX

RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

a. Each apartment owner shall own and shall bear the cost and be responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, electrical and plumbing fixtures, kitchen and bathroom fixtures, and all other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his apartment and which may now or hereafter be affixed or contained within his apartment. Such owner shall further be responsible for maintenance, repair and replacement of any air conditioning equipment servicing his apartment although such equipment not be located in the apartment, and of any and all wall, ceiling and floor surfaces, painting, decorating and furnishings and all other accessories which such owner may desire to place or maintain therein. Unit owners are responsible for the maintenance, including cleaning, repair or replacement of windows and screening thereon and fixed and sliding glass doors.

b. The Association, at its expense, shall be responsible for the maintenance repair and replacement of all common elements and limited common elements, (except the decorated or finished exposed interior floor, ceiling and inside all surfaces as set forth in Article IV) including those portions thereof which contribute the support of the building, and all conduits, ducts, plumbing, wiring and other facilities located in the common elements, for the furnishing of utility services to the apartments, and including artesian wells, pumps, piping, and fixtures serving individual air conditioning units. Painting and cleaning of all exterior portions of the building, including all exterior doors, but excluding sliding glass doors, windows, and screens, and excluding improvements made by an owner in common and limited common areas, shall also be the Association's responsibility. Maintenance, repair and replacement of hurricane shutters installed by the Association in accordance with the provision of Article XII hereof shall also be the responsibility of the Association. Should any damage be caused to any apartment by reason of any work which may be done by the Association in the maintenance, repair or replacement of the common elements, the Association shall bear the expense of repairing such damage.

c. Where loss, damage or destruction is sustained by casualty to any part of the building, whether interior or exterior, whether inside an apartment or not, whether a fixture or equipment attached to the common elements or attached to and completely located inside an apartment, and such loss, damage or destruction is insured for such casualty under the terms of the Association's casualty insurance policy or policies, but the insurance

proceeds payable on account of such loss, damage or destruction are insufficient for restoration, repair or reconstruction, all the apartment owners shall be specially assessed to make up the deficiency, irrespective of a determination as to whether the loss, damage or destruction is to a part of the building, or to fixtures or equipment which it is an apartment owner's responsibility to maintain unless the condominium is terminated pursuant to Article VIII f. in which case this paragraph shall be null and void.

d. In the event owners of a unit fail to maintain it as required herein or make any structural addition or alteration without the required written consent, the Association or an owner with an interest in any unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Association shall have the right to levy at any time a special assessment against the owners of the unit for the necessary sums to put the improvements within the unit in good condition and repair or to remove any unauthorized structural addition or alteration. After making such assessment, the Association shall have the right to have its employees and agents enter the unit, at reasonable times, to do such work as deemed necessary by the Board of Administration of the Association to enforce compliance with the provisions hereof.

The Board of Administration of the Association may enter into a contract with any firm, person or corporation for the maintenance and repair of the condominium property and may join with other condominium corporations on contracting with the same firm, person or corporation for maintenance and repair.

The Association shall determine the exterior color scheme of all buildings and shall be responsible for the maintenance thereof, and no owner shall paint an exterior wall, door, window, patio or any exterior surface, etc, at any time without the written consent of the Association.

X

USE RESTRICTIONS

a. Each apartment is hereby restricted to residential use by the owner or owners thereof, their immediate families, guest, invitees, and servants. The one-bedroom unit is hereby restricted to no more than two (2) occupants. Each two-bedroom unit is hereby restricted to no more than four (4) occupants. Each three-bedroom unit is hereby restricted to no more than six (6) occupants. Each four-bedroom unit is hereby restricted to no more than six (6) occupants.

b. The apartment may be rented provided the occupancy is only by one (1) lessee and members of his immediate family, guests and his servants. No rooms may be rented and no transient tenants may be accommodated. No lease of an apartment shall release or discharge the owner thereof of compliance with this Section X or any of his other duties as an apartment owner. Time sharing of apartments is prohibited. Ownership of an

apartment on a monthly or weekly time sharing program is prohibited. The minimum rental period shall not be less than one year. Subleasing of apartments is prohibited.

c. No nuisances shall be allowed to be committed or maintained upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interfere with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate, nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or use of the common elements that will increase the cost of insurance upon the condominium property.

d. No immoral, improper, offensive use shall be made on the condominium property nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the condominium shall be observed.

e. Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by the Board of Administration of the Association as provided by its Articles of Incorporation and Bylaws.

f. The Board of Administration or the agents and employees of the Association may enter any unit at reasonable times for the purpose of maintenance, inspection, repair and replacement of the improvements within units or the common property, or in case of emergency threatening units or the common property, to determine compliance with these restrictions, reservations, covenants, conditions and easements, and the Bylaws of the Association.

g. No sign, advertisement or notice of any type shall be shown on the common property or any unit and no exterior antennas and aerials shall be erected except as provided under uniform regulations promulgated by the Association. This sub-paragraph g. shall not apply to the Developer and/or institutional first mortgagees.

h. An owner shall not place or cause to be placed in the walkways or in or on any other project areas and facilities of similar nature, both common and limited, any furniture, packages or objects of any kind except as provided in Article XI. Such areas shall be used for no other reason than for normal transit through them.

i. It is prohibited to hang garments, rugs, etc. from windows, balconies or any other exterior area of the building, except that any unit owner may display one portable, removable United States Flag in a respectful way.

j. It is prohibited to dust rugs, etc. from windows or to clean rugs, etc. by beating on the exterior of the project.

k. No auto parking space may be used for any purpose other than parking automobiles which are in operating condition. No other vehicles or objects, including but

not limited to trucks, motorcycles, trailers, and boats, will be parked or placed upon such portions of the condominium property unless permitted by the Board of Administration. No parking space shall be used by any other person other than an occupant of the condominium who is an actual resident or by a guest or visitor and by such guest or visitor only when such guest or visitor is, in fact, visiting and upon the premises.

l. Until the Developer has closed all the sales of the apartments in the condominium, neither the other apartment owners nor the Association shall interfere with the sale of such apartments. The Developer may make such use of the unsold units and common elements as may facilitate its sales, including but not limited to maintenance of a sales office, model apartments, the showing of the property, and the display of signs.

m. No pets are permitted.

XI.

LIMITATIONS UPON RIGHT OF OWNER TO ALTER OR MODIFY APARTMENT

No owner of an apartment shall make any structural modifications or alterations of the apartment. Further, no owner shall cause any improvements or changes to be made on or to the exterior of the apartment buildings, including painting or other decoration, the installation of awnings, shutters, electrical wiring, air conditioning units and other things which might protrude through or be attached to the walls of the apartment building; except as provided below. Further, no owner shall in any manner change the appearance of any portion of the apartment building not wholly within the boundaries of his apartment. The board of administration shall adopt hurricane shutter specifications which shall include color, style and other factors deemed relevant by the board. All specifications adopted by the board shall comply with the applicable building code. The board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board.

The Association shall have the power to authorize the installation by the individual unit owners of grills across the entranceways (alcoves) to the units in the condominium provided they are in harmony with the color scheme of the condominium and provided the unit owner obtains the prior written consent of the Association. Although the unit owner is responsible for maintaining the grills in a proper condition and repair the Association shall ensure that the grills are properly maintained at the unit's owner's expense. The enforcement provisions of Article IX shall apply to the maintenance and repair of grills. An example of the entranceway (alcove) where grills may be placed with Association approval is attached hereto.

In addition, unit owners shall be permitted to place indoor-outdoor carpeting or ceramic tile in the alcoves described above and shall be permitted to place plants in these alcoves provided the alcoves are maintained in a neat and attractive condition at all times, within the sole discretion of the Association. Unit owners shall immediately comply with any

request of the Association to correct the appearance of the alcove. The Association is hereby empowered to pass reasonable rules and regulations with regard to the alcoves so that they shall be maintained by all unit owners in an attractive manner in harmony with the remainder of the building.

The Association shall have the power to authorize the installation of a glass window on the West side of the main building in the condominium as shown on the floor plan of penthouse-06 attached hereto upon presentation of the plans for installation of the window to the Association and approval thereof by the Association.

The Association shall have the power to authorize the uniform alteration of the railings around the balconies of Penthouse-01, Penthouse-06, and the open area on the West side of the main building in the condominium by removing the plaster a distance of 16" from the top of the railings. This modification shall be permitted on the West side of the main building only.

The Association shall have the power to authorize the enclosure of garages (enclosed parking spaces) in both the 15 story main building and the separate parking garage. The enclosures shall be uniform in appearance and shall be approved in writing by the Association prior to construction. The cost of the enclosure shall be borne by unit the unit owner who also shall be responsible for the maintenance and repair of the enclosure. Once the enclosure is completed unit owners shall be permitted to use the enclosed parking spaces for storage so long as the door is kept closed when the enclosure is not in use.

Article XII

ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY ASSOCIATION

Whenever in the judgment of the Board of Administration the condominium property shall require additions, alterations or improvements (in excess of the usual items of maintenance), and the making of such additions, alterations or improvements shall have been approved by written approval of two-thirds of the apartment owners, the Board of Administration shall proceed with such additions, alterations or improvements and shall specially assess all apartment owners for the cost thereof as a common expense, provided, however, no such special assessment shall be levied for improvements which shall exceed one hundred fifteen percent (115%) of the current regular annual assessment, unless prior written consent is received from a majority of the voting members.

The board may, subject to the approval of a majority of voting interest of the condominium, install hurricane shutters and may maintain, repair, or replace such approved hurricane shutters, whether on or within common elements, limited common elements, units, or association property. However, where laminated glass architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, the board may not install hurricane shutters. The board may

operate shutters installed pursuant to this subsection without permission of the unit owners only where such operation is necessary to preserve and protect the condominium property and association property. The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters by the board shall constitute a common expense and shall be collected as such.

A unit owner who has, previous to the installation of shutters by the board installed hurricane shutters or laminated glass architecturally designed to function as hurricane protection which complies with the applicable building code shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each unit, the credit to be based upon the depreciated value of the shutters installed by the owner, assuming a ten-year useful life. However, such unit owner shall remain responsible the pro rata for share of expenses for hurricane shutters installed on common elements and association property by the board and shall remain responsible for a pro rata share of the common expense of the replacement operation, repair, and maintenance of shutters installed on or within common elements and association property.

XIII

AMENDMENT OF DECLARATION

Amendments to this Declaration shall be proposed and adopted in the following manner:

Amendments to the Declaration may be proposed by the Board of Administration of the Association acting upon vote of the majority of the Directors. or by members of the Association owning a majority of the condominium units whether meeting as members or by instrument in writing signed by them.

Upon any amendment or amendments to the Declaration being proposed by said Board of Administration or members, such proposed amendment or amendments shall be transmitted to the President of the Association or other officer of the Association in the absence of the President who shall thereupon call a special meeting of the Association for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as set forth in the By Laws of the Association.

In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than two thirds (2/3) of the apartment units in the condominium. No amendment to this Declaration shall be adopted which operate to affect the validity or priority of any mortgage held by an institutional first mortgagee or which would alter, amend or modify, in any manner

whatsoever, the rights, power and privileges granted and reserved herein in favor of any institutional mortgagee without the consent of all such mortgagees.

No amendment may change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendment.

No provision of the Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision _____ for present text".

An amendment of a Declaration is effective when properly recorded in the public records of Brevard County, Florida. After an amendment has been adopted and recorded in accordance with the above, a copy of the amendment will be furnished to each unit owner along with the statement that the amendment has been adopted and recorded and is effective.

No amendment shall be made or be valid so long as the developer is the owner of any unit within the condominium unless the approval of the developer is expressly noted thereon in writing, except that this paragraph shall not be applicable or in force after December 31, 1985 or after all units in the condominium owned by developer have been conveyed to purchasers, whichever date shall first occur.

Notwithstanding anything to the contrary contained in this declaration, the developer expressly reserves the right to amend the declaration so as to correct any legal description contained herein, which legal description or descriptions may have been incorrect by reason of a scrivener's or surveyor's error. The developer may amend this declaration as aforescribed by filing an amended legal description (or descriptions) as an amendment to the declaration among the Public Records of Brevard County, Florida, which amendment (or amendments) shall expressly describe that legal description which is being corrected (by reference to the exhibit containing said legal description or otherwise), in addition to the corrected legal description. Such amendments need be executed and acknowledged only by the developer and need not be approved by the association, unit owners, lienors or mortgagees of units of the condominium whether or not elsewhere required for amendments. As part and parcel of any such amendment as provided for in this subparagraph, however, there shall be attached thereto an affidavit of the individual or

individuals responsible for the original incorrect legal description, whether he be scrivener or surveyor, which affidavit shall set forth (1) that said individual made an error in the legal description, (2) that the error is corrected by the description contained in the amendment, and (3) that it was the intent at the time of the incorrect original legal description to make that description such as is contained in the new amendment. In the event the party responsible for the original incorrect legal description has died, or is not available, then in that event, any other party having personal knowledge of the incorrect legal description by reason of the scrivener's or surveyor's error may execute the required affidavit for the amendment provided herein.

In the event it shall appear that there is an error or omission in this declaration or exhibits thereto, then and in that event the association may correct such error and/or omission by an amendment to this declaration in the manner hereinafter described to effectuate an amendment for the purpose of curing defects, errors or omissions. Such an amendment shall not require a vote of approval as provided above but shall require a vote in the following manner:

(a) Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such proposed amendment is to be considered.

(b) A resolution for the adoption of such a proposed amendment may be proposed by either the board of administration of the association or by the members of the association, and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

(i) Not less than thirty-three and one-third percent (33 1/3%) of the board of directors and by not less than ten percent (10%) of the votes of the entire membership of the condominium; or

(ii) Not less than twenty-five (25%) of the votes of the entire membership of the association; or

(iii) In the alternative, an amendment may be made by an agreement signed and acknowledged by all unit owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Brevard County, Florida.

(c) The foregoing provisions relation to amendments for defects, errors or omissions is in accordance with and pursuant to Section 718.304(1), Florida Statute.

(d) That the amendment made pursuant to this paragraph need only be executed and acknowledged by the developer or the association and by no other parties whatsoever.

Notwithstanding anything to the contrary contained in this declaration, the developer reserves the right to change the interior designs and arrangement of all units and to alter the boundaries between units, as long as the developer owns the units so altered; however, no such change shall increase the number of units nor alter the boundaries of the common elements, except the party wall between units, without amendment of this declaration in the manner hereinbefore set forth. If the developer shall make any changes in units, as provided in this paragraph, such changes shall be reflected by an amendment to this declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by the developer and any holders of institutional mortgages encumbering the said altered units. The survey shall be certified in the manner required by the condominium act. If more than one (1) unit is concerned, the developer shall apportion between the units the shares in the common elements appurtenant to the units concerned, together with apportioning common expenses and common surplus of the units concerned and such shares of common elements, common expenses and common surplus shall be duly noted in the amendment of the declaration.

Invalidation of any one (1) or more of these restrictions, reservations, covenants, conditions and easements, or any provision contained in this Declaration, or in a conveyance of a unit by the Developer, by judgment, court order, or law, shall in nowise affect any of the other provisions which shall remain in full force and effect.

In the event that any court should hereafter determine that any provision, as originally drafted herein violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, measuring life shall be that of the youngest incorporator of the Association.

These restrictions, reservations, covenants, conditions and easements shall be binding upon and inure to the benefit of all property owners and their grantees, heirs, personal representatives, successors and assigns, and all parties claiming by, through or under any member.

XIV

TERMINATION OF CONDOMINIUM

Except as otherwise provided in Article VIII, paragraph f. of this Declaration, the condominium created and established hereby may only be terminated upon the vote of members of the Association owning a majority of the apartments in the condominium, provided that the written consent to such termination is obtained from all institutional first mortgagees holding mortgages encumbering the apartments.

Immediately after the required vote of consent to terminate, each and every unit owner shall immediately convey by warranty deed to the Association all of said unit owners' right, title and interest to any unit and to the common property, provided the Association's officers and employees handling funds have been adequately bonded and the Association or any member shall have the right to enforce such conveyance by specific performance in a court of equity.

The Board of Administration of the Association shall then sell all of the property at public or private sale upon terms approved in writing by all of the institutional first mortgagees. Upon the sale of said property the costs, fees and charges for affecting said sale, the cost of liquidation and dissolution of the Association and all obligations incurred by the Association in connection with the management and operation of the property up to and including the time when distribution is made to the unit owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale") shall be distributed to the unit owners in the manner now about to be set forth.

The distributive share of each unit owner in the net proceeds of sale, though subject to the provisions hereinafter contained, shall be the following portion thereof; to-wit:

AN UNDIVIDED ONE-ONE HUNDRED EIGHTH (1/108)

Upon the determination of each unit owner's share, as above provided for, the Association shall pay out of each unit owner's share all mortgages and other liens encumbering said unit in accordance with their priority, and upon such payment being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said unit or units, regardless of whether the same are paid in full. Thereupon, the directors of the Association shall proceed to liquidate and dissolve the Association, and distribute the remaining portion of each distributive share, if any, to the owner or owners entitled thereto. If more than one (1) person has an interest in a unit, the Association shall pay the remaining distributive share allocable to said unit to the various owners of such unit, excepting that if there is a dispute as to the validity, priority or amount of mortgages or liens encumbering a unit, then payment shall be made to the owner and/or owners of such unit and to the owners and holders of the mortgages and liens encumbering said unit.

As evidence of the member's resolution to abandon passed by the required vote or written consent of the members, the President and Secretary of the Association shall effect and place in the public records of Brevard County, Florida, an affidavit stating that such resolution was properly passed or approved by the members and also shall record the written consents, if any, of institutional first mortgagees to such abandonment.

After such an affidavit has been recorded and all owners have conveyed their interest in the condominium parcel to the Association and the Association to the purchaser, the title to said property thereafter shall be free and clear from all restrictions, reservations, covenants, conditions and easements set forth in this Declaration, and the purchaser and

subsequent grantees of any of said property shall receive title to said lands free and clear thereof.

XV

ENCROACHMENTS

If any portion of the common elements now encroaches upon any apartment, or if any apartment now encroaches upon any other apartment or upon any portion of the common elements, or if any encroachment shall hereafter occur as the result of settling of the building, or alteration to the common elements made pursuant to the provisions herein, or as the result of repair and restoration, a valid easement shall exist for the continuance of such encroachment for so long as the same shall exist.

Until the Developer has sold all units in the condominium, the Developer, and its successors or assigns as Developer, shall retain the right at all times to declare and create, modify and amend, from time to time, without joinder or consent of any unit owner, unit mortgagee or the Association, easements upon the condominium property for public or private utility, including but not limited to cable television.

XVI

ASSOCIATION TO MAINTAIN REGISTER
OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a register setting forth the names of all owners of apartments in the condominium, and any purchaser or transferee of an apartment shall notify the Association of the names of any party holding a mortgage upon any apartment and the name of all lessees in order that the Association may keep a record of same.

XVII

ESCROW FOR INSURANCE PREMIUMS

Any institutional first mortgagee holding a mortgage upon an apartment in the condominium shall have the right to cause the Association to create and maintain an escrow account for the purpose of assuring the availability of funds with which to pay premium or premiums due from time to time on casualty insurance policy or policies which the Association is required to keep in existence, it being understood that the Association shall deposit in an escrow depository satisfactory to such institutional first mortgagee or institutional first mortgagees a monthly sum equal to one-twelfth (1/12) of the annual amount of such insurance expense, and to contribute such other sum as may be required therefor to the end that there shall be on deposit in said escrow account at least one (1)

month prior to the due date for payment of such premium or premiums, a sum which will be sufficient to make full payment therefor.

XVIII

REAL PROPERTY TAXES DURING INITIAL YEAR OF CONDOMINIUM

In the event that during the year in which this condominium is established, real property taxes are assessed against the condominium property as a whole, such taxes will be a common expense.

XIX

RESPONSIBILITY OF APARTMENT OWNERS

The owner of each apartment shall be governed by and shall comply with the provisions of this Declaration as well as the Bylaws and Articles of Incorporation of the Association. Any apartment owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his act, neglect or carelessness, or by that of any members of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of an apartment. Nothing herein contained, however, shall be construed so as to modify any waiver of rights of subrogation by insurance companies.

In any action brought against an apartment owner by the Association for damages, or injunctive relief due to such apartment owner's failure to comply with the provisions of this Declaration or Bylaws of the corporation, the Association shall be entitled to court costs, reasonable attorney's fees and expenses incurred by it in connection with the prosecution of such action.

XX

WAIVER

The failure of the Association, an apartment owner or institutional first mortgagee, to enforce any right, provision, covenant or condition which may be granted herein, or in the Bylaws and Articles of Incorporation of the Association, or the failure to insist upon the compliance with same, shall not constitute a waiver of the Association, such apartment owner or institutional first mortgagee to enforce such right, provision, covenant or condition, or insist upon the compliance with same, in the future.

No breach of any of the provisions contained herein shall defeat or adversely affect the lien of any mortgage at any time made in good faith and for a valuable consideration

upon said property, or any part thereof, and made by a bank, savings and loan association, or insurance company authorized to transact business in the State of Florida and engage in the business of making loans constituting a first lien upon real property, but the rights and remedies herein granted to the Developer, the Association, and the owner or owners of any part of said condominium, may be enforced against the owner of the portion of said property subject to such mortgage, notwithstanding such mortgage. The purchaser at any sale upon foreclosure shall be bound by all of the provisions herein contained, unless said purchaser be an institutional first mortgagee which had a mortgage on said unit at the time of the institution of said foreclosure action, or the Developer.

XXI

CONSTRUCTION

The provisions of this Declaration shall be literally construed so as to effectuate its purposes. The invalidity of any provision herein shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration.

XXII

GENDER

The use of the masculine gender in this Declaration shall be deemed to refer to the Feminine or neuter gender, and the use of the singular or plural shall be taken to mean the other whenever the context may require.

XXIII

CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

XXIV

REMEDIES FOR VIOLATIONS

For violation or a breach of any provisions of this Declaration by a person claiming by, through or under the Developer, or by virtue of any judicial proceedings, the Association, and the members thereof, or an Institutional first mortgagee, or any of them severally shall have the right to proceed at law for damages or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them, or for such other relief as may be appropriate. In addition to the foregoing right, the corporation shall have the right, whenever there shall have been built within the

condominium any structure which is in violation of this Declaration to enter upon the property where such violation of this Declaration exists, and summarily abate or remove the same at the expense of the owner, provided, however, the corporation shall then make the necessary repairs or improvements where such violation occurred so that the property shall be in the same condition as it was before said violation occurred, and any such entry and abatement or removal shall not be deemed a trespass. The failure promptly to enforce any of the provisions of this Declaration shall not bar their subsequent enforcement. In any proceeding arising because of an alleged violation by an apartment owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court, and in any supplemental proceedings and appellant proceedings pursuant thereto, the prevailing party shall be entitled to attorney's fees for said proceedings subsequent to Final judgment as the appropriate judicial body may award.